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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 3, 2011

Miguel I. Flores, Director  
Water Quality Protection Division, 6WQ  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Re: Framework for State Nutrient Reductions

Dear Mr. Flores:

In response to your letter dated May 24, 2011, we would like to provide some initial comments and suggestions concerning the recent memorandum from Nancy Stoner, Acting Assistant Administrator for Water, U.S. Environmental Protection Agency (EPA), entitled "Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions." Staff of the Texas Commission on Environmental Quality (TCEQ) has been reviewing the memorandum.

We appreciate that Ms. Stoner's transmittal memo emphasized the importance of flexibility and state-specific tailoring. She also noted 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. EPA Administrator, Lisa Jackson, made a similar point in her testimony before the U.S. House Committee on Agriculture in March 2011, "We will soon be releasing a framework memo to our regional offices that makes it clear that addressing nitrogen and phosphorus pollution - which is a major problem - is best addressed by the States, through numerous tools, including proven conservation practices."

In your letter, you suggested that the TCEQ may already be pursuing some of the eight elements of the framework, and we do have a variety of ongoing and recently initiated projects and programs that are relevant. In order to assist with further discussion, we would like to take this opportunity to briefly note some of the specific TCEQ efforts that contribute to an overall framework for nutrient management.

- TCEQ and interested stakeholders have been actively developing nutrient criteria for Texas. TCEQ has established a development plan for nutrient criteria, and criteria were adopted for 75 reservoirs in June 2010. Criteria development efforts are coordinated with an advisory group that has recently reconvened to assess criteria options for streams, rivers and estuaries. In addition to the special-purpose stream studies listed above, TCEQ utilized funds for fiscal year 2011 to conduct two major projects: (1) an assessment of available data in Texas and a compilation of criteria development efforts in other states (with the University of Houston at Clear Lake), and (2) analyses of Texas data to help define the levels of nutrients in Texas streams that can cause significant effects (with the University of Arkansas).

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- For a long time, TCEQ has included nutrient requirements in wastewater permits on a case-by-case basis based on the specific technical issues in each circumstance. More recently, in June 2010, the revisions of the TCEQ Standards Implementation Procedures included the addition of a major new section that defined how wastewater discharge permits would be evaluated and when permit conditions would be established for nutrients.
- TCEQ and monitoring partners in Texas have collected periodic data on components of nitrogen and phosphorus, chlorophyll *a*, and related parameters at a large number of fixed stations in Texas water bodies for over 30 years.
- Additional nutrient-oriented monitoring has recently been conducted or initiated on over 150 Texas streams. These studies involved the efforts of a variety of agencies, organizations, and research institutions. The additional data includes various measures of attached vegetation and full spectrum sampling of nitrogen and phosphorus and related parameters.
- For the Integrated Report, concentrations of total phosphorus, ortho-phosphate, nitrate, ammonia, and chlorophyll *a* are compared to established screening levels in order to identify water bodies of concern. In addition, reservoirs are ranked according to trophic status as indicated by total phosphorus, chlorophyll *a*, and Secchi disk transparency.
- The TCEQ has a well-established program for publicly conducting and implementing total maximum daily loads (TMDLs), and also for developing watershed protection plans in coordinating with local stakeholders. The majority of water bodies in Texas are listed as impaired by factors other than nutrients, but some TMDLs – notably in the North Bosque River watershed and in the watershed of Lake O' the Pines – have focused directly on the impacts of nutrients and on implementation plans to control nutrient loadings.
- Agricultural nonpoint source loadings are under the purview of the Texas State Soil and Water Conservation Board (TSSWCB), who have been very active in establishing a variety of nutrient management plans and watershed protection plans in coordination with TCEQ.

We would like to further discuss with you and your staff how some of the suggestions in EPA's framework might reasonably mesh with existing state water quality management programs in Texas. Obvious concerns for discussion include the level of effort and the regulatory impact that would be involved in implementing EPA's proposed framework. For example, EPA suggests evaluating nutrient source loading for major watersheds as defined by eight digit hydrologic unit codes (HUCs), identifying a large portion as priority watersheds (to account for 80% of the loadings from urban and agricultural sources), and then implementing the equivalent of TMDLs or watershed protection plans for numerous smaller watersheds within each of the larger priority watersheds. Texas has about 210 major watersheds (8-digit HUCs) that would be subject to this process; and a large number of subwatersheds would presumably be targeted for management activities and potentially additional regulatory actions.

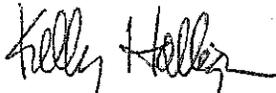
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We recognize, however, that EPA is intending their suggestions as a starting point for discussion, and we think this dialog should include a recognition of the extensive current efforts in Texas to address nutrients.

Sincerely,

A handwritten signature in black ink that reads "Kelly Holligan". The signature is written in a cursive style with a long, sweeping underline.

Kelly Holligan, Director  
Water Quality Planning Division  
Texas Commission on Environmental Quality

