

Meeting Date: 5/24/2011



Agenda Item #

8C

CITY COUNCIL AGENDA ITEM

Contact Name: Paul Johnson **Department Director:** Paul Johnson
Department/Contact # Public Works/775-5447 **City Manager:** Jamie Croteau

- Type of Item:**
- | | | | |
|--------------------------|--------------------------|-------------------------------------|---------------------|
| <input type="checkbox"/> | Public Hearing | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | Ordinance First Reading | <input checked="" type="checkbox"/> | Discussion & Action |
| <input type="checkbox"/> | Ordinance Second Reading | <input type="checkbox"/> | Council Approval |

Subject: Petition to USEPA

BACKGROUND: On January 14, 2009, EPA “determined” that numeric nutrient criteria were needed to implement the Clean Water Act in Florida. That determination came as a result of a lawsuit and placed the numeric nutrient requirements solely on the State of Florida. On Wednesday, May 11, Drew Bartlett of the Florida Department of Environmental Protection explained that the DEP has filed a petition requesting the EPA to rescind its January 14, 2009, “determination” that federally-imposed numeric nutrient criteria are necessary in the State of Florida. The petition explains that EPA would not have made the original determination that numeric nutrient criteria are necessary in Florida if they had fully evaluated the strength of Florida’s programs for addressing nutrient enrichment. The DEP has requested a response from EPA by May 22 and has asked that cities file their own petition with EPA in support of the DEP efforts or weigh in with the EPA through a resolution asking that EPA consider the DEP petition and rescind their finding of necessity. While a resolution is helpful, it does not require a specific action by the USEPA—a petition requires the EPA to respond by a time certain.

RECOMMENDATIONS: That City Council approve the petition to EPA supporting FDEP’s position and authorize the Mayor to execute a cover letter to send along with the petition to EPA.

ATTACHMENTS: Petition to EPA, cover letter from Mayor Strickland

FINANCIAL IMPACT: None

Reviewed by City Attorney _____
Reviewed by Finance Dept. _____
Reviewed by: _____

1st Discussion Date: 5/24/2011	2nd Discussion Date: date.	Third Discussion Date: date.	Other Dates: date.
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May 19, 2011

Ms. Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, Northwest
Washington, DC 24060

Dear Ms. Jackson:

Please find enclosed a Petition from the City of Orange City requesting that the U.S. Environmental Protection Agency (EPA) withdraw its January 2009, determination that numeric nutrient criteria are necessary in Florida. It also requests that EPA restore to the state its responsibility for the control of excess nutrients, including the pursuit of nutrient criteria. We are confident that EPA will find the information in the petition compelling and grant the petition after review.

As clearly demonstrated by the petition, the State of Florida, including its citizenry, local governments and businesses, is very committed to addressing excess nutrients pollution. We look forward to your timely response.

Sincerely,

Harley Strickland
Mayor

Cc: Ms. Keyes Fleming, US EPA, Region IV

Enclosure

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

In re: Florida Department of Environmental
Protection's Petition for Withdrawal of EPA's
303(c)(4)(B) Determination for Florida,
Repeal of 40 C.F.R. § 131.43, and
Related Actions.

PETITION

The City of Orange City, Florida hereby petitions the United States Environmental Protection Agency ("EPA") to take the following actions; 1) withdraw its January 2009, determination that numeric nutrient criteria are necessary in Florida; 2) initiate repeal of 40 C.F.R. § 131.43; and 3) discontinue proposing or promulgating further numeric nutrient criteria in Florida.

On March 16, 2011, EPA issued a memo to all EPA's Regional Administrators, entitled "Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions" (the "EPA memo" or "March 16, 2011, memo") that details the elements "necessary for effective programs to manage nitrogen and phosphorus pollution," which is attached hereto as Attachment 1. The EPA memo provides a useful benchmark for evaluating the strength of a State's nutrient reduction program.

