



STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
CHUCK GIPP, DIRECTOR

July 10, 2012

The Honorable Terry E. Branstad
Governor
State of Iowa
LOCAL

Dear Governor Branstad:

The Department of Natural Resources (DNR) hereby urges you to join with other states and intervene in the *Gulf Restoration Network v. EPA* lawsuit seeking EPA rulemaking to develop and promulgate numeric water quality standards for nutrients. The DNR understands that the Nebraska Attorney General intends to file a motion to intervene in this case and is seeking other interested states in the Mississippi River basin to join with Nebraska. The DNR urges you to join with Nebraska.

Iowa has collaborated in a continuing dialog with Region VII EPA and is developing a state nutrient strategy consistent with the *Stoner Memo*, issued March 16, 2011, titled Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions. Iowa has worked over the past approximately two years to further outline a new focused and organized path to address nutrients. We have installed numerous conservation measures to control nutrients, but have learned from these earlier efforts what is necessary to make further progress. We already have begun to see the results of these efforts in prioritized watershed approaches being supported by federal, state, and local agencies or organizations.

While the EPA has a number of regulatory tools at its disposal, its resources can best be employed by catalyzing and supporting action by states that want to protect their waters from nitrogen, phosphorus and other impairments such as low dissolved oxygen. "Where states are willing to step forward, [the EPA] most effectively encourages 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," EPA said in the memo. "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." We agree that a one-size-fits-all solution will not be effective in achieving water quality goals in Iowa.

In the *Stoner Memo*, EPA has asked that each regional EPA administrator use this framework as the basis for discussions with states like Iowa. Region VII Administrator Karl Brooks had taken on this leadership and has had several discussions with Iowa Secretary of Agriculture Bill Northey and former DNR Director Roger Lande, and me. The outcome of these discussions was an agreement for DNR to work with municipalities and industry to focus on point source aspects of the strategy and for the Iowa

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Department of Agriculture and Land Stewardship (IDALS) to work with agriculture and other nonpoint sources. The goal of these discussions has been to tailor a workable, realistic, cost-effective state nutrient strategy specific to Iowa's circumstances, weather and technology. The strategy takes 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. This is the preferred approach by states like Iowa.

EPA deciding to subsequently supplant a state's rights to decide its approach, by reaching a settlement with the Plaintiffs to propose or impose numeric standards or designate TMDLs (Total Maximum Daily Loads) in the Mississippi River Basin, is inconsistent with these ongoing efforts. The creation of numeric nutrient standards or establishing TMDLs in the Mississippi River watershed by EPA will do nothing but waste valuable resources on the debate of how best to establish the appropriate numeric nutrient criteria for protecting these designated stream and lake uses rather than simply getting to work. Unlike most pollutants which currently have established criteria, no single criterion value appears to be appropriate for every water body. Numerous site-specific factors could lead to individual criteria for every water body. Identifying those site-specific criteria could take several years to develop and be the subject of legal challenges. The result in Iowa would likely be a larger list of impaired waters and fewer resources to address the problems as resources are focused on creating and defending the legal justification for standards or TMDLs rather than actual watershed efforts.

Some of the major problems with setting numeric nutrient standards, identifying impaired waters based on those standards, and then developing and implementing TMDLs include:

- Weak relationships between "healthy" streams and their specific nutrient levels;
- A traditional water-quality based strategy is less effective in watersheds where there are more nonpoint source influences (vs. point sources);
- Uncertainty about the influence of factors such as light, water flow rates and substrate; and
- Differing opinions between state and federal regulators on the best way of handling nutrients and water quality standards.

Numeric criteria can result in a water body being assessed as nutrient-impaired without any degradation of designated uses because of the variability between waters. Iowa prefers an approach of tailoring individualized solutions to preserve and protect Iowa's water resources while considering Iowa community values. Iowa has begun the process of strategically refocusing our efforts and resources to better accomplish our water quality goals.

