

**To:** Lyons, Troy[lyons.troy@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]  
**Cc:** Jackson, Ryan[jackson.ryan@epa.gov]; Daniel M Marx (DMMarx@flaherty-hood.com)[DMMarx@flaherty-hood.com]  
**From:** John Hall  
**Sent:** Tue 6/20/2017 6:29:15 PM  
**Subject:** MN Coalition letter on EPA Nutrient Criteria Approval - request for meeting to discuss issues  
[Emmer letter to EPA Phosphorus Standards Rule\\_Final.pdf](#)  
[04102017EPAletter\\_PhosphorusMeetingFinal \(003\).pdf](#)  
[EPA Response 03172017.pdf](#)  
[CGMC -MESERB Letter to new Administration - MN WQS\\_Final.pdf](#)

Troy, Sarah and David,

A few months back, two municipal coalitions from Minnesota contacted Administrator Pruitt to see if they could get some relief/reconsideration of the Agency's 2015/2016 approval of river nutrient standards applicable to their state. As noted in their correspondence, several aspects of the approved criteria were unprecedented to say the least. EPA responded in mid-March that the matter was under review.

The Coalition would like to meet with EPA to discuss their request to ensure there is no confusion regarding its scope.

Could that be arranged?

Thanks

**John**

John C. Hall

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TOM EMMER  
6TH DISTRICT, MINNESOTA

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REPUBLICAN WHIP TEAM

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SUBCOMMITTEES  
FINANCIAL INSTITUTIONS AND  
CONSUMER CREDIT  
MONETARY POLICY  
AND TRADE

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2306**

April 10, 2017

Mr. Donald Benton  
White House Liaison  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Mr. Layne Rio Bangerter  
Special Assistant to the President  
U.S. Environmental Protection Agency  
William Jefferson Clinton North Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Messrs. Benton and Bangerter:


I am writing to follow up on my March 15, 2017 letter to Administrator Pruitt regarding a request for the U.S. Environmental Protection Agency (EPA) to reconsider its approval of the Minnesota Pollution Control Agency's (MPCA) River Eutrophication Standards.

Despite ongoing federal litigation to resolve problems associated with these new standards, the MPCA is currently implementing the new standards in the form of wastewater permits to cities throughout the state, including the City of Cokato in my district. The specific permit in Cokato, with a population of 2,728, will cost \$16 million dollars for compliance. These standards place an extraordinary financial burden on cities with minimal benefit to water.

Given the pending litigation and costly nature of the previous administration's decision, I respectfully request that you meet with representatives from municipal organizations in my state to discuss our concerns and present scientific information on the standards flaws. For your convenience I have attached my March 15<sup>th</sup> letter to Administrator Pruitt in addition to letters from two municipal organizations in my state summarizing the concerns about MPCA's flawed standards.

Thank you for your consideration of my request. If I can provide additional information on this matter or if you have questions, please contact Nick Lunneborg in my office via email at [Nick.Lunneborg@mail.house.gov](mailto:Nick.Lunneborg@mail.house.gov) or via telephone at (202) 329-3499.

Sincerely,

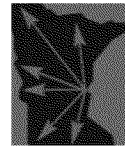


Tom Emmer  
Member of Congress

Enclosure:  
[CGMC –MESERB Letter to new Administration]  
[EPA Phosphorus Standards Rule\_Final]



Dedicated to a Strong Greater Minnesota



**MESERB**

Minnesota Environmental Science  
and Economic Review Board

*February 15, 2017*

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

Mr. E. Scott Pruitt Administrator (Designate)  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Mr. Don Benton  
Mr. David Schnare  
Office of Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**RE: Reconsideration of EPA Region 5's Approval of Minnesota's Numeric  
Eutrophication Standards**

Dear Administrator Pruitt and Messrs. Benton and Schnare:

Our organizations, the Coalition of Greater Minnesota Cities (CGMC) and Minnesota Environmental Science and Economic Review Board (MESERB), represent 93 communities in Minnesota, many of whom are struggling to deal with the avalanche of new federal mandates imposed under the Obama Administration. This letter constitutes a formal request by our organizations for your office to review the actions taken by EPA Region 5 regarding one particularly egregious and inappropriate regulatory action – approval of Minnesota's numeric nutrient standards for streams. Presently, a lawsuit challenging that federal action is ongoing in the D.C. District Court, which was filed by the Center of Regulatory Reasonableness (“CRR”) on behalf of our organizations and municipal members (Docket 16-1435-RJL). Accordingly, we also request that this case be held in abeyance while the matter is being reconsidered so further resources do not have to be expended in addressing Region 5's scientifically indefensible action. The following briefly discusses the basis for these requests in advance of an opportunity to meet with you and your staff to discuss our concerns in greater detail.

