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**VIA EMAIL: nugent.angela@epa.gov****Dr. Angela Nugent  
Designated Federal Officer (DFO)  
EPA Science Advisory Board (1400F)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460****Re: COMMENTS TO EPA SCIENCE ADVISORY BOARD  
ECOLOGICAL PROCESSES AND EFFECTS COMMITTEE DRAFT  
REVIEW (FEDERAL REGISTER VOLUME 75, NO. 34, DATED  
FEBRUARY 22, 2010)****Dear Dr. Nugent:**

Please accept the following comments on behalf of the Pennsylvania Municipal Authorities Association ("PMAA") in response to the February 22, 2010 Federal Register notice regarding the March 24, 2010 public teleconference of the chartered Science Advisory Board ("SAB") relating to the SAB's Ecological Processes and Effects Committee's ("Committee") review of the United States Environmental Protection Agency's ("EPA") draft guidance document entitled *Empirical Approaches for Nutrient Criteria Derivation* ("Guidance"). (The Committee's report is hereinafter referred to as the "Draft Report.")

By letters dated August 31, 2009 and November 30, 2009, PMAA, which represents the interests of over 700 municipal authorities in the Commonwealth of Pennsylvania, and of the approximately 400 municipal authorities that will be impacted by the Guidance, submitted comments to the SAB regarding both the Guidance and the Committee's undertaking in this matter. In these comments, PMAA, among other things, questioned the scientific methodology employed by EPA in the Guidance.

PMAA has now reviewed the Committee's Draft Report, which is the subject of the aforementioned public teleconference, and generally supports the Committee's fundamental recommendations regarding the Guidance. [See, e.g., Draft Report, p.3]. However, provided below are several items that PMAA believes should also be specifically noted.

First, PMAA supports the Committee's determination "that improvements in the Guidance are needed prior to its release to make the document more useful to state and tribal water quality scientists and resource managers," and that "the scope, limitations, and

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intended use of the Guidance need to be more clearly described.” [Draft Report, p.2]. Moreover, PMAA also generally supports the Committee’s discussion regarding the “stressor-response framework” and, more specifically, its conclusion in the Draft Report that “a large degree of unexplained variations can be encountered when attempting to use empirical stressor-response approaches to develop nutrient criteria,” and that “[t]he final Guidance should clearly indicate that such unexplained variation can present significant problems in the use of this approach.” [Draft Report, p.2]. In particular, PMAA points to the Draft Report’s conclusion that “*the final document should clearly state that statistical associations may not be biologically relevant and do not prove cause and effect.*” [Draft Report, p.2, original emphasis]. As the Draft Report observes, “[t]he absence of a direct causative relationship between stressor and response is one of the most serious issues raised by the Committee.” [Draft Report, p.4].

PMAA also believes that EPA should implement the Committee’s key recommendations concerning the intended use of the Guidance, including addressing the importance of: (1) establishing linkages among designated uses, measured responses, stressors, and measures of stressors; and (2) relating measures of responses directly to deleterious effects on designated uses. [Draft Report, p.6]. Notably, one of the key concerns in the Guidance is the scientific defensibility of the approaches used to derive numeric nutrient criteria. For example, the Committee suggests that EPA consider certain issues as it selects variables to develop numeric criteria, such as which measures will allow detection of impairment of designated uses and is that relationship sufficiently strong to determine criterion to ensure that the designated use is protected. [Draft Report, p.7]. Significantly, the Draft Report also notes that “EPA should explicitly acknowledge the conditions under which the stressor-response relationship applies” and that such relationship may be “relatively strong and well-established in lakes and reservoirs as opposed to streams and rivers where the relationship is more complex and influenced by many factors (e.g., shading, sediment, flow regime).” [Draft Report, p.7]. This observation of the Committee is critical to the development of nutrient criteria and Total Maximum Daily Loads (“TMDLs”) for streams and rivers in Pennsylvania.

PMAA further believes that the Committee generally focused on the key points regarding the selection of response variables and that EPA should implement such recommendations. [Draft Report, p.9-10]. For example, EPA should present examples illustrating a strong nutrient-response relationship and clear linkage of the response variable to a designated use. As the Committee notes, “[i]t is important to clearly present the rationale for such linkage.” [Draft Report, p.10]. Similarly, PMAA believes that EPA should incorporate the Committee’s findings regarding temporal/spatial aspects of data and the selection of variables to appropriately quantify the stressor and response. [Draft Report p.13-14]. Such information would be beneficial and provide critical information relating to the development of numerical nutrient criteria and TMDLs.

PMAA would also like to emphasize the importance of a site specific inquiry regarding the development of numerical nutrient criteria or TMDLs. Failure to consider site specific conditions can lead to negative social and economic effects and unintended environmental consequences, without additional environmental protection. In its previous comments to the Guidance, PMAA noted the questionable scientific methodology

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proposed for nutrient criteria development and pointed out that the likely end result that implementation of such methodology will result in the expenditure of public funds with no assurance that such effort will be successful or, in fact, even necessary. In expressing these concerns, PMAA stressed the importance of a carefully designed site specific data collection and analysis effort to determine the appropriateness of various control measures in an aquatic system, a theme that it had articulated in its written comments to Pennsylvania TMDLs. It is noteworthy that the Committee's observation regarding the importance of obtaining data from well designed site specific monitoring programs in the development of nutrient criteria (Draft Report, p.37) closely tracks PMAA's past comments on the development of TMDLs in Pennsylvania.

In summary, PMAA believes that the SAB has identified the major concerns to proceeding with the development of numeric nutrient criteria and/or TMDL development based on the Guidance and will not submit more extensive comments at this time.

Finally, PMAA appreciates the opportunity to submit these comments to the SAB for its consideration in this matter and expresses its appreciation for the work undertaken by the Committee during this process.

Very truly yours,

HAMBURG, RUBIN, MULLIN,  
MAXWELL & LUPIN

By: \_\_\_\_\_  
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