In 2011, Iowa re-focused the Water Resources Coordinating Council (WRCC), a council of all state and federal agencies and state universities working on water quality issues. Under Iowa Code § 466B.3, the purpose of the council is: "to preserve and protect Iowa's water resources, and to coordinate the management of those resources in a sustainable and fiscally responsible manner. In the pursuit of this purpose, the council shall use an integrated approach to water resource management, recognizing that insufficiencies exist in current approaches and practices, as well as in funding sources and the utilization of funds. The integrated approach used by the council shall attempt to overcome old categories, labels,

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and obstacles with the primary goal of managing the state's water resources comprehensively rather than compartmentally."

The cost of nutrient reduction on Iowans' utility bills, on job providers, on the price of food, and on communities and farms is anticipated to be great. In order to be sustainable and fiscally responsible, watershed work needs to be prioritized and phased in over a number of years. This will minimize the impacts on Iowa's less fortunate and on Iowa's economy as a whole.

The WRCC has four accountability measures within Iowa law. The success of the council's efforts shall ultimately be measured by the following outcomes:

- a. Whether the citizens of Iowa can more easily organize local watershed projects.
- b. Whether the citizens of Iowa can more easily access available funds and water quality program resources.
- c. Whether the funds, programs, and regulatory efforts coordinated by the council eventually result in a long-term improvement to the quality of surface water in Iowa.
- d. Whether the potential for flood damage in each watershed in the state has been reduced.

The WRCC is also advised by the Watershed Planning Advisory Council, a diverse group of mostly non-governmental organization representatives who review research and make recommendations to the WRCC and the various state agencies that provide support for watershed improvement. Iowa law has also recently changed to allow Watershed Management Authorities as a tool for local governments to collaborate formally across jurisdictional lines for watershed projects. The WRCC work is built on a variety of previous stakeholder efforts including the Iowa Watershed Task Force (2001), the Watershed Quality Planning Task Force (2006), and Senate File 2363 (2008) that establishes an adaptive management framework and cycle that prioritizes state watershed management activities as the preferred approach for Iowa.

Because of the ecological, geographical and climatic differences in our state of Iowa and its waters, a "one-size-fits-all" numeric standard is not appropriate for our state's waters. Iowa approaches nutrients through a phased adaptive management framework, consistent with paragraph 1A, B and C of the *Stoner Memo* that includes the logical progression of targeting, planning, implementation and measurement, and adjustments based on previous results. Some of the current resources for this effort include:

- DNR regional watershed assessments for the approximately 56 HUC-8 watersheds and the NRCS Rapid Watershed Assessments.
- Existing cooperative agency watershed implementation projects (e.g., Clean Water Act Section 319, Water Protection Fund, Watershed Protection Fund, Watershed Improvement Review Board projects, USDA Mississippi River Basin Initiative (MRBI) projects, wellhead protection, storm water MS4 cities, etc.)
- Existing completed TMDLs, and the Clean Water Act § 303(d) list.
- The Clean Water Act § 305(b) Report.
- Iowa's water quality standards including narrative criteria and anti-degradation rules.

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- The Iowa Daily Erosion Project, a daily simulation of the erosion process on nearly 20,000 hill slopes across the state of Iowa.
- Mississippi River Basin Initiative including the Conservation Effects Assessment Project (CEAP) data, Spatially Referenced Regression on Watershed Attributes (SPARROW) attributes, state-level water quality data and monitoring and appropriate modeling of nitrogen and phosphorus loading from the watershed to guide future adaptations in management.
- Mississippi River/Gulf of Mexico Watershed Nutrient Task Force activities. Iowa has implemented a variety of creative state actions with very limited federal and state financial support (e.g., the Iowa Conservation Reserve Enhancement Program, the Upper Mississippi River Sub-basin Hypoxia Nutrient Committee, various Iowa watershed protection projects, and the market-driven Iowa Wetland Landscape Systems Initiative).

