

July 28, 2009

Mr. Tom Danielson  
Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

Dear Mr. Danielson:

The Maine Rural Water Association is a private non-profit association that provides training and technical assistance to water and wastewater operators and systems throughout the State of Maine. We have just under 500 members, of which approximately 125 operate a wastewater facility.

The MRWA provided testimony at June 18, 2009 public hearing with respect to the process of rulemaking rather than the specifics of the proposed rule. We would like to take this opportunity to provide written comments documenting our concerns with the proposed rule.

Generally speaking, MRWA is in support of the overall approach to developing rules using numeric criteria as well as response variables such as chlorophyll a, secchi disk transparency, pH, diatom total phosphorus index and other biological indicators. That said, we are concerned that the numeric criteria is overly conservative and will cause a significant financial burden to the communities that are point sources on these water bodies. These communities will be unequally targeted for nutrient reduction when the majority of nutrient loadings that cause enrichment are contributed to by nonpoint sources such as storm water, failing or crowded septic systems and farming practices. Phosphorus is a unique pollutant compared to all the other water quality criteria. It is naturally occurring in all living systems.

We feel that this is a complex issue and needs to be thoroughly evaluated and not rushed through the APA process because of the fear of lawsuits. Maine is being compared to a state which has a significant nutrient enrichment problem that has not been adequately addressed for years according to the letter from the EPA Assistant Administrator Ben Grumbles. (This document can be found on the Florida DEP website). As we are aware, EPA is giving Florida 12 months to review and correlate data to nutrient enrichment indicators and develop an appropriate limit.

Because Florida has more data than most states due to its impairment, it is more prepared to determine an appropriate scientifically based limit than the State of Maine which has limited data. Additionally, EPA does not require all states to develop numeric criteria if narrative criteria have been successful. According to the January 14, 2009, letter from the EPA Assistant Administrator Benjamin Grumbles to the Florida Department of Environmental Protection, Florida must implement numeric criteria because "substantial water quality degradation from nutrient over-enrichment remains a significant challenge in the State and one that is likely to worsen with continued population growth and environmental and land-use changes."

Maine does not have substantial water quality degradation from nutrient over-enrichment and thus would not necessarily need to implement a numeric criteria. Florida must implement a numeric criteria because a narrative criteria has failed to produce results. According to Grumbles:

The very substantial and widespread nature of nutrient challenges faced by the State of Florida and the barriers to effective implementation associated with narrative nutrient criteria in Florida, such as the need for numerous, highly technical site-specific analyses prior to the development of water quality-based effluent limitations in NPDES permits and TMDLs, strongly support the need in this case for numeric nutrient criteria to effectively protect designated uses and prevent impairments. In many circumstances, narrative criteria can be an effective tool for protecting

designated uses, particularly when the scope and nature of the environmental problem is easily and clearly defined and derivation of appropriate control measures can be effectively and expeditiously accomplished (e.g., toxic pollutants and bioassessments). However, achieving faster and more effective progress in water quality protection with regard to nutrients is critical in Florida due to the significant and far-reaching impacts of nutrient pollution on the unique and highly valued aquatic ecosystems that exist in the State. In this case, numeric nutrient criteria are needed to protect Florida's designated uses.

In its proposal, the Maine DEP fails to recognize the hydrologic variability between the different water body types. Criteria used for lakes are being used for all the other water body types. Rivers, streams and impounded areas all have differing ecological attributes that are unique to that water body. Criteria must be developed for each of these separately.

Once again Maine proposes to be one of the strictest in the nation with its criteria. From our perspective, Maine cannot afford to continue such conservative regulatory approaches. Industries are being driven out of business and our people can no longer afford to pay for the services provided of treating the wastewater.

Since the Clean Water Act allows various approaches to developing these limits, it is not unusual that different states are tackling the issue through different approaches. The least desirable, but the easiest to implement is the use of the EPA guidance range of criteria. The reason MRWA feels that this is the least desirable is because it is not based on scientific justification for conditions in Maine and would be the least legally defensible.

