



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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DALLAS, TX 75202-2733

DEC 20 2011

Kelly Holligan, Director
Water Quality Planning Division
TCEQ
P.O. Box 13087
Austin, TX 78711-3087

Dear Mr. Holligan:

The Environmental Protection Agency (EPA) Region 6 appreciates your State's progress in developing numeric nutrient criteria. Nutrient criteria plans have served as road maps for outlining a process to develop numeric criteria for all applicable water body types for each State. However, these plans were completed some time ago, and the schedule and milestones need to be updated to better reflect completed, current and planned state activities related to nutrient criteria development. Related to this need, EPA has established guidelines for Program Activity Measure (PAM) WQ-1c which relate to the phased development process. The purpose of this letter is to request that your agency update its plan, taking into account these guidelines, so we can accurately report out the status of your efforts by the end of this fiscal year.

Development of numeric nutrient criteria was stimulated by EPA's 1998 *National Strategy for Development of Regional Criteria*. This task has been very challenging to most States and we appreciate the incremental progress made to date. Some numeric criteria have been developed for subsets of water body types. However, the long-term goal is for states to complete the task of developing numeric nutrient criteria for total nitrogen (N) and total phosphorus (P) for all water body types in your state. Timeliness should be factored into your planning. The March 2011 EPA memo from Nancy Stoner, *Working in Partnership With States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions*, provided eight recommended elements of a state framework. The eighth element, "Develop work plan and schedule for numeric nutrient criteria development" establishes a goal for states to complete development of numeric N and P criteria for at least one class of waters within three to five years.

PAMs which define efforts to measure state progress toward numeric nutrient development, contained in *FY 2012 National Water Program Guidance (NWPG) Water Quality Measure Definitions* include:

WQ-01a - Number of numeric water quality standards for N and P adopted by States and Territories and approved by EPA for all water body types in the state (cumulative; universe of 280)

WQ-01b - Same as above, but criteria are draft, proposed for rulemaking (cumulative; universe of 280)

WQ-01c - Number of States and Territories supplying a full set of performance milestone information to EPA concerning development, proposal, and adoption of numeric water quality standards for N and P for each water body type within the State (annual; universe of 56.)

Detailed guidance related to PAM WQ-01c is enclosed. For the Region to report on and credit your progress and future planning we are requesting target and completion dates for the following activity for each water body type:

1. Planning for criteria development
2. Collection of information and data
3. Analysis of information and data
4. Proposal of criteria (related to measure WQ-1b)
5. Adoption of criteria into the water quality standards (related to measure WQ-1a)

If target dates have been missed, please provide new target dates and a written explanation for missing the original target date. We expect all states to actively engage in the criteria development process. However, a state can get credit under this measure even if they do not plan to develop N and P criteria for applicable water types by declaring this in writing along with their reasons for not developing the criteria.

Our suggested timeline for nutrient criteria plan updates (related to PAM WQ-01c) is as follows:

- States submit revised, updated plans by March 1, 2012
- EPA will review and comment on draft as appropriate by May 1, 2012
- States will finalize plans and submit by July 1, 2012
- States and EPA mutually agree on plans by August 1, 2012
- EPA enters information from revised plans into EPA national tracking system by August 21, 2012, (see <http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/progress.cfm>)

We are planning a conference call in January which would include Region 6 States to discuss the requested plan revisions. We will be in touch with you or your staff to set up this call. Again, we appreciate all your efforts and your continued diligent coordination related to nutrient criteria.

Sincerely,



Jane B. Watson, Ph.D.
Associate Director
Ecosystems Protection Branch

Enclosure

cc: Laurie Eng
Nutrient Criteria Coordinator
TCEQ
P.O. Box 13087
Austin, TX 78711-3087

ATTACHMENT

Excerpt for WQ-1 from:

"FY 2012 National Water Program Guidance (NWPG) Water Quality Measure Definitions"

See: [http://water.epa.gov/resource_performance/planning/FY-2012-NWPG-Measure-Definitions-Water-Quality.cfm#Measure%20Code %20WQ 01%20 a %20b %20c](http://water.epa.gov/resource_performance/planning/FY-2012-NWPG-Measure-Definitions-Water-Quality.cfm#Measure%20Code%20WQ%2001%20a%20b%20c)

Measure Code: WQ-01 (a, b, c)

Measure Language: (WQ-01a): Number of numeric water quality standards for total nitrogen and for total phosphorus adopted by States and Territories and approved by EPA, or promulgated by EPA, for all waters within the State or Territory for each of the following waterbody types: lakes/reservoirs, rivers/streams, and estuaries (cumulative, out of a universe of 280).

(WQ-01b): Number of numeric water quality standards for total nitrogen and total phosphorus at least proposed in draft by States and Territories, or by EPA proposed rulemaking, for all waters within the State or Territory for each of the following waterbody types: lakes/reservoirs, rivers/streams, and estuaries (cumulative, out of a universe of 280).

(WQ-01c): Number of States and Territories supplying a full set of performance milestone information to EPA concerning development, proposal, and adoption of numeric water quality standards for total nitrogen and total phosphorus for each waterbody type within the State or Territory (annual). (The universe for this measure is 56.)

Type of Measure: Cumulatively reported (WQ-01a and WQ-01b) or Annually reported (WQ-01c).

Measure Contact: Gregory Stapleton, EPA Office of Science and Technology

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Measure Definition

Terms and phrases:

- *Numeric standards for total nitrogen and total phosphorus* – numeric water quality criteria for total nitrogen (TN) and total phosphorus (TP) incorporated into water quality standards for the protection of Clean Water Act section 101(a)(2) goal uses (protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water). Such criteria are for eutrophication endpoints. Criteria for other endpoints, such as ammonia, nitrate, or elemental phosphorus toxicity, would not count. The "total" forms of nitrogen and phosphorus are generally preferable from a scientific standpoint because they account for both organic and inorganic forms. Other forms of nitrogen or phosphorus would be counted only if justified scientifically.

