



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
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ATLANTA, GEORGIA 30303-8960

JUN 27 2014

Mr. Thomas Reeder
Director
Division of Water Resources Planning
North Carolina Department of Environment
and Natural Resources
1611 Mail Service Center
Raleigh, North Carolina 27699-1617

Dear Mr. Reeder:

This letter documents a mutual agreement between North Carolina Department of Environment and Natural Resources (NCDENR) and the U.S. Environmental Protection Agency regarding the State's revised numeric nutrient criteria development plan entitled, "North Carolina Nutrient Criteria Development Plan" (Plan). The Plan was submitted to the EPA for final review on June 5, 2014. In response to its review, the EPA entered into a mutual agreement with the State on June 17, 2014. On June 20, 2014, NCDENR submitted a revised version of the Plan (dated June 20, 2014) where two non-substantive changes were made. In response to the review of the revised Plan, the EPA is providing mutual agreement on the most current version of the Plan which reflects the non-substantive change submitted on June 20, 2014. The EPA recognizes that this Plan represents continued endeavors by the State to address the complex issue of nutrient over-enrichment. We appreciate the cooperation of your staff in submitting revised versions of the Plan and making efforts to develop a comprehensive plan of action. Based upon our review, the EPA believes this revised Plan describes a reasonable and timely process by which the State can develop appropriate protective numeric nutrient criteria for State water quality standards adoption.

The Plan reflects the State's approaches in developing and adopting numeric nutrient criteria for three waterbodies, High Rock Lake, the central portion of Cape Fear River Basin and Albemarle Sound. The State will implement these approaches in developing and adopting numeric nutrient criteria for Statewide waterbody types. As agreed to in the Plan, the State will discuss these approaches with the EPA, no less than quarterly, as numeric nutrient criteria are being developed for the site-specific waterbodies.

As presented in the EPA guidance document, "Guiding Principles on an Optional Approach for Developing and Implementing a Numeric Nutrient Criterion that Integrates Causal and Response Parameters" and other EPA guidance, numeric values for all parameters developed under the Plan must protect the designated uses and ensure that water quality standards provide for the attainment and maintenance of downstream water quality. The State must use and provide to the EPA scientifically-defensible methods and analyses supporting the development of these protective water quality criteria.

The EPA understands that the Plan may need to be revisited and renegotiated if unforeseen delays occur. Several tasks, presented in Tables 5-7, require the Plan to be revised or amended as needed. The EPA

looks forward to discussing your progress in developing numeric nutrient criteria, no less than quarterly, to ensure that the expectations presented in both the Section 106 Workplan and Plan will be met.

If, however, in the future the State fails to make reasonable progress toward the adoption of numeric nutrient criteria, the Administrator may choose to exercise her discretion under the Clean Water Act (CWA) §303(c)(4)(B) to determine that new or revised standards are necessary to meet the requirements of the CWA and may promulgate water quality criteria for nutrients applicable to surface waters within the State of North Carolina in accordance with CWA §303. However, the revised Plan submitted by NCDENR and agreed to by the EPA makes this possibility unlikely at this time. The EPA will continue to make every effort to assist you in the development of numeric nutrient criteria in accordance with the Plan. We expect that continued cooperation between the State and the EPA will lead to the adoption of scientifically defensible and protective criteria.

By this agreement, the EPA is acknowledging that the Plan reflects a reasonable course of action by which the State can proceed to develop numeric nutrient criteria. However, this agreement should not be interpreted as an approval or disapproval of State water quality standards. The EPA's agreement does not imply an in-depth technical analysis or reflect a complete review or determination as to whether the resulting criteria will be protective or consistent with the CWA. According to the milestones presented in the Plan, the EPA expects that you will submit numeric water quality standards for nutrients for High Rock Lake by 2018, for Albemarle Sound by 2020 and for the central portion of the Cape Fear River Basin by 2021 for the EPA review. In the interim, the EPA expects to receive updates through quarterly conference calls and written annual reports. In the event the Plan is revised, the EPA will review and re-evaluate this mutual agreement.

We appreciate the time and resources that you and your staff have devoted in the development of this Plan and anticipate the achievement of adopting numeric nutrient criteria. If you have any questions regarding this matter, please feel free to contact me at (404) 562-9345 or have a member of your staff contact the North Carolina Nutrients Coordinator on my staff, Ms. Anna Cornelious at (404) 562-9435.

Sincerely,



James D. Giattina
Director
Water Protection Division

cc: Tom Fransen
Dianne Reid
Jeff Manning
Connie Brower