

NWA Intergovernmental Working Group and NWA Stakeholders

A Basic History and Vision of Nutrient Trading and Act 335

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The Background of Nutrient Trading and the Evolution of Act 335 in Arkansas.

The concept of nutrient trading is not a new one and has been used in an attempt to improve or enhance water quality in other regions of the United States via a variety of means and methods and with varying degrees of success. The United States Environmental Protection Agency (EPA) has supported the concept of nutrient water quality trading for more than twenty years. During the George W. Bush administration, the EPA issued a formal policy statement elaborating on its support for trading (EPA Final Water Quality Trading Policy Jan. 13, 2003), and that support has continued to the present day. The concept initially began to be seriously discussed in our area when the Arkansas and Oklahoma phosphorus issue heated up again a few years ago. The larger cities and the two largest counties in Northwest Arkansas (NWA) formed the Intergovernmental Working Group (IWG) basically to address issues and best practices on phosphorus reduction and other legal issues in the Illinois River Watershed. The IWG originally consisted of the cities of Springdale, Fayetteville, Rogers, Bentonville and Siloam Springs as well as Washington and Benton counties. Siloam Springs withdrew around 2012 for various reasons. Once the initial issues were addressed, an updated "Joint Principles" agreement produced, and the Arkansas-Oklahoma Compact Commission given the mission to develop a technically based and scientifically defensible phosphorus level for the Illinois River, the discussion about nutrient trading began again.

The discussion picked up steam in late 2013 and early 2014 after the Regulation 2 "Minerals Issue" and water quality standards became a big focus and many of the major water utilities across the state banded together with ADEQ to help secure legislative approval for the proposed revised Regulation # 2. This overall effort had somewhat of a galvanizing effect in terms of water utility managers realizing that not many people were looking out for their interest except them, and they should likely be more engaged in proactive policy input and influencing regulations and water law. Nutrient trading suddenly looked like a strong possibility if it was done right and the utilities could be the catalyst to get it started, yet they realized they would need allies from a broad cross-section of interested parties, not just one or two. The question at the time was: How do we advance this concept and who is going to do it??

The Arkansas Water and Wastewater Manager's Association (AWWMA) seemed to be the right place to introduce this idea and the right group to help facilitate a solution. At the July 2014 conference, a discussion meeting was held and chaired by Billy Ammons of Fayetteville (employed directly by CH2M HILL). Allan Gates of Little Rock, an environmental attorney for many cities, was a speaker at the conference and a technical resource for guidance on how to advance the trading initiative. This specific meeting of the AWWMA had two primary topics: A draft nutrient trading bill; the fact the AWWMA had to have more of a voice on policy issues affecting our industry and perhaps we needed to discuss a full time director. The next day at the closing business meeting, Heath Ward of Springdale made a motion for the AWWMA to carry forward and support a nutrient trading bill in the next legislative session which passed unanimously. Ward was appointed the Legislative Committee Chair for the AWWMA and was asked to not only monitor industry-related legislation in the next session but was also given the objective to help carry the draft nutrient trading bill forward, seek to align broad-based support, and then determine who might sponsor the bill. Basic principles of the draft bill were that participation in any program established was to be voluntary, cost the State very little or nothing, and provide a foundation from which to build that would be workable for a variety of circumstances and situations.

The first thing that needed to be done was to provide information and outreach to potentially interested and affected parties. The AWWMA knew that if the right information was not given to people, then there could be opposition from some very key groups who would actually benefit from nutrient trading if they understood the concept. A special effort was made to reach out to ADEQ, cities, farmers (through the Farm Bureau and directly), landowners, industry (including the Poultry Federation) and environmental concerns. After some effort and a number of presentations, there appeared to be no organized or known opposition. Several other organizations outright supported the concept including the Municipal League, the Illinois River Watershed Partnership, Beaver Water District, Beaver Watershed Alliance, Ozarks Water Watch, all the major NWA cities, several businesses, the Northwest Arkansas Council, and the IWG. This was indeed the diverse support that was needed to get such a new concept passed into law with very little opposition. Representative Charlie Collins (R) of Fayetteville was asked to sponsor the bill and Senator Uvalde Lindsey (D) representing Fayetteville and a part of Springdale, carried it in the Senate. Ultimately there were multiple co-sponsors and it became HB1067.