As demonstrated herein, Florida's program is one of the strongest in the country when measured against the elements set forth in the EPA memo, or by other objective standards. Based on the strength of Florida's nutrient pollution control program, which includes a commitment to nutrient standards, Orange City submits EPA should rescind its January 2009, determination. This action will reestablish the proper regulatory framework in Florida, whereby

States designate the uses of their waters and set criteria that are protective of those uses, and EPA should simply review the changes to water quality standards proposed by the States. 33 U.S.C. § 1313(a)(3)(A) and (c)(2)(A); *see also Natural Resources Defense Council v. U.S. E.P.A.*, 16 F.3d 1395, 1399 (4th Cir. 1993)("While the states and E.P.A. share duties in achieving this goal [of protecting water resources], primary responsibility for establishing appropriate water quality standards is left to the states. EPA sits in a reviewing capacity of the state-implemented standards, with approval and rejection powers only.").

Orange City requests that EPA respond to this Petition within 30 days of filing. Failure of EPA to timely act can interfere with Orange City's ability to implement the activities described by this Petition. Additionally, granting this petition will confirm to the States that EPA is committed to a reasoned approach to evaluating the success of state programs and will stand behind the EPA Memo.

Background

According to EPA, Florida has one of the preeminent programs in the nation to address excess phosphorus and nitrogen pollution in its waters. "Florida is one of the few states that have in place a comprehensive framework of accountability that applies to both point and nonpoint sources and provides the enforceable authority to address nutrient reductions in impaired waters based upon the establishment of site specific total maximum daily loads." 75 Fed. Reg. 4174, 4175 (Jan. 26, 2010). As outlined below, in measuring Florida's program against the eight elements in the EPA memo, the State of Florida, in partnership with its regional water management districts and local governments, is a national leader in developing innovative and comprehensive tools and programs to detect, assess, prevent and/or remedy nutrient problems in the State's waters.

For instance, Florida has placed substantial emphasis on the monitoring and assessment of its waters as a cornerstone of its water quality program, and, as a result of this valuable objective, has collected significantly more water quality data than any other State. *See* EPA's January 14, 2009, Necessity Determination for Florida, p. 6. Greater than 30% of all water quality data in EPA's national water quality database, STORET, comes from Florida.¹ STORET, <http://www.epa.gov/storet>. Florida has used this extensive data to, among other things, accurately and scientifically assess whether individual waterbodies are impaired for nutrients; promulgate nutrient restoration goals first through Pollutant Load Reduction Goals ("PLRGs") and then through Total Maximum Daily Loads ("TMDLs"); calculate protective nutrient water quality-based effluent limits ("WQBELs") for NPDES dischargers; and adopt restoration plans setting forth restoration requirements on both point and nonpoint sources on a watershed-wide basis (i.e., Basin Management Action Plans ("BMAPs"), Surface Water Improvement and Management ("SWIM") plans, and legislatively-mandated plans for targeted waters).²

Overall, Florida's efforts have resulted in significant reductions in ambient phosphorus concentrations since the early 1980s despite the explosive growth of Florida's population during this same period. 2008 Integrated Water Quality Assessment for Florida: 305(b) Report and 303(d) List Update, p. 34, available at http://www.dep.state.fl.us/water/docs/2008_Integrated_Report.pdf. However, Florida continues to further refine and enhance its programs and implement specific restoration plans high priority

¹ FDEP doesn't substitute quantity of sampling for the quality of those samples. Rather than accepting any collected sample, FDEP requires stringent quality assurance for water quality samples to be used for regulatory purposes. *See* Fla. Admin. Code Ch. 62-160.

² Florida has also utilized this extensive data in adopting a protective numeric phosphorus criterion for the Everglades Protection Area that has been upheld in both state and federal courts. *See* Fla. Admin. Code R. 62-302.540(4)(a).

watersheds to both protect its many healthy waters from nutrient impairment and achieve nutrient reductions in those that are impaired by nutrients so that water quality improvements are fully realized.

