

# Southeastern Pennsylvania Nutrient Coalition



June 6, 2017

## VIA EMAIL & FIRST CLASS U.S. MAIL

Mr. E. Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W. – Mail Code 1101A  
Washington, DC 20460

### RE: Request for Peer Review of EPA Region 3's TMDL Nutrient Endpoint Report

Dear Administrator Pruitt:

On behalf of the Southeastern Pennsylvania Nutrient Coalition of boroughs, townships, and wastewater treatment authorities (including Telford Borough, Telford Borough Authority, Lower Salford Township Authority, Lower Salford Township, Souderton Borough, Franconia Township, Franconia Sewer Authority, Abington Township, Newtown Township, Hatfield Township and Westchester), we request a meeting to discuss EPA Headquarters' coordination of an independent peer review of a document entitled *Development of Nutrient Endpoints for the Northern Piedmont Ecoregion of Pennsylvania: TMDL Application – Follow-Up Analysis* ("TMDL nutrient endpoint report"). See attached Ex. 1. As outlined below, we believe this EPA document creating stringent nutrient reduction requirements for Eastern PA waters is not scientifically defensible and single-handedly misallocates hundreds of millions of dollars in municipal funds towards unnecessary construction of wastewater and stormwater facilities. As noted in *Presidential Executive Order on Promoting Energy Independence and Economic Growth*, these are precisely the type of regulatory decisions that should be peer-reviewed:

It is also the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.

(signed March 28, 2017) (emphasis added). As conscientious stewards of the environment, we remain fully committed to water standard compliance and dedicating our limited resources towards expenditures that will achieve this goal. However, we have serious concerns that this document, and the exorbitant costs that it will impose by its use, will achieve such ends. Therefore, we believe that a thorough independent review of the document should be conducted.

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## *Background*

The TMDL nutrient endpoint report was originally developed in 2007 by TetraTech for EPA Region 3. The 2007 report was subsequently updated by TetraTech in 2012 to address comments made by the EPA Science Advisory Board (SAB, 2010) critical of the stressor-response evaluations contained in the original report. *See* Ex. 2, EPA's 2010 Peer Review Report. Despite a harsh rebuke from the SAB that undercut the central presumption underlying the TMDL nutrient endpoint report, EPA and TetraTech concluded in the follow-up report that the 40 µg/l total phosphorus ("TP") stream endpoint target developed in the 2007 report is still scientifically defensible and will ensure compliance with Pennsylvania's narrative criteria for nutrients (*e.g.*, protection of aquatic life). Once developed, these reports served as the linchpin determination to impose the same 40 µg/l TP stream endpoint target in nutrient TMDLs for several southeastern Pennsylvania free flowing streams (*e.g.*, Indian Creek, Goose Creek, Wissahickon Creek, Southampton Creek). Many of these TMDLs have been heavily contested and/or are currently being litigated in Federal Court. *See, e.g., Telford Borough Authority v. EPA*, (E.D.P.A. 12-6548); *West Goshen Sewer Authority v. EPA*, (E.D.P.A. 12-5353).

## *Major Scientific Flaws*

While each of the entities in our group have site-specific concerns with application of the 40 µg/l TP target in their watershed, the following major technical flaws apply generally to all watersheds:

- Available data for these watersheds confirm that high levels of plant growth (periphyton) are occurring independent of TP concentrations (*i.e.*, no relationship between the two parameters). Accordingly, even if hundreds of millions of dollars are spent in an effort to meet the 40 µg/l TP target, there will be no resulting benefit to the aquatic ecosystems of these watersheds.
- Contrary to the nonexistent relationship between TP and periphyton in the available data, there is a strong relationship between periphyton growth and canopy cover. *See* Ex. 3, PADEP Memorandum by Alan Everett on Periphyton Standing Crop in Wissahickon Watershed. The data confirm that increasing canopy and restoring the riparian zone would be far more effective – not to mention cost-effective – in reducing plant growth.<sup>1</sup>
- Numerous scientific studies – even some developed by EPA's experts – confirm that periphyton control via TP reduction is virtually impossible, except at extremely low levels of TP that are not attainable in these watersheds (less than 10 µg/l TP). *See* Ex. 4, Dodds Report (at 677).

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<sup>1</sup> On multiple occasions, our group has requested to implement a stream restoration proposal in lieu of the TMDL reductions. EPA Region III has denied each of these proposals.

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- The majority of southeastern Pennsylvania streams are heavily populated and urbanized. Accordingly, the upstream background concentrations of TP are elevated well beyond the 40 µg/l target and would make compliance with that endpoint infeasible – even if phosphorus was entirely eliminated from the wastewater and stormwater discharges. It is inappropriate to regulate in a manner that causes enormous energy and financial costs with no benefit. *See Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015) (“No regulation is ‘appropriate’ if it does significantly more harm than good.”).
- The TMDL nutrient endpoint report is directly at odds with an earlier SAB review finding that such generalized analyses for developing nutrient endpoints are not scientifically defensible. *See Ex. 2, SAB Peer Review Report*, at 38 (“Numeric nutrient criteria developed and implemented without consideration of system specific conditions (e.g., from a classification based on site types) can lead to management actions that may have negative social and economic and unintended environmental consequences without additional environmental protection.”)