The bill passed the House and Senate without a single “no” vote in total bipartisan fashion and was signed by Governor Hutchinson in March 2015. Only eight months after being introduced as a somewhat revolutionary idea, the basic framework to allow nutrient trading in Arkansas was now a reality and is now known as Act 335.

Basics of Nutrient Trading and Trading or Compliance Associations

In its simplest form nutrient trading would allow point source, permitted dischargers to form voluntary associations within a watershed that would take into account the net limit for a given parameter in that watershed or other designated area. As an example: If there were 10 wastewater treatment plants in the same watershed with a permit for phosphorus that allowed them to discharge 10 pounds per day per plant, then the net “group” permit would be 100 pounds per day of phosphorus discharged to that watershed. If plant “A” exceeded its limit by 2, plant “B” discharged 8 pounds or less, and the rest of the group simply met their limit, there would not be enforcement since the net discharged phosphorus was 100 pounds or less. This is a simple example.

A more complex, but also relatively simple implementation method is the idea that if a POTW or other entity invested in an environmental project that had measurable results, they could be given a credit for the environmental protection or improvement provided by that project via a less stringent limit at their treatment facility discharge point. This could be in cooperation with municipalities, land owners or companies that may benefit. These types of programs are sometimes called offsets or credits.

A more sophisticated and complex implementation method is the creation of an exchange for credits. This would create a trading market where people could potentially buy or sell credits if needed or perhaps bank them for future use. This is based on credits being granted for projects that have scientifically proven positive environmental impact. Many nutrient reduction projects are measurable over time and as more are done, there will be even more data to support this. A nutrient credit exchange would give public entities, private landowners and private companies the formal recognition they deserve for good things they do for the environment that have a net positive impact.

Benefits of Nutrient Trading and ACT 335

There are several ways that these general concepts could benefit municipal wastewater treatment plants and other permitted point source dischargers, landowners, those with stream bank erosion concerns, municipalities, counties, industries and agri-business, and environmental groups and concerns. Below are just a few examples of how those partnerships and synergies may work:

- Help municipal wastewater treatment facilities and other point source dischargers maintain reasonable limits by allowing a net point source impact to a given area or watershed through sharing that limit with other point source dischargers.
- May be able to divert substantial financial resources to watershed projects with a significant environmental benefit instead of expensive infrastructure projects that may yield very little in terms of total impact.
- Matching grants that are available from groups like ANRC for stream bank restoration or other good environmental projects are often out of reach for most landowners due to high out of pocket financial commitments required. If cities or other entities could (as part of a trading program) pool money or provide direct funds to get those matching grants it might benefit the land owner, the treatment facility and ultimately the watershed. This could be through existing partnerships or future ones in a given watershed or area.
- Funds might be spent on quality, high impact alternative projects that would have a “bigger bang for the buck” or greater environmental return for a given financial investment in the watershed as it pertains to nutrient reduction. Once again, these funds would come from sources where alternatives could be employed in lieu of expensive, low yield infrastructure.
- Ratepayers and taxpayers would feel less of an impact over time. If a significant but smaller investment was made on less expensive but more effective nutrient trading and restoration programs, those improvement would be here for many years to come and would not need a huge operations and maintenance budget to be sustained.
- Industry and business could also greatly benefit. They could potentially bank credits for environmentally protective actions undertaken. The good things that people do for our environment and the community might no longer become just a short lived press release and a photo op, but would rather become a documented important part of the overall nutrient management plan for a given area or an association. Formal recognition would be given as credits. Examples of the kind of positive and environmentally protective projects both public and private partnerships have produced are:
 - Rain gardens and education in a community.
 - Poultry litter or other animal by-products removed from an area.
 - BMP or other management systems implemented in both urban and rural areas.
 - Stream bank restoration programs.
 - Other run-off and storm water mitigation projects.