FDEP has also used the vast water quality data, collected at substantial cost to Florida taxpayers, to study the subtle relationships between nutrient concentrations and healthy aquatic ecosystems with the intention of deriving appropriate numeric nutrient criteria for its waters. As part of this process, FDEP has created a number of biological assessment tools, including the Stream Condition Index and the Lake Vegetation Index. FDEP has submitted to EPA statewide numeric nutrient criteria development plans to document its ongoing efforts, with the last development plan being submitted in March 2009.

Despite Florida's status as a national leader in nutrient reduction efforts and FDEP's great progress on the complex science needed to support defensible numeric nutrient criteria, on January 14, 2009, EPA, under the previous administration, issued a § 303(c)(4)(B) determination that numeric nutrient criteria were necessary in the State of Florida, but in no other State.³ The 2009 "necessity" determination led to EPA settling a frivolous lawsuit alleging that EPA had already made such a necessity determination in its 1998 Clean Water Action Plan. The settlement agreement was subsequently memorialized as a Consent Decree in *Florida Wildlife*

³ While the necessity determination implies that Florida's situation is unique, excess nutrients are a problem in every State. *See, e.g.*, USGS Circular 1350: Nutrients in the Nation's Streams and Groundwater, 1992-2004 (2010), available at <http://pubs.usgs.gov/circ/1350/pdf/circ1350.pdf>. EPA has not utilized its 303(c)(4)(B) authority to promulgate numeric nutrient criteria elsewhere and has declined to set numeric nutrient standards in the Mississippi River basin even though EPA has been petitioned twice (in 2003 and 2008) to do so. *See* EPA's Response to Sierra Club Petition Regarding Defined Portions of the Mississippi and Missouri Rivers, available at <http://water.epa.gov/scitech/swguidance/standards/SierraClub.cfm>; and Petition to Establish Numeric Nutrient Standards for the Mississippi River, available at <http://www.cleanwaternet.org/resources/petition-establish-numeric-standards-and-tmdls-nitrogen-and-phosphorous>.

Federation v. Jackson, Case No. 08-00324, Consent Decree, DE 153 (N.D. Fla. December 30, 2009), and is currently on appeal. FDEP was not a party to that litigation and did not participate in the negotiations resulting in the settlement and consent decree.

Pursuant to the settlement agreement, on December 6, 2010, EPA promulgated numeric nutrient criteria for Florida's lakes and flowing waters. 75 Fed. Reg. 75762 (Dec. 6, 2010) (codified at 40 C.F.R. §131.43). EPA remains obligated to propose numeric nutrient criteria for the remainder of Florida's waters (except for wetlands) by November 14, 2011, and finalize those numbers in rule by August 15, 2012. *See Florida Wildlife Federation*, Joint Notice to the Court of Extension of Consent Decree Deadlines, DE 184 (N.D. Fla. June 7, 2010).

Orange City urges EPA to withdraw its determination. This action will allow Florida to address nitrogen and phosphorus pollution through State and local programs, including the FDEP's pursuit of nutrient water quality standards.

Overview of Florida's Nutrient Reduction Program

The State of Florida has a comprehensive set of legislatively mandated programs, implemented at the State, regional and local levels, which work in unison to protect waters from nutrient pollution and reduce nutrient loading from all sources of pollution, not just federally-regulated point sources. The core of Florida's program focuses on NPDES permitting with appropriate effluent limits,⁴ extensive monitoring of its waters, identification of those waters that are impaired, setting load reduction targets for those waters identified as impaired, and implementing watershed restoration plans covering both point and nonpoint sources. Over the

⁴ For wastewater sources that discharge nutrients, WQBELs are specifically derived to protect State waters from nutrient impairment under "worst case" conditions. *See* Fla. Admin. Code R. 62-650.300(3)(h). Before FDEP is able to issue a wastewater permit, the permit applicant must provide upfront "reasonable assurance" that the permittee can meet all conditions in their permit, including the permit effluent limit—a more rigorous permitting standard than contained within the Clean Water Act. *Compare* Fla. Admin. Code R. 62-620.320(1) *with* 40 C.F.R. § 122.44(d).

years, Florida has expended great time and resources in undertaking these activities. While many of these efforts emanate from the typical Clean Water Act NPDES and TMDL programs, there are a number of programs unique to Florida that complement the standard Clean Water Act tools and in many instances go far beyond the mandates of the Clean Water Act.