### *Peer Review Request*

As noted in the recent executive order, it is crucial that our federal regulatory programs be based on sound decision-making and good science – not guesswork or generalized one-size-fits-all approaches that misdirect limited resources to unnecessary or unhelpful measures. This is particularly true in the realm of nutrients, where EPA has been seeking to regulate nutrients at all times and all places, regardless of what the data show or the ability to actually control the situation. *See, e.g., Ex. 5, SAB’s Draft Peer Review of TP limits in Lake Erie to regulate Cladophora.*

As several hundred million dollars in wastewater and stormwater compliance costs could easily be triggered by this one report, we believe that a second peer review, to supplement the 2010 SAB review, would be a reasonable and prudent means to ensure that our resources are being appropriately expended. We look forward to meeting with you and further discussing this request.

Sincerely,



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Mark D. Fournier  
on behalf of the Southeast Pennsylvania  
Nutrient Coalition

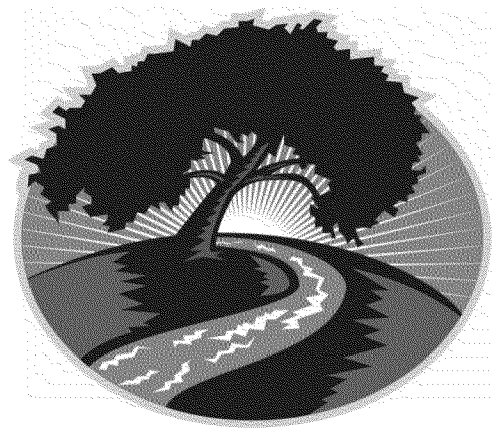
### Enclosures

cc: Sarah Rees, USEPA  
Sarah A. Greenwalt, USEPA  
Troy Lyons, USEPA

## **Southeastern Pennsylvania Nutrient Coalition**

Justin Schwab, Esq., USEPA  
Donald Benton, USEPA  
Senator Pat Toomey  
Senator Bob Casey  
Congressman Ryan Costello  
Congressman Pat Meehan  
Congressman Bill Shuster  
Congressman Brian Fitzpatrick  
Congressman Brendan Boyle

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Senator Pat Toomey  
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Congressman Bill Shuster  
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Congressman Brendan Boyle

**RE: Request for Congressional Support for Peer Review of EPA Region 3's  
Nutrient Endpoint Report**

Dear Senators and Congressmen:

On behalf of the Southeastern Pennsylvania Nutrient Coalition (including Telford Borough, Telford Borough Authority, Lower Salford Township Authority, Lower Salford Township, Souderton Borough, Franconia Township, Franconia Sewer Authority, Abington Township, Newtown Township, Hatfield Township and Westchester), we are seeking support of our Coalition's request to have EPA conduct an independent peer review of a nutrient endpoint report that EPA is using to impose stringent nutrient reduction mandates throughout eastern Pennsylvania. *See*, Peer Review Request. As discussed in the Coalition's peer review request, this document is single-handedly misallocating hundreds of millions of dollars of municipal expenditures throughout southeastern Pennsylvania. We are asking your help to avoid this waste of limited state resources.

While our communities are more than willing to pay for watershed improvement efforts that will produce meaningful environmental benefits where mandated by state or federal law, our reviews have determined that (1) the nutrient reductions driven by this document will be meaningless in improving the conditions in our local streams/creeks, and (2) less costly canopy restoration is the only way to eliminate the excess periphyton growth. Unfortunately, despite numerous requests based on these findings, EPA has been unwilling to withdraw its nutrient reduction mandates that are based on this nutrient endpoint report.

Accordingly, the requested peer review is the only way – aside from litigation – that the Agency will modify its position. For instance, in 2009, a similar Pennsylvania Congressionally-supported peer review request triggered an independent peer review by EPA's Science Advisory Board. That action proved to be instrumental in getting the Agency to withdraw/revise a

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similarly flawed nutrient guidance document, following the Science Advisory Board's conclusion that EPA's approach was not scientifically defensible. While we anticipate a similar result if an independent peer review were to be granted for this document, we are, nonetheless, willing to live with the results of an independent review, regardless of the outcome.

Therefore, we respectfully request your offices support for this peer review request. Thank you for any assistance you can provide that will assure Pennsylvania's resources are wisely expended.

Sincerely,



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Mark D. Fournier  
on behalf of the Southeast Pennsylvania  
Nutrient Coalition

Enclosure