Once again, these types of projects may be funded from monies from formed association or individual businesses. The opportunities are not limited to one source and can be more effectively implemented when considering the total impact to a watershed.

The eventual potential of a trading exchange could even be to create a profitable and marketable environmentally centered business niche for many entities in Arkansas. At a minimum, an exchange of this type should be another useful tool to help manage nutrients in a given area and could also help provide recognition to those who put forth effort, time and expense to benefit our environment.

To provide the best chance for broad-based support and general acceptance, these groups would need to be formed at the grass roots level and not be a “top down” endeavor. This leaves most of the control at the much preferred local and state levels and should generate more local support and participation.

From our perspective, three actions should be taken: An initial association should be formed; projects or project types identified, evaluated, and approved; and a *simple* system of banking and credits created. This actions may be undertaken in parallel or sequentially. However, an “alpha” association should be formed or identified before anything else can progress very far. Many people in NWA are willing to be involved in developing that initial association and providing the necessary testing ground. We have a vested interest, a strong desire to do the right thing and regardless of what happens to phosphorus limits or TMDL’s from EPA, we feel that what we do will be good for the environment. ***We fully expect that establishing an initial association will be a time consuming and lengthy process, perhaps requiring as much as two to three years before the association will be formed and functioning, yet we are excited to begin.*** We do not want this process to be rushed just to have a “program” and we want to avoid outside pressure to simply copy someone else’s program. ***Every state and region is different and unique and we want to do our best to develop a plan that provides the best environmental impacts in the most cost-effective manner possible.***

Our Vision: Relationships, Structure and Moving Forward

What we envision is a group in NWA (the core of which will almost certainly be the existing IWG) that will willingly and reasonably quickly put in a request to form a compliance association and create a draft framework for how that association might function. We would then ask ADEQ/APCEC to allow the association to go back and form a set of rules, goals, and a “constitution” of sorts. We would also ask about potential overhead costs that the association would have to bear for ADEQ support, with the hope that that the agency would appoint someone to work with who is open minded, cooperative and does not have too many preconceived notions. We would then develop a draft plan to take that back to the advisory panel for guidance and to the agency for approval on the final “rules”. Once that is done we would want to find our first simple project, define it and give the process a first try. We envision ourselves as being a self-governing, self-reporting type group based on the guidance received and approval of the projects we select. It would be our hope that the project selection and approval process would be simple and streamlined as long as the association provides adequate scientific support and information, and that the granting of and valuation of credits would be a dynamic process based on ongoing performance of implemented projects and continued scientific research.

We hope to conduct these actions within a very collaborative and forward thinking atmosphere, as opposed to a strict authoritarian approach where regulations get written and forced upon regulated parties and “woe be to those who do not comply”. We sincerely hope that we can move forward working together in a cooperative manner.

Summary

Although nutrient trading is not a new concept, we are embarking on a journey to implement that concept for the first time as a new tool to help improve the water environment in Arkansas. As we find ourselves looking for better ways to improve our situation in specific areas of the state, it is time to look at new concepts and ideas, especially those that benefit several constituencies, have a multitude of synergistic impacts, and will accumulate significant environmental benefits. We know that certain practices in other watersheds elsewhere in our country to include BMP’s, trading, and cooperative efforts have succeeded as components of comprehensive and holistic plan. We hope that we have moved beyond the idea that all water quality problems are one dimensional, that a single agency acting alone can solve all issues, that money spent on one source can fix everything, or that one party or type of source is always at fault. By working together, being proactive, and doing things a little differently, we can lay the groundwork for success not just on nutrients, but perhaps other similar or related issues in the future.

(Point of contact for questions or content is Heath Ward, Executive Director, Springdale Water Utilities, 479-751-5751 or Billy Ammons, Regional Business Manager, CH2MHill, City of Fayetteville Waste Water, 479-443-3292)