We support EPA being able to exercise its discretion to allocate its resources in a manner that supports targeted regional and state activities and accelerates the development and adoption of state approaches. Setting numeric standards is not a simple solution to the hypoxia challenges in the Mississippi River Basin, but it does choke off alternative solutions that may well be more successful in achieving water quality goals.

EPA explained in the denial of the Plaintiffs' petition for rulemaking on July 29, 2011, that "the comprehensive use of federal rulemaking authority is [not] the most effective or practical means of addressing [Plaintiffs'] concerns at this time." In the denial letter EPA detailed ongoing efforts at the state and federal levels to address nutrients in the Mississippi River Basin and ultimately concluded that those efforts are "the most effective and sustainable way to address widespread and pervasive nutrient pollution." In EPA's view, the unilateral exercise of its rulemaking authority, particularly on the broad scale requested by Plaintiffs, "is not a practical or efficient way to address nutrients at a national or regional scale." Any departure of the EPA from this position will cause significant social and economic hardships on both the urban and rural populations of the Mississippi River states.

In its implementation of the Clean Water Act, Iowa has included waters on the impaired waters list when their designated uses have been impaired for nutrients, low dissolved oxygen, algae, or turbidity or when a biological impairment is observed but causation has not yet been determined. Iowa's full integrated report can be found at: http://www.iowadnr.gov/Portals/idnr/uploads/watermonitoring/impairedwaters/2010/IA%202010%20Integrated%20Report_Cat-5_30Jun2011.pdf. In accordance with the Clean Water Act, Iowa prioritizes these water bodies, and develops and implements TMDLs for those waters. Iowa's narrative standards have identified waters that are impaired by nutrients and other causes, and then appropriately placed these waters on its Clean Water Act § 303(d) list and followed the traditional protocol for impaired waters and developing and implementing TMDLs.

Even if the alleged basis for a Mississippi River Basin-wide numeric standard or TMDL is the hypoxia condition in the Gulf of Mexico, the Clean Water Act does not authorize EPA to allocate nutrient loading limits on upstream states for impairments in the Northern Gulf. EPA does not have authority to regulate nonpoint sources nor should it force states to do so. Effective implementation for nonpoint sources in

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the variable conditions of Iowa's watersheds requires ad hoc adjustments when more pragmatic information is discovered about the site-specific location. This adaptive management approach is vital to a successful program, but this approach would be compromised by a settlement agreement imposing numeric criteria or TMDLs in the Mississippi River Basin and the Northern Gulf.

Iowa desires to be a model state in achieving our goals without causing an imbalance between our state's environmental, social and economic goals if it is given the time and flexibility to adapt throughout the process. Iowa's approach has been successful. Some of the examples of Iowa's watershed successes where state government has partnered with local communities can be found at <http://www.iowadnr.gov/Environment/WaterQuality/WatershedImprovement/WatershedSuccesses.aspx> and <http://www.iowaagriculture.gov/waterResources/WatershedProjects/IowaWatershedProjects.asp>. Continued progress may require difficult choices about the price of meeting water quality goals including choices about local land use, the level of agricultural productivity, increased basic living costs, increased food prices and food insecurity, urban storm water infrastructure retrofits, directing state resources among priorities such as education and health care, and the desire for an overall strong jobs economy.

Iowa intends to build on our current and past conservation successes to an even greater degree with better strategized and targeted approaches, in a more strategic and targeted fashion, and we have put the governance structure necessary to accomplishing our goals in place to accomplish our goals. Iowa's detailed strategy will soon be out for public comment.

We look forward to a continued dialog with EPA Region VII to develop a true partnership of providing federal expertise and resources to Iowa while allowing our state to work on our challenges without federal regulations supplanting our progress.

Sincerely,



Bruce Troutman
For

Chuck Gipp, Director
Iowa Department of Natural Resources