

September 17, 2010

The Honorable Lisa Jackson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson,

The undersigned organizations are profoundly concerned with the Clean Water Act numeric nutrient criteria (NNC) policies that are now being advanced by the Environmental Protection Agency (EPA) across the U.S., and in their most prominent and current form in Florida. It is apparent that EPA's development of NNC in Florida will establish a template for how NNC should be structured nationwide. The work underway in Florida is a result of a settlement agreement with activists, which is not only highly problematic but also raises fundamental questions of fairness and transparency, and effectively undermines the rights of the regulated community to customary, open proceedings.

We strongly urge EPA to:

- Delay further NNC policymaking until it has engaged with all relevant stakeholders in a thorough and transparent review of the strategic direction of NNC policies.
- Revisit and update the 1998 "National Strategy for the Development of Regional Nutrient Criteria" (National Strategy).
- Not finish the NNC for Florida's lakes and streams this fall and instead work on those in concert with the NNC that EPA is planning to finalize in August 2012 for all other Florida waters – and in the process answer the numerous and significant scientific, economic and policy questions about these NNC in an open and transparent manner.
- Reject policymaking by settlement agreement, with its inherent opaqueness and the distrust that creates.

We believe that revisiting and updating the 1998 National Strategy is warranted for at least four reasons. First, during the 12 years since the strategy was issued a considerable body of applied scientific knowledge and policy experience has been developed by the research community, states, and EPA. We estimate that more than 40 states have explored how they might create NNC. We understand that this work at the state-level has involved considerable debate on substantive matters within states, between states, and between EPA and the states, and that many of these debated matters remain unresolved. This substantive

experience with the difficult scientific and practical pitfalls of NNC needs to be drawn upon to develop a sound path forward for NNC policies in general. In the case of Florida, there are significant questions about the statistical, modeling and biological science used by EPA. By EPA's own admission in the proposed rulemaking, there is no scientifically established correlation between these proposed NNC and the desired biological conditions in these waters. In general, we believe there is a serious lack of rigorous, generally accepted science that justifies the particular methods EPA adopted to generate these NNC in Florida.

Second, since the development of the 1998 National Strategy, there has been little or no significant or organized public participation in NNC policy development from a strategic perspective. Such an open and transparent process is essential if specific NNC being advanced by EPA and the states are to be embraced. This is certainly a far more acceptable process than letting policy be driven by settlement agreements developed behind closed doors solely with activist groups, as has been the recent case with NNC and in other important Clean Water Act policy areas.

Third, one of the most serious drawbacks of the 1998 National Strategy is that it failed to undertake any substantive analysis of the economic costs and benefits of NNC; for the regulated community, for the economy as a whole, or for the public sector that must develop and administer the NNC. In the particular case of the Florida NNC, it is very clear that adopting the wrong criteria can cause enormous economic harm – both in the direct costs to the regulated community but also for the economy as a whole. The Florida Department of Agriculture estimates that the total **initial** cost for agricultural producers to comply with the NNC for lakes, rivers and streams to be between \$855 million to \$3.069 billion, and the subsequent **annual** compliance costs to be \$902 Million to \$1.605 billion. As a result, it estimates that the size of the Florida economy will be reduced by \$1.148 billion a year and that 14,545 full and part time jobs would be lost.

Not just agriculture is at risk, of course. The Florida Department of Environmental Protection estimates that the total capital cost for utilities to comply with these NNC would be \$4.167 billion. The Florida Water Environment Association estimates the cost for compliance with all of the NNC that EPA has under development to be \$47.6-\$98.7 billion over 30 years. They also estimate that the average household utility bill will increase \$673-\$726 a year.

The size of these costs for Florida alone are reason enough to justify revisiting the National Strategy to ensure that a sound and responsible path forward is developed.

Lastly, with regard to the substance of the proposed NNC, EPA needs to fully consider the implications and outcomes that will result if it sets the NNC for the lakes and streams at standards that are far too stringent, impractical and unattainable for Florida and the rest of the United States. The goals of the Clean Water Act must not be set and pursued in isolation from all of the other important goals and priorities of society, including promoting vibrant, strong job-creating businesses, economically strong communities, and the productive and valuable use of the land for agricultural and other purposes.

For all these reasons, we believe it is imperative that EPA open a meaningful, working dialogue on the strategic direction of NNC policies. We believe that is best accomplished by using as a starting point the 1998 National Strategy. The dialogue must be carried out with all the relevant stakeholders in an open and transparent manner, not simply with the activist NGOs. In the particular case of the Florida NNC, given the host of legitimate economic and scientific questions and issues, we believe the NNC for lakes and streams should not be finalized this fall, and instead subjected to further scientific development and review as part of EPA's broader effort involving the NNC for the other waters of the state. This work on the Florida NNC should be carried out in parallel to the national working dialogue we have suggested.

Sincerely,

Agricultural Retailers Association
American Farm Bureau Federation
American Feed Industry Association
American Horse Council
American Meat Institute
American Soybean Association
American Sugar Alliance
CropLife America
Florida Fertilizer & Agrichemical Association
Florida Forestry Association
National Alliance of Forest Owners
National Association of Conservation Districts
National Association of State Departments of Agriculture
National Association of Wheat Growers
National Barley Growers Association
National Cattlemen's Beef Association
National Chicken Council
National Corn Growers Association
National Cotton Council

National Council of Farmer Cooperatives
National Farmers Union
National Milk Producers Federation
National Pork Producers Council
National Potato Council
National Sorghum Producers
National Sunflower Association
National Turkey Federation
National Water Resources Association
Southern Crop Production Association
The Fertilizer Institute
United Egg Producers
United Fresh Produce Association
U.S. Apple Association
U.S. Canola Association
U.S. Cattlemen's Association
US Rice Producers Association
USA Rice Federation
Western Growers

cc: Secretary Tom Vilsack, USDA