We feel that Maine is rushing the proposed rule through and using the easy way out. Rather than use the pressure over potential law suits, lets create a stakeholder process for input and move forward with a rule that makes sense for the impacted parties and for the State of Maine. For instance, Florida proposes a range of total phosphorus of 69 ppb in the Panhandle Region to 415 ppb in the Bone Valley Region whereas Maine proposes from 15 ppb in GPA waters to 37 ppb in class C waters. Florida also uses a geometric mean with a minimum of 4 measurements that must be taken in different seasons, Maine uses instantaneous one time values for some parameters and a mean for total phosphorus, but no definition is given for this mean.

In the Maine proposal, there is no difference in phosphorus levels allowed based on the time of year which could be significant due to the increased loadings from storm water in the spring and fall. Connecticut takes an approach that has differing levels of allowable concentrations based on the spring and summer seasons. We submit that this is a much more realistic approach to rule making. Looking at the data on the Maine DEP website, it is apparent that many sections of the Maine's waters will have to be listed as impaired if these proposed rules were to pass. The total phosphorus in all of the larger rivers have sections that exceed these proposed limits at times. One of the truly beneficial components to Florida's rule is that they recruited and convened a Technical Advisory Committee with individuals with expertise to assist with the development of the criteria. We strongly recommend that Maine do the same.

Maine has limited data on many of its watersheds. The data that it does have shows that adopting the proposed criteria would require the state to list many more waters as impaired for nutrient enrichment. After reviewing the DEP website at <http://www.maine.gov/dep/blwq/docmonitoring/modelinganddatareports/>, it is apparent that most of Maine's rivers would have a segment listed as impaired by using the proposed criteria. Other states that have adopted criteria that are much less stringent than Maine's proposal are rethinking their criteria.

For instance New Jersey adopted a total phosphorus limit of 0.1 mg/l which is 100 ppb. This limit required them to list over 50% of their rivers and streams as impaired for the past two years. Maine is considering much lower total phosphorus levels of between 20 to 37 ppb. We ask whether it is the goal of the State of Maine to set criteria much more stringent that would require more TMDLs and UAAs to be performed? From our perspective, an overly conservative rule will force the state to have to list more waters as being impaired.

For waters that get listed as impaired, EPA will require limitations be put on discharges from wastewater treatment facilities. Treatment plants were designed to meet secondary standards and not for advanced treatment for nutrient removal. To add this advanced treatment requirement to communities with treatment plants will require upgrades. This additional treatment could range significantly in cost depending on the required upgrade.

For example, a system with an activated sludge secondary system an upgrade would consist of adding a few additional tanks to be able to deliver chemicals to precipitate out the phosphorus. As you know, the community of Oakland was required to provide this additional level of treatment has provided a general idea of the cost of the chemicals. Oakland has spent approximately \$14,000 to remove the phosphorus during the months of June through September for an average of 250,000 gallons per day. This does not include the additional cost for purchasing the tanks and metering pumps necessary to add the two chemicals to the process. Nor does it include the added costs of the increased sludge disposal due to increased solids removal. It does not include the price that will be paid because these chemicals will prematurely age the facility due to extremely harsh corrosive chemicals being used in a system that was not originally designed to use such chemicals.

We are of the perspective that some communities will have to spend significantly more due to their current form of secondary treatment. Lagoons are not typically designed for nutrient removal. There would need to be much more expensive upgrades to these systems to remove nutrients down to the part per billion range. Maine has approximately 40 lagoons throughout the state.

We submit that a stakeholder process is absolutely necessary to work through these important and potentially costly issues in an effort to create a rule that makes sense for the State of Maine. In conclusion we request that this rule be delayed and that a stakeholders group be formed to prepare rules that are more legally defensible because they will be based on the scientific conditions unique to the state of Maine. Additionally, we request that the state analyze the current data to determine the impact of this proposal.

Thank you for the opportunity to submit comments. We look forward to participating in a stakeholder process with other interested parties and the Maine DEP.