For instance, under the Clean Water Act, once a TMDL is set and incorporated into NPDES permits, mandated federal actions are at an end. No comprehensive implementation plan is required. *See* EPA's TMDL website, available at <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/glossary.cfm> ("Current 303(d) regulations do not require implementation plans, though some state regulations do require an implementation plan for a TMDL."); *see also* *Sierra Club v. Meiburg*, 296 F.3d 1021 (11th Cir. 2002). Florida, on the other hand, has a number of watershed-based approaches that result in restoration plans covering both point *and* nonpoint sources. These watershed plans include BMAPs, SWIM plans, and legislatively-mandated restoration efforts directed at a number of specific watersheds like the Everglades and Lake Okeechobee. *See, e.g.*, §§ 373.451 - .4595 and 403.067(7), Fla. Stat.

Florida has already adopted aggressive nutrient load reduction limits for major waterbodies across the State through its TMDL and SWIM programs. Currently, there are 135 adopted nutrient TMDLs and 47 SWIM plans (many with PLRGs) for major waterbodies including: Lake Okeechobee, the Caloosahatchee Estuary, the St. Lucie Estuary, the Indian River Lagoon, Tampa Bay, the Lower St. Johns River, the Suwannee River, the Santa Fe River, the Ocklawaha Chain of Lakes, the Winter Haven Chain of Lakes, Lake Jesup, and many first magnitude springs across the State including Manatee, Fanning, and Wekiva Springs. Florida has also established comprehensive restoration and/or protection plans for most of our high priority waters including the Everglades, Lake Okeechobee, the St. Johns River and Estuary, the

Ocklawaha Chain of Lakes, Tampa Bay, Sarasota Bay, and the Florida Keys coastal waters, among others.

These efforts, combined with the point and nonpoint source strategies discussed below, already have shown significant, positive results in many of Florida's watersheds. EPA itself has documented a number of Florida's nutrient reduction successes including Lake Apopka, Tampa Bay, Sarasota Bay and Indian River Lagoon. See EPA Region 4's Watershed Improvement Summaries, http://www.epa.gov/region4/water/watersheds/watershed_summaries.html#fl.

Moreover, Florida has a number of nationally preeminent programs including its long-standing post-construction stormwater program for all new or modified development (since 1981), its land purchasing program (protecting over 5.3 million acres of land to date representing 15% of the State – Florida spent more than any other State in the nation to acquire conservation lands from 1998-2005), and its reuse of reclaimed water. Florida also has a broad agricultural nonpoint source program setting forth best management practices (“BMPs”) for most of the primary agricultural commodities in the State as well as BMPs specific to targeted areas of the State. All of these programs, as well as others, complement one another and result in Florida’s Nutrient program being, unquestionably, a national leader.

These various programs are further discussed below in the context of evaluating Florida's water quality program pursuant to the EPA memo.

Florida Has as a Strong Nutrient Reduction Program as Measured Against EPA's March 16, 2011 Memo or Any Other Objective Standard

EPA's March 16, 2011, memo outlines eight minimum elements needed in a comprehensive State nutrient reduction program. Florida undoubtedly exceeds all eight of these requirements, and is a national leader in most of those categories.

Once FDEP completes its rulemaking, EPA obviously maintains its authority to review any proposed criteria resulting from the State process. 33 U.S.C. § 1313(c). Consequently, if EPA

were to withdraw its necessity determination, it would not relinquish total authority to Florida. This significant step would once again allow Florida to regain its primary responsibility for standard setting, as Congress unambiguously envisioned within the Clean Water Act.