Numeric translators for TN and TP will be counted in this measure if they are binding upon section 303(d) assessments, TMDLs, and NPDES permits, and have been adopted as water quality standards and approved by EPA under section 303(c) (for WQ-01a) or have been proposed as such (for WQ-01b). Response variables, such as chlorophyll-a, clarity, SAV acreage, or dissolved oxygen, are not considered translators for this purpose.

- o Waterbody type means one of the following three types of U.S. water bodies:
 - Lakes and reservoirs (excluding the Great Lakes)
 - Rivers and streams
 - Estuaries

- o Note: The majority of states and territories have all three of these waterbody types, but some states do not. See Universe below.

- o *For all waters* – To be counted under this measure, water quality criteria values would need to be established for all waters of the waterbody type (see below). The values for each pollutant could be uniform for all such waters, or could vary as appropriate (e.g., for different subtypes, different watersheds, different seasonal periods), but would count as only one criterion for the purpose of this measure. In other words, states could use site-specific criteria to help meet this measure as long as all waters of the waterbody type are covered by some combination of site-specific and non-site-specific criteria.

- o *Adopted and approved* by EPA (in WQ-01a) means that the state or territory has adopted the criteria through its rulemaking process and submitted them to EPA for review, and that EPA has approved them under section 303(c).

- o *Promulgated* by EPA (in WQ-01a) means that EPA has issued a final rule promulgating the criteria as federal water quality standards under section 303(c)(4).

- o *At least* (in WQ-01b) means that criteria can be counted if they have been proposed, or if they have progressed to any later stage of adoption and approval. For example, all criteria that the state or territory has adopted in final form can be counted even if they have not yet been submitted to EPA for approval. All criteria counted under WQ-01a should be included, since they have progressed to final adoption and EPA approval, or have been promulgated by EPA.

- o *Proposed* (in WQ-01b) by states and territories means that a state or territorial agency has either (a) proposed and published the criteria for public comment, (b) formally provided the criteria for review to a legislative body, legislative committee, public commission, or similar body as part of a prescribed regulatory process, (c) recommended the criteria to a legislature, public commission, or agency responsible for promulgating standards under its own public process, or (d) otherwise issued the draft criteria to begin a similar public process. For federal promulgations, proposed means that EPA has issued a Federal Register notice of proposed rulemaking that seeks public comment.

o *Full set of performance information* (in WQ-01c): EPA expects, as part of the process for administering section 106 grants or performance partnership agreements, that states and territories will establish internal milestones for developing, proposing, and adopting TN and TP criteria for their waters. To be credited under this measure, a state or territory would need to provide information about these milestones to EPA on a regular basis, but at least annually.

EPA expects that the state or territory would establish milestones for the completion of each of the following key steps:

1. Planning for criteria development
2. Collection of information and data
3. Analysis of information and data
4. Proposal of criteria (related to measure WQ-1b)
5. Adoption of criteria into the state's or territory's water quality standards (related to measure WQ-1a)

Such milestones would need to be established for developing TN and TP criteria for each of the waterbody types within the state or territory. If planning showed that criteria development should proceed separately for TN and TP, and for each waterbody type, then a state or territory with all three waterbody types could theoretically have 30 milestones. In practice, this number could be higher or lower, depending on whether work could be combined across TN and TP and waterbody types, or whether additional waterbody subtypes were established.

For each milestone established, EPA expects the state or territory to provide EPA the following on a regular basis, but not less than annually:

1. A *target* date, consistent with internal planning,
2. A *completion* date when the milestone is met, and
3. A written *explanation* for changes in target dates from previous plans, or any delays in achieving them.

If a state or territory does not plan to develop TN or TP criteria for a particular waterbody type, an explicit, explained declaration of their intentions not to develop the criteria would serve as milestone information.

EPA notes that many states have already established nutrient criteria development plans, including many that have been mutually agreed-upon with EPA. Such plans could be of assistance in providing the kinds of information needed to satisfy this measure.

EPA anticipates that a full set of the above information, shared regularly between the state or territory and EPA, will greatly facilitate the management and oversight of nutrient criteria development, including the annual planning and performance cycle under section 106 and performance partnership agreements. EPA also anticipates using this information to help populate an EPA Web site to keep the public informed about the status of these important efforts.

Methodology for computation of results:

For WQ-01a and WQ-01b: The results for a State or Territory will be computed by adding the number of numeric nutrient criteria for each of the two or three waterbody types in the state or territory that have been approved or promulgated (WQ-01a) or proposed (WQ-01b). For example, if a state with all three waterbody types has TP and TN for all lakes and reservoirs, and TP for all rivers and streams, and none for estuaries, the state would be credited with 3 criteria out of a maximum (universe) of 6.

For WQ-01c: A state or territory will be counted for WQ-01c if it provides a complete set of Target dates, Actual dates, and Explanations for the milestones they have established.

Units: Number of standards (WQ-01a, WQ-01b) or Number of states and territories (WQ-01c)

Universe: WQ-01a and WQ-01b: 280 criteria. This represents two criteria – TN and TP – for each of the 140 state/territorial waterbody types represented in the 56 states and territories. There are 55 states/territories with rivers and streams, 55 states/territories with lakes and reservoirs, and 30 states/territories with estuaries. WQ-01c: 56 states and territories, comprising the 50 states, the District of Columbia, and the territories of Puerto Rico, Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Baseline: WQ-01a and WQ-01b: As of December 2008, 31 numeric TN and TP standards had been adopted by states and territories, and approved by EPA. WQ-01c: 3 states and territories.