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# Water Quality Trading in Arkansas: Allan Gates (Mitchell Williams Law Firm) Arkansas Environmental Federation Water Seminar Presentation

## Arkansas Environmental, Energy, and Water Law Blog

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My law firm colleague, Allan Gates, undertook a presentation addressing recent developments associated with water quality trading in the State of Arkansas.

Allan's presentation was titled *Water Quality Trading in Arkansas*.

Legislation enacted in the 90<sup>th</sup> Arkansas General Assembly provided the Arkansas Department of Environmental Quality ("ADEQ") and Arkansas Pollution Control and Ecology Commission ("Commission") the authority to establish and regulate water quality trading in the State.

A number of areas in the country are utilizing water quality trading as one approach to address water quality goals. Clean Water Act National Pollution Discharge Elimination System ("NPDES") permits issued at both the federal and state level are increasingly including stringent limits applicable to the discharge of nutrients such as phosphorus or nitrogen.

The costs associated with removing nutrients from a point source can be significant. Non-point source discharges may often be reduced at a lower cost on a pollutant basis than the point source discharges. Therefore, trading programs may allow facilities facing higher pollution costs to meet that regulatory obligation by purchasing environmental equivalent (or superior) pollution reductions from another source at a lower cost.

The Arkansas legislation provides the Commission the authority to promulgate rules and regulations. Further, the legislation provides that any nutrient trading regulations adopted by the Commission may address issues such as water quality trading exchanges, nutrient water quality compliance associations, nutrient water quality trading credits, water quality offsets and a number of related matters.

ADEQ is provided the authority to include terms and conditions and permits to allow the eligible permit holder to use water quality trading arrangements and/or issue a permit to eligible associations as a means for multiple eligible permit holders to collectively satisfy their aggregate limits for one or more nutrient water quality parameters.

Allan's presentation at the Arkansas Environmental Federation seminar included various background resources related to the Arkansas legislation. The materials provided included:

1. Act 335 of 2015, Arkansas Nutrient Water Quality Trading Act, *codified as* ARK. CODE ANN. §§ 8-4-232 & 8-4-233 (Supp. 2015)
2. Arkansas Nutrient Water Quality Trading Advisory Panel
3. Straw Man Discussion Draft Nutrient Water Quality Trading Regulation
4. Other Resources:
  - National Network on Water Quality Trading, BUILDING A WATER QUALITY TRADING PROGRAM (June 2015), *accessible at*: <http://willamettepartnership.org/wp-content/uploads/2015/06/BuildingaWQTPProgram-NNWQT.pdf>
  - EPA Office of Water, WATER QUALITY TRADING POLICY (Jan. 13, 2003), *accessible at*: [https://www3.epa.gov/npdes/pubs/wqtradingtoolkit\\_app\\_b\\_trading\\_policy.pdf](https://www3.epa.gov/npdes/pubs/wqtradingtoolkit_app_b_trading_policy.pdf)
  - EPA Office of Wastewater Management, Water Permits Division, *accessible at*: WATER QUALITY TRADING TOOLKIT FOR PERMIT WRITERS (REV. June 2009), *accessible at*: [https://www3.epa.gov/npdes/pubs/wqtradingtoolkit\\_fundamentals.pdf](https://www3.epa.gov/npdes/pubs/wqtradingtoolkit_fundamentals.pdf)

[Click here to download a copy of the background paper and attached materials.](#)