EPA Should Withdraw Its Necessity Determination and, Consequently, Repeal 40 C.F.R. §131.43 and Refrain from Proposing Other Numeric Criteria in Florida

EPA's purported willingness to give flexibility to States, like Florida, that have in place the framework for achieving nutrient reductions, is not consistent with EPA's 2009 necessity determination for Florida. Measured against EPA's March 16, 2011 memo, the State of Florida has in place a framework for achieving nitrogen and phosphorus reductions and control that is among the best in the nation. It is therefore reasonable to conclude that EPA's 2009 necessity determination should not have singled out Florida. To rectify this discrepancy, EPA must withdraw its necessity determination and has good reason to do so.

Because the necessity determination is essential for EPA's promulgation of numeric nutrient criteria in Florida's lakes and flowing waters, withdrawal of the determination will require EPA to repeal 40 C.F.R. § 131.43. Withdrawal will also relieve EPA from proposing and promulgating numeric nutrient criteria for Florida's estuaries, coastal waters and south Florida canals.

It is well-recognized that federal agencies may change their mind and alter their previous agency actions. *Mactal v. Chao*, 286 F.3d 822, 825-26 (5th Cir. 2002). As explained by the United States Supreme Court, an agency "faced with new developments or in light of reconsideration of the relevant facts and its mandate, may alter its past interpretation and overturn past administrative rulings and practice." *American Trucking Ass'ns v. Atchison, Topeka, and Santa Fe Railway Co.*, 387 U.S. 397, 416 (1967); see also *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 41-42 (1983); *Dun & Bradstreet Corp. Found. v. United*

States Postal Service, 946 F.2d 189, 193 (2d Cir. 1991) ("It is widely accepted that an agency may, on its own initiative, reconsider its interim or even its final decisions, regardless of whether the applicable statute and agency regulations expressly provide for such review."). EPA has asserted that § 303(c)(4)(B) necessity determinations are discretionary action not subject to judicial review. See EPA's Motion to Dismiss Cross-Claim and EPA's Motion for Judgment on the Pleadings on Counts I, III and IV of FCG's and FWEAUC's First Amended Complaint, Case No. 08-00324, DE 151 and 214 (N.D. Fla.); and EPA's Motion to Dismiss, Case No. 09-00428, DE 13 (N.D. Fla. Dec. 22, 2009). Accepting EPA's assertion, the Agency has broad discretion to withdraw that same action. Even if EPA's withdrawal action is reviewable, the reasons for the change in agency action need be no better or worse than the justifications for the original agency course. *F.C.C. v. Fox Television Station, Inc.*, 129 S. Ct. 1800, 1810-11 (2009).

EPA is not irrevocably bound by the previous administration's January 2009 necessity determination. See *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 981 (2005) (Reflecting that a change in administration can prompt reevaluation of the previous administration's actions). To the contrary, withdrawal of the necessity determination is warranted based solely on the demonstrated strength of Florida's nutrient reduction program. However, the change in EPA's administration, the recent issuance of the EPA memo, and FDEP's commitment to expeditiously promulgate nutrient criteria are additional changed circumstances that warrant rescinding of EPA's necessity determination. Withdrawal will also enable FDEP to proceed with its proposed rule adoption schedule without the added complication of overlapping federal rulemaking authority.

Conclusion

Florida's comprehensive nutrient reduction program is among the upper echelon of programs in the nation. FDEP is also committed to further its comprehensive program by pursuing nutrient

criteria under state law. For these reasons and the other grounds articulated in this Petition, Orange City requests that EPA withdraw its January 2009 necessity determination and take the steps necessary to relieve the Agency from the obligation to propose, promulgate, or implement numeric nutrient criteria in Florida. Granting this request will serve as a clear, positive affirmation of EPA's expectation of States consistent with the March 16, 2011, memorandum

RESPECTFULLY SUBMITTED the 22nd day of May 2011.

