



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

R-19J

FEB 05 2001

Russell J. Harding, Director  
Michigan Department of Environmental Quality  
P.O. Box 30473  
Lansing, Michigan 48909-7973

Dear Mr. Harding:

The Michigan Department of Environmental Quality (MDEQ) submitted on January 8, 2001, the latest revised proposal under the State - U.S. EPA Agreement to Pursue Regulatory Innovation: Cooperative Agreement to Meet Total Maximum Daily Load (TMDL) for Phosphorus (Proposal). The January 8, 2001 Proposal reflects the discussions our staffs have held since my letter to you of November 21, 2001. We appreciate MDEQ's continued efforts to clarify this Proposal and to address concerns we have raised.

On January 22, 2001, the MDEQ advised Ms. Jo Lynn Traub, Director of U.S. EPA Region 5 Water Division, of its intent relative to the submittal of the Total Maximum Daily Load (TMDL) for the Lake Allegan watershed. Based on that communication, I am confident that U.S. EPA will be able to approve the Lake Allegan TMDL. An approved TMDL is critical to the successful implementation of the Proposal. Accordingly, we accept the Proposal, with the understanding that the MDEQ will submit the TMDL as proposed.

We appreciate the hard work of your staff in developing the Proposal, and bringing these discussions to a successful conclusion. We look forward to successful implementation of this important project.

Sincerely yours,

David A. Ullrich  
Acting Regional Administrator

cc: Paul Zugger, MDEQ  
David Hamilton, MDEQ

PROPOSAL UNDER THE STATE/ENVIRONMENTAL PROTECTION AGENCY (EPA)  
AGREEMENT TO PURSUE REGULATORY INNOVATION

COOPERATIVE AGREEMENT TO MEET TOTAL MAXIMUM DAILY LOAD  
(TMDL) FOR PHOSPHORUS

Michigan Department of Environmental Quality

July 17, 2000  
(Revised January 25, 2001)

Overview of Project

The objective of this project is to test an innovative approach to reduce phosphorus loading in a watershed to meet a Total Maximum Daily Load (TMDL) that has been developed to attain Water Quality Standards (WQS). It is proposed to pilot this approach in the Lake Allegan watershed. Also under consideration are similar projects in the Ford/Belleville Lakes and Lake Macatawa watersheds. Other watersheds may be considered for inclusion as this project proceeds. This approach will be implemented through National Pollutant Discharge Elimination System (NPDES) permits issued by the MDEQ and the entry of a Cooperative Agreement.

Under the traditional approach, the Michigan Department of Environmental Quality (MDEQ) would reissue permits for point source discharges in these basins with new, tighter phosphorus limits to meet the individual wasteload allocations of the TMDL. These new requirements would not take effect and be enforceable until the permittee has either accepted the permit or exhausted all administrative appeals. This would likely result in substantial delays before these new requirements would become enforceable requirements, with little progress on pollution abatement while resources are expended on hearings and litigation.

Under the proposed innovative approach, the MDEQ would reissue the NPDES permits in concert with the entry of a Cooperative Agreement among participating significant point source and nonpoint source contributors in the watershed. The reissued permits would continue the phosphorus requirements in the current permits and reference the Cooperative Agreement as the means of attaining the goals of the TMDL.

The permits would authorize the MDEQ to re-open the permits if commitments under the agreement are not met. Under the Cooperative Agreement, permittees commit to develop a Point Source Reduction Implementation Plan (PSRIP) with an approvable schedule and milestones under which either the individual or aggregate wasteload allocation (WLA) will be achieved within five years of the effective date of the permit. Within one year of the effective date of the agreement, the PSRIP is to be submitted to the MDEQ for review and approval.

Within five years from the date of issuance of the NPDES permits, the individual permits will be modified or reissued to establish the aggregate and individual WLA as enforceable requirements of the permits, including schedules to achieve the necessary additional reductions. The permits would expressly state that exceedance of the individual number would not be a violation unless the aggregate number is also exceeded. In effect, these individual NPDEQ permits would also be watershed permits, since they would include the aggregate WLA as an enforceable requirement. This is an important aspect of this proposal.

To qualify for participation in this project, a permittee in the watershed must sign a Cooperative Agreement by which the permittee:

- Commits to participate with other point source and nonpoint contributors in the watershed to reduce point and nonpoint contributions of phosphorus as necessary to meet the TMDL.
- Agrees to develop and commits to reductions set forth in a PSRIP to accomplish the individual or aggregate point source loading reductions to meet the TMDL.
- Agrees to facilitate nonpoint source reductions by providing assistance, resources and coordination of local efforts, and further to participate and assist in the development of a Nonpoint Source Reduction Implementation Plan (NSRIP).
- Agrees to measure progress toward meeting the individual and aggregate loading reductions.

