

June 29, 2007

Hypoxia Advisory Panel
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BY U.S. MAIL AND E-MAIL

Dear Environmental Protection Agency Science Advisory Board Hypoxia Panel,

As state, regional, and national members of the Mississippi River Water Quality Collaborative (MSWQC), we are writing to applaud the significant progress achieved in the EPA's Scientific Advisory Board's (SAB) Hypoxia Advisory Panel Public Draft Report published May 24, 2007.

This document is timely and important. It provides updated information now seven years since the *Integrated Assessment* and nearly six years since the *Hypoxia Action Plan* were published. This Report reviews a wide array of available data concerning the causes of hypoxia, nutrient sources, fate, and transport, and the appropriate basis for goals and management options. But unlike previous reports, this document finally provides policy makers with a suite of credible options to make meaningful steps forward in solving this decades-long problem.

While the report identifies additional data that should be gathered to further inform the understanding of certain aspects of hypoxia, and also identifies issue areas to be explored in more detail, the panel also supports its conclusion that significant action should not be delayed until resolution of all unresolved issues. Instead, the panel rightly suggests that additional and future information be incorporated into reduction strategies using adaptive management.

There is great urgency this year to set serious nutrient reduction goals and adopt measures necessary to achieve them. A modeling effort conducted this month indicates that this year's dead zone will be the largest in the last two decades, coming within 10 percent of the all-time largest area of Gulf hypoxia on record.

We commend the SAB for recommending:

1. Setting a 45 % nitrogen (N) reduction goal and a 40% phosphorus (P) reduction goal to achieve the original Coastal Goal of a Dead Zone measuring less than 5,000 km².
2. Re-structuring current agricultural support payments to reward conservation practices.
3. Re-structuring current agricultural support payments to provide an economic incentive to switch from corn-soybeans to perennial crops.
4. Requiring Mississippi Area River Basin (MARB) sewage treatment plant (STP) upgrades to achieve total N concentrations of 3 mg/L and total P concentrations of 0.3 mg/L.

5. Requiring nutrient concentrations or loading limits in major STP permit renewals.
6. Wetland restoration specifically to control nonpoint source nutrient loads, particularly in areas of heavy tile drainage.

Furthermore, the research cited by the panel concerning the success of voluntary programs comports with our real-world experience. Unless mechanisms exist to create a great enough incentive to reduce pollution, or a great enough disincentive for failing to do so, it is unlikely that pollution controls will be implemented in a reliable and comprehensive fashion via the current voluntary program approach.

An additional recommendation that the panel should have made is that states establish water quality standards for nitrogen and phosphorus as soon as possible to protect their waters and downstream waters under 40 CFR 131.10(b). Standards for nitrogen and phosphorus were originally supposed to be developed by 2003 and EPA established nitrogen and phosphorus criteria in 2000. Subsequent research has shown that the standards that should be established by states in the Mississippi Basin should be - if anything - more stringent than the 2000 EPA criteria. Accordingly, to the extent that states do not approve nitrogen and phosphorus standards that will protect their waters and the Gulf by the end of 2007, EPA should establish standards based on the 2000 criteria for all of the Mississippi basin states under Section 303(c)(4) of the Clean Water Act.

We wish to specifically address two issues concerning the panel's recommendations. First, we are troubled by the implication by some commenters that the panel's scientists have no legitimate role in hypoxia policy recommendations, and that the panel somehow overstepped its mandate. Informed decisions about how to address the crucial issue of hypoxia will be impossible without evidence-based recommendations from credible scientists. As a result, the panel's charge quite rightly includes an examination of "[t]he scientific basis for, and recommended revisions to, the goals proposed in the Action Plan; and the scientific basis for the efficacy of recommended management actions to reduce nutrient flux from point and nonpoint sources."

Second, it is important to understand that a 40 to 45 % reduction goal for nitrogen and phosphorus need not translate into a 40 to 45 % reduction of fertilizer use by farmers. To combat such misinterpretations, we suggest that the SAB consider an alternative reduction goal approach. We suggest consideration of a nitrogen and phosphorus load reduction goal for the Mississippi River Basin as a whole and that each major watershed basin in the MARB be assigned load reductions from point and non-point sources that would accomplish the overall goal.

We hope you consider these serious options and that you finalize this draft report with a set of solutions that will make meaningful progress towards reducing the nutrient pollution problems that cause the dead zone every year.

Best regards,

Environmental Law and Policy Center
Environmental Working Group
Institute for Agriculture and Trade Policy

Iowa Environmental Council
Gulf Restoration Network
Kentucky Waterways Alliance
Midwest Environmental Advocates
Minnesota Center for Environmental Advocacy
Missouri Coalition for the Environment
Natural Resources Defense Council
Tennessee Public Employees for Environmental Responsibility
Prairie Rivers Network
Tennessee Clean Water Network
Louisiana Environmental Action Network