CITY OF ORANGE CITY

HARLEY STRICKLAND
Mayor

O. WILLIAM CRIPPEN
Vice-Mayor

City of Orange City
205 East Graves Avenue
Orange City, Florida 32763



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 16 2011

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions

FROM: Nancy K. Stoner
Acting Assistant Administrator

TO: Regional Administrators, Regions 1-10

This memorandum reaffirms EPA's commitment to partnering with states and collaborating with stakeholders to make greater progress in accelerating the reduction of nitrogen and phosphorus loadings to our nation's waters. The memorandum synthesizes key principles that are guiding and that have guided Agency technical assistance and collaboration with states and urges the Regions to place new emphasis on working with states to achieve near-term reductions in nutrient loadings.

Over the last 50 years, as you know, the amount of nitrogen and phosphorus pollution entering our waters has escalated dramatically. The degradation of drinking and environmental water quality associated with excess levels of nitrogen and phosphorus in our nation's water has been studied and documented extensively, including in a recent joint report by a Task Group of senior state and EPA water quality and drinking water officials and managers.¹ As the Task Group report outlines, with U.S. population growth, nitrogen and phosphorus pollution from urban stormwater runoff, municipal wastewater discharges, air deposition, and agricultural livestock activities and row crop runoff is expected to grow as well. Nitrogen and phosphorus pollution has the potential to become one of the costliest and the most challenging environmental problems we face. A few examples of this trend include the following:

- 1) 50 percent of U.S. streams have medium to high levels of nitrogen and phosphorus.
- 2) 78 percent of assessed coastal waters exhibit eutrophication.
- 3) Nitrate drinking water violations have doubled in eight years.

¹ *An Urgent Call to Action: Report of the State-EPA Nutrients Innovations Task Group*, August 2009.

4) A 2010 USGS report on nutrients in ground and surface water reported that nitrates exceeded background concentrations in 64% of shallow monitoring wells in agriculture and urban areas, and exceeded EPA's Maximum Contaminant Levels for nitrates in 7% or 2,388 of sampled domestic wells.²

5) Algal blooms are steadily on the rise; related toxins have potentially serious health and ecological effects.

States, EPA and stakeholders, working in partnership, must make greater progress in accelerating the reduction of nitrogen and phosphorus loadings to our nation's waters. While EPA has a number of regulatory tools at its disposal, our resources can best be employed by catalyzing and supporting action by states that want to protect their waters from nitrogen and phosphorus pollution. Where states are willing to step forward, we can most effectively encourage progress through on-the-ground technical assistance and dialogue with state officials and stakeholders, coupled with cooperative efforts with agencies like USDA with expertise and financial resources to spur improvement in best practices by agriculture and other important sectors.

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. Nonetheless, our prior work with states points toward a framework of key elements that state programs should incorporate to maximize progress. Thus, the Office of Water is providing the attached "Recommended Elements of a State Nutrients Framework" as a tool to guide ongoing collaboration between EPA Regions and states in their joint effort to make progress on reducing nitrogen and phosphorus pollution. I am asking that each Region use this framework as the basis for discussions with interested and willing states. The goal of these discussions should be to tailor the framework to particular state circumstances, taking into account existing tools and innovative approaches, available resources, and the need to engage all sectors and parties in order to achieve effective and sustained progress.

While the Framework recognizes the need to provide flexibility in key areas, EPA believes that certain minimum building blocks are necessary for effective programs to manage nitrogen and phosphorus pollution. Of most importance is prioritizing watersheds on a state-wide basis, setting load-reduction goals for these watersheds based on available water quality information, and then reducing loadings through a combination of strengthened permits for point-sources and reduction measures for nonpoint sources and other point sources of stormwater not designated for regulation. Our experience in almost 40 years of Clean Water Act implementation demonstrates that motivated states, using tools available under federal and state law and relying on good science and local expertise, can mobilize local governments and stakeholders to achieve significant results.

