

June 23, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

Re: Numeric Nutrient Criteria

Dear Administrator Jackson,

The undersigned organizations are all partners and stakeholders committed to addressing nutrient loadings to our nation's waters. We would like to commend the U.S. Environmental Protection Agency (EPA) for acknowledging in the March 16, 2011 Memorandum from Nancy Stoner, Acting Assistant Administrator, Office of Water, to the EPA Regional Administrators, that states must take the lead in addressing nutrients and that: "states need room to innovate and respond to local water quality needs, so a one-size-fits-all solution to nitrogen and phosphorus pollution is neither desirable nor necessary."

We are concerned, however, that a March 1, 2011 letter from Acting Assistant Administrator Stoner responding on the issue of nutrients to a letter from the New England Interstate Water Pollution Control Commission, as well as the Office of Water's draft 2012 National Program Guidance, and language in the March 16, 2011 memorandum itself, undermine the important principle highlighted above. Rather than giving states room to innovate and respond to local water quality needs, the Agency appears to reinforce a more inflexible and counterproductive EPA position which has been held since 1998¹ and advanced more aggressively in recent years. This position is that states must adopt numeric nutrient criteria (NNC), in all water bodies, for both nitrogen and phosphorus which are "independently applicable" (i.e., apply regardless of actual observed and documented water body biology and in-stream impairment) even in the absence of a cause and effect relationship between nutrient levels and regardless of achievement of designated uses.

In the most public example of this dichotomy, EPA promulgated federal NNC for Florida lakes and flowing waters that are independently applicable. Thus, a water body is considered impaired even if it is otherwise healthy or if the biological impairment is related to a different factor (such as habitat alteration). Likewise, more restrictive numeric limits are then required in permits and dischargers will be required to install controls for one nutrient, such as nitrogen, when another nutrient, such as phosphorus, may be the most limiting.

¹ National Strategy for Development of Regional Nutrient Criteria, 1998.

Without question, nitrogen and phosphorus pollution is a serious water quality problem in our nation. States are working hard to develop and implement a variety of approaches to control nutrients from both point and non-point sources. Some states have put considerable effort and resources into the process of developing NNC. However, given the difficulty of establishing scientifically defensible NNC under certain conditions, other states are:

- Focusing efforts on balancing biological, causal, and environmental response variables;
- Directly improving water quality by taking actions to reduce nutrient loadings;²
- Setting response criteria at levels to protect all designated uses;³
- Taking steps to control nutrients to protect downstream uses, such as monitoring to ensure uses are maintained, setting permit limits that ensure upstream discharges do not cause exceedances of downstream criteria, and applying antidegradation rules at upstream sites;
- Applying NNC only after verifying that nutrients are the cause of adverse water quality impacts in a water body;
- Adopting criteria for response variables, such as chlorophyll *a* or dissolved oxygen, instead of NNC;
- Using other indicators of adverse water quality impacts in a water body to direct reduction activities;
- Controlling both N and P, or only one, depending on the water body needs.

EPA's Science Advisory Board encourages these "weight of the evidence" approaches.⁴ EPA's insistence that states must ultimately develop independently applicable NNC for all water bodies, even in the absence of a cause and effect relationship between the nutrient level and achievement of designated uses, is not scientifically defensible and is undermining innovative state approaches to reducing nutrient pollution. Continued controversy among EPA, states, and the regulated community over EPA's approach to nutrients is slowing progress towards reducing impairments associated with excess nutrients.

The undersigned organizations request that EPA take meaningful public steps to support innovative approaches for reducing nutrient loadings and, where a state believes NNC are appropriate, innovative approaches for developing scientifically defensible NNC.

² Where progress is being made, the March 16 Memorandum appears to support a state focus on load reductions.

³ The use of response criteria does not mean that no action will be taken before impairment occurs – rather, it means that actions can be taken at the appropriate point so that designated uses are maintained; change will be detectable before impairment occurs.

⁴ See *SAB Review of Empirical Approaches for Numeric Nutrient Criteria Derivation*, EPA-SAB-10-006 (April 27, 2010).

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Sincerely,

NATIONAL AND MULTI-STATE ORGANIZATIONS

Association of State and Interstate Water Pollution Control Administrators

National Association of State Departments of Agriculture

National Association of Conservation Districts

National Association of Flood & Stormwater Management Agencies

National Water Resources Association

Western Coalition of Arid States

Agricultural Retailers Association

American Chemistry Council

American Farm Bureau Federation

American Forest & Paper Association

American Sugar Alliance

CropLife America

Edison Electric Institute

Federal Water Quality Coalition

National Alliance of Forest Owners

National Cattlemen's Beef Association

National Chicken Council

National Corn Growers Association

National Council of Farmer Cooperatives

National Pork Producers Council

Responsible Industry for a Sound Environment

The Fertilizer Institute

United Egg Producers

Utility Water Act Group

MUNICIPAL, CORPORATE & REGIONAL ENTITIES

Aurora Water, CO

City of Pueblo, CO

City of Yuma, AZ

Colorado River Water Conservation District

East Bay Dischargers Authority, CA

Georgia Association of Water Professionals

Littleton/Englewood Wastewater Treatment Plant, CO

San Juan Water Commission, NM

Virginia Association of Municipal Wastewater Agencies

Wyoming Association of Conservation Districts

Alcoa

Florida Pulp & Paper Association

GROWMARK

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PotashCorp

Rayonier Corporation

Delaware Maryland Agribusiness Association

Tennessee Paper Council

US Steel

Virginia Agribusiness Council

Virginia Grain Producers Association

Virginia Poultry Federation

Wyoming Ag-Business Association

Wyoming Crop Improvement Association

Wyoming Farm Bureau Federation

Wyoming Stock Growers Association

Wyoming Wheat Growers Association

cc: Nancy Stoner, Acting Assistant Administrator, Office of Water