**Background Regarding EPA Approval Action**

Before any new water quality standard can be used for compliance purposes under the Clean Water Act, EPA must affirmatively find that the proposed standard is scientifically defensible and necessary to protect the designated aquatic life uses. *See generally* CWA § 303(c) and 40 C.F.R. Part 131. Consequently, standards are set at or near the threshold where significant adverse aquatic life use impacts may occur. Where ambient data indicate such numeric values will be exceeded, the waters are designated as “impaired” and significant regulatory actions (and

prohibitions) are triggered for those contributing the pollutant to the water body. Because of the serious ramifications associated with establishing water quality standards, comprehensive scientific documentation is needed to justify their adoption. As discussed below, we believe Region 5's approval falls squarely within the ambit of wasteful and irresponsible regulation that the new administration seeks to eliminate. EPA's action has resulted in and will continue to result in hundreds of Minnesota's streams, creeks, and rivers being improperly designated as nutrient impaired. In so doing, EPA's approval will recklessly misdirect limited fiscal resources towards "improvements" that are unnecessary and will not produce demonstrable environmental benefits. Given that nutrients are at the forefront of EPA's Clean Water Act regulatory agenda, the national precedent established by EPA's approval will be massive.

Our group's concerns were documented in detail in a December 10, 2015 letter. *See* Att. 1, CRR withdrawal request to EPA without Attachments. The letter focused on Minnesota's unprecedented use of (and Region 5's approval of) the 5-day biochemical oxygen demand (BOD5) test (a common wastewater test method used throughout the country) and a parameter known as diel DO flux (24-hour change in dissolved oxygen concentration) as nutrient and aquatic life impairment indicators. No prior federal guidance or criteria document ever asserted that either of these parameters could be defensibly used as nutrient impairment indicators, or that these parameters were even capable of directly causing aquatic life impairment. In response to Freedom of Information Act requests, EPA acknowledged that it possessed no records showing it was scientifically defensible to use these endpoints (that are affected by easily a dozen non-nutrient factors) as nutrient impairment indicators. *See* Atts. 2 – 3, FOIA requests and responses from EPA headquarters regarding BOD5 and DO flux. When *Standard Methods*, the national authority on proper test usage, was asked to weigh in on whether the BOD5 test was appropriate for use as a nutrient impairment response indicator, they confirmed emphatically that it was not. *See* Att. 4, Standard Methods Memorandum on BOD5 (November 19, 2014). Nonetheless, EPA approved these components of Minnesota's standards with conclusory assertions that the decision was scientifically defensible, in the face of conclusive evidence to the contrary.

In the midst of the ongoing litigation, another EPA document emerged, prepared by an EPA Region 3 scientist, regarding a similar stream nutrient impairment proposal by the Pennsylvania Department of Environmental Protection (PADEP). EPA's scientist admitted that the objections to using DO flux were well founded and that DO flux was not an aquatic life impairment indicator. *See* Att. 5, email from Dr. Gregory J. Pond, EPA Region 3, regarding PADEP's nutrient criteria (Dec. 30, 2015). These EPA comments prompted Pennsylvania to withdraw its proposed stream impairment protocol. Unsurprisingly, EPA is now seeking to preclude the D.C. District Court's consideration of this damaging evidence in conjunction with its review of the Minnesota standards.