It has long been EPA's position that numeric nutrient criteria targeted at different categories of water bodies and informed by scientific understanding of the relationship between nutrient loadings and water quality impairment are ultimately necessary for effective state

² *Nutrients in the Nation's Streams and Groundwater: National Findings and Implications*, US Geological Survey, 2010.

programs. Our support for numeric standards has been expressed on several occasions, including a June 1998 National Strategy for Development of Regional Nutrient Criteria, a November 2001 national action plan for the development and establishment of numeric nutrient criteria, and a May 2007 memo from the Assistant Administrator for Water calling for accelerated progress towards the development of numeric nutrient water quality standards. As explained in that memo, numeric standards will facilitate more effective program implementation and are more efficient than site-specific application of narrative water quality standards. We believe that a substantial body of scientific data, augmented by state-specific water quality information, can be brought to bear to develop such criteria in a technically sound and cost-effective manner.

EPA's focus for nonpoint runoff of nitrogen and phosphorus pollution is on promoting proven land stewardship practices that improve water quality. EPA recognizes that the best approaches will entail States, federal agencies, conservation districts, private landowners and other stakeholders working collaboratively to develop watershed-scale plans that target the most effective practices to the acres that need it most. In addition, our efforts promote innovative approaches to accelerate implementation of agricultural practices, including through targeted stewardship incentives, certainty agreements for producers that adopt a suite of practices, and nutrient credit trading markets. We encourage federal and state agencies to work with NGOs and private sector partners to leverage resources and target those resources where they will yield the greatest outcomes. We should actively apply approaches that are succeeding in watersheds across the country.

USDA and State Departments of Agriculture are vital partners in this effort. If we are to make real progress, it is imperative that EPA and USDA continue to work together but also strengthen and broaden partnerships at both the national and state level. The key elements to success in BMP implementation continue to be sound watershed and on-farm conservation planning, sound technical assistance, appropriate and targeted financial assistance and effective monitoring. Important opportunities for collaboration include EPA monitoring support for USDA's Mississippi River Basin Initiative as well as broader efforts to use EPA section 319 funds (and other funds, as available) in coordination with USDA programs to engage creatively in work with communities and watersheds to achieve improvements in water quality.

Accordingly the attached framework envisions that as states develop numeric nutrient criteria and related schedules, they will also develop watershed scale plans for targeting adoption of the most effective agricultural practices and other appropriate loading reduction measures in areas where they are most needed. The timetable reflected in a State's criteria development schedule can be a flexible one provided the state is making meaningful near-term reductions in nutrient loadings to state waters while numeric criteria are being developed.

The attached framework is offered as a planning tool, intended to initiate conversation with states, tribes, other partners and stakeholders on how best to proceed to achieve near- and long-term reductions in nitrogen and phosphorus pollution in our nation's waters. We hope that the framework will encourage development and implementation of effective state strategies for managing nitrogen and phosphorus pollution. EPA will support states that follow the framework but, at the same time, will retain all its authorities under the Clean Water Act.

With your hard work, in partnership with the states, USDA and other partners and stakeholders, I am confident we can make meaningful and measurable near-term reductions in nitrogen and phosphorus pollution. As part of an ongoing collaborative process, I look forward to receiving feedback from each Region, interested states and tribes, and stakeholders.

Attachment

**Cc: Directors, State Water Programs
Directors, Great Water Body Programs
Directors, Authorized Tribal Water Quality Standards Programs
Interstate Water Pollution Control Administrators**

Recommended Elements of a State Framework for Managing Nitrogen and Phosphorus Pollution

1. Prioritize watersheds on a statewide basis for nitrogen and phosphorus loading reductions

- A. Use best available information to estimate Nitrogen (N) & Phosphorus (P) loadings delivered to rivers, streams, lakes, reservoirs, etc. in all major watersheds across the state on a Hydrologic Unit Code (HUC) 8 watershed scale or smaller watershed (or a comparable basis.)
- B. Identify major watersheds that individually or collectively account for a substantial portion of loads (e.g. 80 percent) delivered from urban and/or agriculture sources to waters in a state or directly delivered to multi-jurisdictional waters.
- C. Within each major watershed that has been identified as accounting for the substantial portion of the load, identify targeted/priority sub-watersheds on a HUC 12 or similar scale to implement targeted N & P load reduction activities. Prioritization of sub-watersheds should reflect an evaluation of receiving water problems, public and private drinking water supply impacts, N & P loadings, opportunity to address high-risk N & P problems, or other related factors.

