



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

February 15, 2011

The Honorable Susan Collins
United States Senate
413 Dirksen Senate Office Building
Washington, D.C. 20510

OFFICE OF THE
REGIONAL ADMINISTRATOR

Dear Senator Collins:

Thank you for your January 21, 2011 letter concerning the role of Maine's Department of Environmental Protection (Maine DEP) in determining the appropriate Clean Water Act (CWA) listings for nutrient impaired waters, and the state's ability to rely on narrative, rather than numeric, nutrient criteria. Maine DEP has made considerable progress in working towards mitigating nitrogen and phosphorus pollution, and the Environmental Protection Agency (EPA or Agency) appreciates and recognizes these important efforts. Administrator Jackson has asked me to respond on her behalf in coordination with her national program managers.

Nitrogen and phosphorus pollution impacts water supplies, aquatic life, and recreational water quality across the United States. EPA's regulations at 40 CFR Part 131.11 specify that criteria "must contain sufficient parameters or constituents to protect the designated use." Therefore, EPA considers state adoption of numeric criteria for nitrogen and phosphorus, the causal parameters directly responsible for eutrophication in near-field and/or downstream waters, a priority. While states may adopt a narrative nutrient criterion¹ in conjunction with numeric criteria for nitrogen and phosphorus, the numeric criteria will allow states to quantitatively evaluate waters for use attainment and promote consistency in assessment and permitting.

EPA recognizes that there is analytical, spatial, and temporal variability associated with environmental data, which should be considered in deriving numeric criteria for nitrogen and phosphorus. If desired, states may subcategorize waters (e.g., cool water aquatic life, warm water aquatic life) or use a tiered aquatic life use approach and apply the criteria accordingly. Regardless of how the state chooses to categorize its waters, the uses and the criteria to protect those uses must be consistent with 40 CFR Part 131.10 which implements CWA Sections 303 and 101(a)(2), and requires states to designate their navigable waters to provide for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, wherever attainable. Furthermore the state's designated uses should be supported by the appropriate technical and scientific data and analyses per 40 CFR Parts 131.6(b) and 131.11. EPA can work with states to adjust the state-adopted causal parameter criteria to account for site-specific conditions that continue to assure attainment of applicable water quality goals.

¹ EPA is aware of Maine's narrative nutrient criteria for Class GPA waters which apply to great ponds, natural lakes and ponds less than 10 acres in size (Maine Revised Statute, MRS, 38 §465-A Paragraph 1.B). However, Maine's Standards for Classification of Fresh Surface Waters (MRS 38 §465), for fresh waters which are not great ponds, and Standards for Classification of Estuarine and Marine Waters (MRS 38 §465-B) do not include narrative criteria specific to nutrients. Maine currently assesses rivers, streams, and estuarine and marine waters against general aquatic life use support and biological narrative standards. Assessment methods for measurement of these general standards, explained in Maine's Comprehensive Assessment and Listing Methodology (CALM), include nutrient enrichment measures such as excessive plant and algal growth.

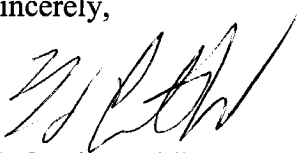
Maine DEP proposed draft rules in February 2010 that included numeric criteria for total phosphorus as well as for biological indicators of eutrophication, such as chlorophyll-a, secchi depth (transparency), and algal cover, for fresh waters. The February 2010 draft rule included a waterbody assessment approach to use only the biological eutrophication indicators to assess impairment. Once biological impairment was indicated, numeric phosphorus criteria were only to be used to identify whether phosphorus would be listed as the cause of the impairment. Therefore a water body could be exceeding the phosphorus criteria, but be found to meet water quality standards because biological criteria had been attained. In that case, no numeric phosphorus criteria would apply for the purposes of protecting the water body from future impairments. In EPA's March 2010 letter to Maine DEP, we agreed that the proposed numeric phosphorus thresholds were protective and approvable, but pointed out that criteria are applicable not just for assessment and restoration of impaired waters, but also to ensure that water bodies that are meeting designated uses do not become impaired. Establishing numeric criteria for nitrogen and phosphorus, the nutrient causal parameters directly responsible for eutrophication in immediate and/or downstream waters, is a protective approach which helps ensure compliance with 40 CFR 131.11(a) which states: "States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use."

Following discussions with EPA Region 1 staff, Maine DEP revised the draft rule to provide for the development of higher, site-specific phosphorus criteria within a defined range. Given the flexibility incorporated in Maine's revised approach, and the minimal number of waterbodies that would likely necessitate site specific criteria, Maine should have the ability to apply site-specific criteria as needed.

I appreciate Maine's interest and efforts in mitigating nitrogen and phosphorus pollution. EPA looks forward to continuing to work with Maine to develop a scientifically and legally defensible approach to protecting the state's waters from nitrogen and phosphorus pollution.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Ms. Michael Ochs in the Office of Government Relations at (617) 918-1066, or Stephen Silva, Water Quality Branch Chief, at (617) 918-1561.

Sincerely,



H. Curtis Spalding
Regional Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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BOSTON, MA 02109-3912

February 15, 2011

The Honorable Michael Michaud
U.S. House of Representatives
437 CHOB
Washington, D.C. 20510

OFFICE OF THE
REGIONAL ADMINISTRATOR

Dear Congressman Michaud:

Thank you for your January 21, 2011 letter concerning the role of Maine's Department of Environmental Protection (Maine DEP) in determining the appropriate Clean Water Act (CWA) listings for nutrient impaired waters, and the state's ability to rely on narrative, rather than numeric, nutrient criteria. Maine DEP has made considerable progress in working towards mitigating nitrogen and phosphorus pollution, and the Environmental Protection Agency (EPA or Agency) appreciates and recognizes these important efforts. Administrator Jackson has asked me to respond on her behalf in coordination with her national program managers.

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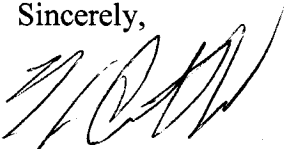
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Sincerely,



H. Curtis Spalding
Regional Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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BOSTON, MA 02109-3912

February 15, 2011

The Honorable Chellie Pingree
U.S. House of Representatives
1037 Longworth HOB
Washington, D.C. 20510

OFFICE OF THE
REGIONAL ADMINISTRATOR

Dear Congresswoman Pingree:

Thank you for your January 21, 2011 letter concerning the role of Maine's Department of Environmental Protection (Maine DEP) in determining the appropriate Clean Water Act (CWA) listings for nutrient impaired waters, and the state's ability to rely on narrative, rather than numeric, nutrient criteria. Maine DEP has made considerable progress in working towards mitigating nitrogen and phosphorus pollution, and the Environmental Protection Agency (EPA or Agency) appreciates and recognizes these important efforts. Administrator Jackson has asked me to respond on her behalf in coordination with her national program managers.

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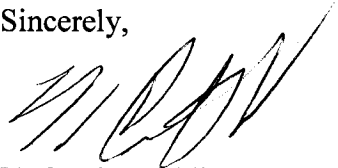
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Sincerely,



H. Curtis Spalding
Regional Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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BOSTON, MA 02109-3912

February 15, 2011

The Honorable Olympia J. Snowe
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510

OFFICE OF THE
REGIONAL ADMINISTRATOR

Dear Senator Snowe:

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