

Congress of the United States
Washington, DC 20515

January 21, 2011

Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

As members of Maine's Congressional Delegation, we strongly support the Environmental Protection Agency's work with the State of Maine to develop water quality criteria that will control the adverse impacts of nutrients in our waters. Maine has been a national leader on promoting clean water. Controlling nutrient pollution is a very important national initiative and we appreciate your directive that this effort be guided by strong scientific and technical criteria. Scientifically defensible water quality criteria for nutrients is important for protecting our aquatic ecosystems, commercial fisheries, shellfisheries and businesses that rely on having access to clean water.

We are writing to ask you to clarify the role of the Maine Department of Environmental Protection (DEP) in the determination of whether a water body is impaired through the combination of a numeric and narrative standard for nitrogen and phosphorus. Draft rules crafted by the Maine DEP propose a scientifically defensible framework based on hundreds of field observations of many different metrics of water quality that allowed the numeric nutrient criteria to be used in conjunction with and as part of other water quality criteria that define impacts of nutrient enrichment, such as dissolved oxygen and algae. The ability to use the narrative standard to help define impairment is an important attribute of the draft rule and provides much flexibility to the Maine DEP. Based on the science underlying the rule, such a provision protects water quality while at the same time ensuring Maine towns and businesses are able to focus their limited funds on the most important water quality issues.

The process of developing the proposed rule has also involved extensive stakeholder input. In March of 2010, after extensive stakeholder meetings and public hearings before DEP, EPA Region 1 stated that it could not support the central framework of the draft nutrient rules. However, the citation provided in a March 10th letter seems to support Maine's approach because it allows the use of either narrative or numeric nutrient criteria. EPA regulations define water quality criteria as "elements of State water quality standards, expressed as constituent concentrations, levels or narrative statements, representing a quality of water that supports a

particular use" (40 C.F.R. § 131.3(b)). Of equal importance, criteria must be linked to designated uses and "must be based on sound scientific rationale" (40 C.F.R. § 131.11(a)).

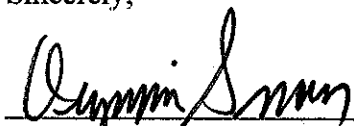
We appreciate that EPA has been willing to engage in subsequent discussions with Maine DEP staff and understand that a label of "indeterminate" is proposed for water bodies that exceed the numeric criteria but do not exceed the narrative standard. As described during a November 1st stakeholders' meeting, the indeterminate decision could require Maine DEP to conduct further assessments including formal site-specific criterion development. We are particularly concerned about how the determination in these situations will be made, as significant additional testing can be expensive. The Maine DEP should have the ability in the final rule to make technical adjustments and decisions based on their long history of being good stewards of the state's waters.

Recognizing the importance of protecting water quality in Maine, we urge EPA to continue to work with the Maine DEP to implement a rule that is not cumbersome and allows the DEP to take timely enforcement and corrective action if necessary. Maine has many years' worth of data that scientifically supports its approach in developing nutrient criteria for fresh surface waters within the state and linking those criteria to designated uses. Maine has one of the best water quality protection programs in the country in terms of water quality criteria and standards development, permitting of discharges, and administration of its delegated program.

For these reasons, we ask EPA to clarify the role of the Maine DEP in implementing rules to ensure the protection of our state's water quality when a water body falls within the indeterminate category.

Thank you in advance for your attention to this important matter. We look forward to your response.

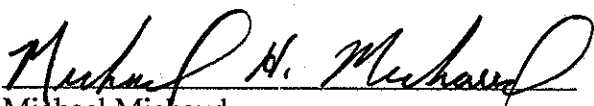
Sincerely,



Olympia J. Snowe
United States Senator



Susan M. Collins
United States Senator



Michael Michaud
Member of Congress



Chellie Pingree
Member of Congress