2. Set watershed load reduction goals based upon best available information

Establish numeric goals for loading reductions for each targeted/priority sub-watershed (HUC 12 or similar scale) that will collectively reduce the majority of N & P loads from the HUC 8 major watersheds. Goals should be based upon best available physical, chemical, biological, and treatment/control information from local, state, and federal monitoring, guidance, and assistance activities including implementation of agriculture conservation practices, source water assessment evaluations, watershed planning activities, water quality assessment activities, Total Maximum Daily Loads (TMDL) implementation, and National Pollutant Discharge Elimination System (NPDES) permitting reviews.

3. Ensure effectiveness of point source permits in targeted/priority sub-watersheds for:

- A. Municipal and Industrial Wastewater Treatment Facilities that contribute to significant measurable N & P loadings;
- B. All Concentrated Animal Feeding Operations (CAFOs) that discharge or propose to discharge; and/or
- C. Urban Stormwater sources that discharge into N & P- impaired waters or are otherwise identified as a significant source.

4. Agricultural Areas

In partnership with Federal and State Agricultural partners, NGOs, private sector partners, landowners, and other stakeholders, develop watershed-scale plans that target the most effective practices where they are needed most. Look for opportunities to include innovative approaches, such as targeted stewardship incentives, certainty agreements, and N & P markets, to accelerate adoption of agricultural conservation practices. Also, incorporate lessons learned from other successful agricultural initiatives in other parts of the country.

5. Storm water and Septic systems

Identify how the State will use state, county and local government tools to assure N and P reductions from developed communities not covered by the Municipal Separate Storm Sewer Systems (MS4) program, including an evaluation of minimum criteria for septic systems, use of low impact development/ green infrastructure approaches, and/or limits on phosphorus in detergents and lawn fertilizers.

6. Accountability and verification measures

- A. Identify where and how each of the tools identified in sections 3, 4 and 5 will be used within targeted/priority sub-watersheds to assure reductions will occur.
- B. Verify that load reduction practices are in place.
- C. To assess/demonstrate progress in implementing and maintaining management activities and achieving load reductions goals: establish a baseline of existing N & P loads and current Best Management Practices (BMP) implementation in each targeted/priority sub-watershed, conduct ongoing sampling and analysis to provide regular seasonal measurements of N & P loads leaving the watershed, and provide a description and confirmation of the degree of additional BMP implementation and maintenance activities.

7. Annual public reporting of implementation activities and biannual reporting of load reductions and environmental impacts associated with each management activity in targeted watersheds

- A. Establish a process to annually report for each targeted/priority sub-watershed: status, challenges, and progress toward meeting N & P loading reduction goals, as well as specific activities the state has implemented to reduce N & P loads such as: reducing identified practices that result in excess N & P runoff and documenting and verifying implementation and maintenance of source-specific best management practices.
- B. Share annual report publically on the state's website with request for comments and feedback for an adaptive management approach to improve implementation, strengthen collaborative local, county, state, and federal partnerships, and identify additional opportunities for accelerating cost-effective N & P load reductions.

8. Develop work plan and schedule for numeric criteria development

Establish a work plan and phased schedule for N and P criteria development for classes of waters (e.g., lakes and reservoirs, or rivers and streams). The work plan and schedule should contain interim milestones including but not limited to data collection, data analysis, criteria proposal, and criteria adoption consistent with the Clean Water Act. A reasonable timetable would include developing numeric N and P criteria for at least one class of waters within the state (e.g., lakes and reservoirs, or rivers and streams) within 3-5 years (reflecting water quality and permit review cycles), and completion of criteria development in accordance with a robust, state-specific workplan and phased schedule.