

## HALL & ASSOCIATES

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August 17, 2009

### **Via US Mail, E-Mail, and Facsimile**

Administrator Lisa P. Jackson  
Dr. Vanessa Vu  
US EPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1101A  
Washington, D.C. 20460

Dr. Vanessa Vu  
US EPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1400F  
Washington, D.C. 20460

**RE: Request for Additional Time for Municipal Coalition Presenters at  
SAB Review of the Technical Guidance on Nutrient Criteria  
Development**

Dear Administrator Johnson and Dr. Vu:

As you know, based on a petition filed by a group of Pennsylvania municipalities and supported by the Pennsylvania Congressional delegation (Attachment), EPA agreed to conduct a Science Advisory Board ("SAB") review of the very complex and novel methods now being used by EPA to derive numeric nutrient criteria for use in TMDLs. Although the new guidance document outlining the process is not available for review, EPA has already applied these methods in the preparation of five TMDLs in Pennsylvania and has tutored all its Regions on the implementation of this precedent-setting approach. If the TMDL results in Pennsylvania are representative of the outcomes in other areas, EPA's new methodology will result in additional treatment requirements for total phosphorus in excess of \$300 billion for wastewater treatment facilities across the county. The application of the guidance in TMDLs has already resulted in

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requirements that cannot be achieved for MS4 communities; compliance with the new criteria is virtually impossible. In spite of the enormous cost, our research indicates that impaired uses will not be restored under this approach and corrective measures will be misdirected. Given these outcomes, the interest in this matter by the regulated community is extreme.

Our research on stream nutrient impairment evaluation has been developed over the past several years as EPA shifted from a dissolved oxygen-based nutrient assessment to the control of nuisance algae to macroinvertebrate community impairment. Over this time, we have amassed a significant amount of information exposing the major concerns with these approaches for designated use restoration. This information needs to be presented to the Board to understand whether EPA's new methods are appropriate. However, we have been informed that stakeholders wishing to testify before the SAB will be limited to five minutes per speaker to present their issues and concerns. *This amount of time is grossly insufficient for such a complex and critical issue of national importance.*

We request that a two hour block of time be afforded to four presenters, representing an interstate coalition of affected parties (including publicly owned treatment works, municipal storm sewer operators, and trade organizations), to present information and evaluations critical to the SAB review that have been derived through the course of reviewing and commenting on EPA's application of these methods in the Pennsylvania TMDLs and elsewhere. These presenters include Dr. Dominic DiToro, Mr. Thomas Gallagher, Mr. William Hall, and Mr. John Hall. The information they intend to present is briefly described below.

- Dr. Dominic DiToro (University of Delaware)

Dr. DiToro was the SAB Technical Director for EPA on the sediment criteria review and is a nationally renowned expert on environmental assessment issues. The prior SAB review rejected many of the same procedures now recommended by EPA for the derivation of nutrient criteria. Dr. DiToro will present an overview of the similarities between these two approaches and the scientific deficiencies that led the SAB to reject the approach previously. He will also explain why the new approach will likely misdirect resources on a national scale.

- Mr. Thomas Gallagher, P.E. (HydroQual, Inc.)

Mr. Gallagher is a Principal Engineer with HydroQual, Inc. (Mahwah, NJ). Mr. Gallagher has 40 years of experience in conducting water quality studies and developing complex nutrient models. Mr. Gallagher will present an overview of his experience in mitigating nutrient-related problems in relation to the approach now

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being fostered by EPA. He will address why regression-type analyses are expected to give misleading results and how to improve regulatory decision-making in this area.

- Mr. William T. Hall (Hall & Associates)

Mr. Hall is an Associate with Hall & Associates (Washington, DC). He has over 25 years of experience evaluating water quality issues and, over the past five years, has prepared detailed evaluations of the changing nutrient criteria development approach used by EPA. Mr. Hall will present a summary of the statistical issues and concerns with this latest approach and why various projects failed to remedy nutrient impacts using these methods.

- Mr. John C. Hall, Esq. (Hall & Associates)

Mr. Hall is the founder of Hall & Associates. He is an environmental engineer and attorney with 30 years of experience addressing Clean Water Act issues. Mr. Hall has prepared legal, regulatory, and technical reviews of the new EPA methods and will explain where they fail to follow Clean Water Act mandates and will preclude the use of more effective regulatory approaches to restore stream uses.

Given the importance of the proposed approach and the potential costs to implement the TMDLs that will follow from the application of this guidance, we believe that an extended presentation by these individuals is critical. We respectfully request that the expanded timeframe be authorized for these presentations.

Sincerely,

John C. Hall  
Hall & Associates

Enclosure

cc: Senator Arlen Specter  
Senator Robert P. Casey  
Congressman Tim Holden  
Congressman Charles W. Dent  
Pennsylvania Periphyton Group  
John W. Brosious, Pennsylvania Municipal Authorities Association  
Pennsylvania Water Environment Association  
Iowa WPCA

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Minnesota Environmental Science and Economic Review Board  
Ellen Gulbinsky, Association of Environmental Authority, New Jersey  
Connecticut Water Pollution Abatement Association  
Association of Illinois Wastewater Agencies  
NACWA  
National Homebuilders Association  
New York Water Environment Association  
Tar Pamlico Basin Association, North Carolina  
Central States Water Environment Association

**Congress of the United States**  
Washington, DC 20515

November 7, 2008

Mr. Stephen L. Johnson  
Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington, DC 20460

Dear Administrator Johnson:

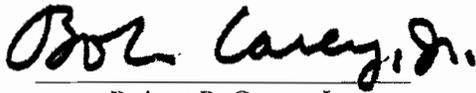
We are concerned about the Region III in-stream standards for nutrients that the Environmental Protection Agency (EPA) has proposed to create new Total Maximum Daily Loads (TMDLs) for certain streams and creeks in Pennsylvania. Specifically, we are worried that the science used to develop the new discharge standards has not been peer-reviewed under the normal EPA protocol. Considering the practical implications, we could be imposing billions of dollars in compliance costs on Pennsylvania towns to meet standards that may or may not be necessary or achievable.

There is legitimate debate among nationally recognized scientists both for and against the strict new standards proposed by EPA. In fact, we know of two experts whom EPA has worked with in the past, Dr. Dominic DiToro and Dr. Stephen Chapra, who have said that the new standards are neither scientifically sound nor likely to restore streams. Given such strong statements, we find it odd that EPA would consider adopting these standards without a thorough vetting in a peer review process. Therefore, we strongly urge you to initiate a formal scientific peer review process and delay implementing new TMDLs until this process can be completed.

We agree that protecting and restoring Pennsylvania's streams and water bodies is critically important. But we also know that Pennsylvania communities cannot be expected to shoulder an expensive burden when it may not even achieve the intended restoration goals. At a time when we are putting so much work into strengthening Pennsylvania's economy and creating jobs, we are reluctant to risk that progress when we are not assured that we are meeting restoration goals in the most cost-effective manner possible.

Thank you in advance for your attention to this important matter. We look forward to your response regarding formal peer review of the science for the proposed TMDLs and our continued work to protect the precious resources of Pennsylvania.

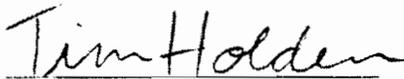
Sincerely,



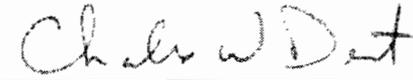
Robert P. Casey, Jr.  
United States Senator



Arlen Specter  
United States Senator



Tim Holden  
Member of Congress



Charles W. Dent  
Member of Congress