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Inside EPA's Environmental Policy Alert

An exclusive bi-weekly report tracking environmental legislation, regulation and litigation

from Vol. 26, No. 19, September 23, 2009

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An EPA Science Advisory Board (SAB) panel is blasting a draft agency guidance describing methods to craft strict numeric nutrient criteria, saying a key statistical method does not prove nutrients alone cause harm, which an industry lawyer says could form the basis for a lawsuit if EPA does not heed the panel's criticisms.

The SAB panel offered "harsh" criticism of the guidance, the panel's chair, Dr. Judith Meyer, said at a Sept. 11 meeting, but also underscored that it believed setting nutrient criteria was an important effort. "We felt that the document in its current form was not adequate," Meyer said, "but we see this as a viable way of setting numeric nutrient criteria and we see that it's very important that those numeric criteria be set."

SAB, which will synthesize its findings into a final report in coming months, is likely to suggest wholesale changes to the guidance, including a likely call for EPA to encourage consideration of additional factors that affect how nutrient pollution impacts water quality.

EPA officials appeared receptive to changing the guidance, with key water office official Dana Thomas saying she "enjoyed" the panelists' input.

At issue is a draft EPA guidance intended to help states develop numeric risk-based limits, known as criteria, for addressing nutrient pollution. Under the Clean Water Act, states and other regulators use the criteria to set enforceable water quality standards.

Nutrients, which stem from fertilizer runoff, power plant emissions and discharges from point sources, are responsible for eutrophication — a process that results in reduced oxygen levels in waters, such as the hypoxic "dead zone" in the Gulf of Mexico and other large watersheds.

Environmentalists have long urged the agency to require states to set numeric nutrient criteria for their waters, which are more easily enforceable, rather than narrative criteria. Frustrated with the slow pace of progress, environmentalists had begun suing the agency to require development of the numeric criteria. Late last month, activists won a settlement from EPA and the state of Florida on a schedule for implementing numeric standards for nutrient pollution in the state, a move activists say will propel similar efforts nationwide.

EPA's Inspector General in a report released last month also urged the agency to speed development of numeric nutrient criteria. *Relevant documents are available on InsideEPA.com.*

The draft guidance suggests regulators use empirical approaches, including a controversial statistical method — called the conditional probability approach — to describe the harmful "stressor-response" relationship between nutrients in streams and adverse effects on invertebrate populations. EPA says states have registered the most interest in methods to describe the stressor-response relationship — like the guidance does.

The agency also argues numeric nutrient criteria are crucial to facilitate protective permits and create targets that can foster water quality trading programs.

But industry officials are strongly resisting the efforts. Shortly after the recent Florida settlement was unveiled, a group of Florida utilities filed a notice of intent to sue EPA for its January 2009 determination that Florida is required to develop the criteria.

And at a Sept. 9 hearing before the SAB panel, industry groups urged the panel to kill EPA's draft guidelines, saying the draft is "fundamentally flawed" and "hopeless."

"Abandon the effort to develop nutrient criteria. The method is fatally flawed, and does not work," Dr. Dominic DiToro of the University of Delaware — who is consulting for industry — told the panel. DiToro and other critics say the draft drastically simplifies the myriad factors by which nutrients cause increased algae and plankton growth, which in turn reduce oxygen levels and cause other ecological problems.

John Hall, a lawyer who represents wastewater treatment plants, says he plans to work with the agency to improve the guidance. However, he also argues the SAB panel finding that stressor-response relationships do not prove causation could help form an administrative record bolstering an industry suit against criteria based on it if EPA did not incorporate the criticisms. "They have to" adopt the criticisms, Hall says. — *Jonathan Strong*