### **Request for Immediate Action**

It is crucial that our federal regulatory programs be based on sound decision making and good science – not administrative fiat. But for EPA’s relentless insistence on regulating nutrients at all times and all places, regardless of what the data shows (*see* USEPA 2013 Nutrient Impairment Guidance to States), this abusive situation would not be occurring. Several hundred million dollars in taxpayer funded wastewater and stormwater compliance costs are easily triggered by this one misplaced standard. Future growth will be hampered for any communities wishing to discharge to waters designated as impaired due to these flawed standards. Given the well documented fact that use of BOD5 and DO Flux as nutrient/aquatic life impairment indicators is not scientifically defensible, we request that the new Administration agree to hold the current litigation in abeyance, so the parties may engage in alternative dispute resolution. As EPA is under a duty to independently ensure that proposed state water quality criteria are scientifically defensible, and these criteria plainly are not, the Agency’s reconsideration of its earlier approval would be most appreciated.

Sincerely,



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CGMC President, Sara Carlson



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MESERB President, Andy Bradshaw

Cc. John Hall, Center for Regulatory Reasonableness

Enclosures

TOM EMMER  
6TH DISTRICT, MINNESOTA

COMMITTEES  
FINANCIAL SERVICES  
SUBCOMMITTEES  
CAPITAL MARKETS AND  
GOVERNMENT SPONSORED ENTERPRISES  
MONETARY POLICY  
AND TRADE  
TERRORISM AND ILLICIT FINANCE

Congress of the United States  
House of Representatives  
Washington, DC 20515-2306

March 15, 2017

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HOUSE REPUBLICAN STEERING

REPUBLICAN WHIP TEAM

DEPUTY WHIP TEAM

The Honorable Scott Pruitt, Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Pruitt,

First and foremost, congratulations on your recent confirmation as the 14<sup>th</sup> Administrator of the Environmental Protection Agency (EPA). I look forward to working with you and your team in the new Congress to further the goals of the Administration.

I write to you today with great concern regarding the Minnesota Pollution Control Agency's (MPCA) phosphorus standards, which your agency approved under the previous Administration. I have heard from multiple cities within my district about the compliance costs and the negative impacts associated with this rule. Therefore I urge your office to reconsider its approval of these standards that will require millions of dollars in local and state resources with debatable improvements to water quality.

While we all can agree that clean water is vitally important to our communities, these phosphorus standards represent regulatory overreach by the MPCA. In fact, multiple entities have questioned the standard's basis in sound science. The result of this overreach and increased regulation is millions of dollars of costs that many of these cities in my district cannot absorb.

Despite ongoing litigation to resolve the matter, the MPCA is currently implementing the new, problematic standards in the form of wastewater permits to cities throughout the state. The city of Cokato in my district has already received a flawed wastewater permit. If the EPA withdraws its approval of the standards, the MPCA's permits will lose the force effect of law in Minnesota and be forced to correct the scientific flaws cited in the public comment period.

Minnesota is a leader in water quality and our cities do an excellent job in keeping our natural resources clean. However, these standards place an extraordinary financial burden with minimal returns to water quality. I respectfully request that you reconsider your agency's approval of the MPCA's flawed phosphorus standards in response to pending litigation. The legal review of these standards must be finalized before approving such problematic standards.

Thank you for your consideration of my request. If I can provide additional information on this matter or if you have questions, please contact Nick Lunneborg in my office via email at [Nick.Lunneborg@mail.house.gov](mailto:Nick.Lunneborg@mail.house.gov) or via telephone at (202) 329-3499.

Sincerely,



Tom Emmer  
Member of Congress

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
WATER

March 17, 2017

Ms. Sara Carlson  
President  
Coalition of Greater Minnesota Cities  
525 Park Street  
St. Paul, Minnesota 55103

Mr. Andy Bradshaw  
President  
Minnesota Environmental Science and Economic Review Board  
525 Park Street  
St. Paul, Minnesota 55103

Dear Ms. Carlson and Mr. Bradshaw:

Thank you for your February 15, 2017, letter to Administrator Pruitt and Messrs. Don Benton and David Schnare in which you request that the Agency review the approval of Minnesota's numeric nutrient standards for streams.

We are in the process of reviewing the petition and considering the issues you raised. In the meantime, if I can be of further assistance, please contact me, or you or your staff may contact Sara Hisel-McCoy, Director of the Standards and Health Protection Division, at 202-566-1649, or [hisel-mccoy.sara@epa.gov](mailto:hisel-mccoy.sara@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Southerland".

Elizabeth Southerland, Director  
Office of Science and Technology