UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

MAY 24 2011

Kelly Holligan, Director
Water Quality Planning Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Dear Mr. Holligan:

We would like to hear your thoughts on the March 16, 2011, memorandum titled "Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions" from Nancy Stoner, Acting Assistant Administrator for Water, to the Regional Administrators (enclosed). This memo recommends a holistic approach which continues to emphasize nitrogen and phosphorus criteria development but also encourages states to strive for near-term reductions in nitrogen and phosphorus loading through use of a framework that includes prioritization of watersheds, setting reduction goals, addressing point sources (including storm water) and agricultural areas, and incorporating accountability and reporting mechanisms.

The memo calls for the Regions to use the framework as the basis for discussions with interested and willing states, with the goal of tailoring the framework to the particular state circumstances. The framework was not meant to be a rigid "one size fits all" approach; therefore, it is a planning tool that could be considered for designing a state-wide nutrient reduction strategy. We would like to work with you on a strategy patterned on the framework. You may already be aggressively pursuing some of the eight elements comprising the framework. We would like to hear your interest in developing and implementing a framework, or something tailored to your State's situation.

I would appreciate your response so that we understand your position and can move forward together to address nitrogen and phosphorus pollution. Many thanks for all that your agency does to protect water quality. Please give me a call at (214) 665-7101 if you have any questions or would like to discuss.

Sincerely,

Miguel I. Flores
~~Director~~
Water Quality Protection Division

Enclosure

Received
MAY 27 2011
TCEQ
Water Quality Planning Division

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Recycled Paper (40% Postconsumer)

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.

Internet Address (URL) ● http://www.epa.gov
Recycled/Recyclable ● Printed with Vegetable Oil Based Inks on 100% Postconsumer, Process Chlorine Free Recycled Paper

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 5will 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.