The permittee would then accept the permit, and agree to not appeal any aspect of the permit covered by the Cooperative Agreement. The permit would specify that the MDEQ has grounds to and may reopen the permits to establish phosphorus control requirements in accordance with the individual wasteload allocations set forth in the TMDL, if any of the following occur:

- An adequate Cooperative Agreement is not entered.
- An adequate PSRIP to accomplish the aggregate or individual WLA is not developed and submitted to the MDEQ in a timely fashion.
- The permittee withdraws from the Cooperative Agreement.
- The permittee does not fulfill its obligations under the Cooperative Agreement.
- The Cooperative Agreement is not successful in achieving the goals of the TMDL.

The Cooperative Agreement will be signed by participating parties that contribute significant quantities of phosphorus to the waterbody. Other potential signers include stakeholder groups that are involved or interested in pollution control activities in the watershed. The unique aspect of this approach is that the support of the point source community is obtained by allowing the existing authorized load limits in their NPDES permits to remain unchanged for a five-year period, while under the Cooperative Agreement, the point sources develop and implement the PSRIP that meets the goals of the TMDL in accordance with the timeframes set forth in the plan. The point source dischargers will also play an important role in encouraging and mentoring nonpoint source dischargers in identifying and implementing best management practices to reduce nonpoint source loadings.

This provides an opportunity for all parties to accomplish, or make significant progress in accomplishing, necessary reductions in point and nonpoint sources through incentive-based cooperative efforts, in lieu of contested case hearings and litigation. In this manner, the permits and Cooperative Agreement provide reasonable assurance that the TMDL will be met through necessary point source and nonpoint source reductions.

## Basis of the Project

The purpose of the Cooperative Agreement approach is to assure coordinated efforts in reducing point and nonpoint sources of pollution. The approach is consistent with the direction given by the EPA in the March 21, 1996 Settlement Agreement on the Great Lakes Water Quality Guidance Litigation with Association of Metropolitan Sewerage Agencies. In the settlement, the EPA strongly encourages states to implement voluntary programs as the first step in restoring water quality.

In many nonattainment areas, the reduction of point source phosphorus will not be sufficient to meet WQS. In these instances, it is important to spend time and capital resources on nonpoint source phosphorus controls. In Michigan, the control of nonpoint source pollution is achieved primarily through cooperative measures and partnerships. Efforts to develop cooperative partnerships are severely hampered if the principle burden of meeting the TMDL is placed on the point source community through stricter regulatory limitations and potential fines for noncompliance, while the nonpoint sources are not subject to a commensurate level of control. The use of a strict regulatory approach to require the point sources to meet the TMDL creates a litigious situation with resulting contested case hearings and court appeals precluding progress in actual reductions. In such a situation, the resulting distrust by the regulated permit holders impairs development of local cooperative efforts to develop watershed management/improvement plans that involve all stakeholders. In many of these watersheds, the local community leaders are the point source dischargers, and their support of the project is critical to the success of the watershed plans.

## Barriers to Overcome

The challenge of this project is to accomplish WLA and LA as necessary to meet the goals of the TMDL in a timely manner. This project will accomplish this objective by assuring active participation from the point and nonpoint dischargers in developing pollution reduction plans to meet the TMDL. These reduction plans will then reflect local commitment and have the support of the dischargers. This will require a nontraditional permitting approach. The first round of permits under this project will reference the Cooperative Agreement as the means of establishing final WLA and LA, which will be incorporated in the next round of permits.

## Essential Work Activities/Products Needed for Implementation

The work activities and products under this proposal are:

- Submittal of the Lake Allegan TMDL to EPA by MDEQ within 30 days of EPA's acceptance of this innovation proposal.
- Timely approval by EPA of the Lake Allegan TMDL.
- Timely final issuance of the FY2001NPDES permits in this watershed.
- Stakeholder development of the PSRIP and the NSRIP that set forth reduction goals for point and nonpoint sources to achieve either the aggregate or the individual WLA and load allocation (LA) to accomplish the TMDL. Changes to WLA and LA that are made to the TMDL will be done in accordance with Michigan's normal process for modifying a TMDL, and no formal shifting of load reduction allocations between point and nonpoint sources in an approved TMDL will occur unless and until these shifts are incorporated into a revised TMDL approved by USEPA.
- Annual progress reports on the PSRIP and the NSRIP efforts to accomplish the reduction goals. These reports will be based upon the annual reports prepared and submitted by the point sources and nonpoint sources as specified in the Cooperative Agreement.
- Subsequent modifications or reissuances of individual NPDES permits to establish the aggregate and individual WLA as enforceable permit requirements.
- Continued annual water quality monitoring to document progress toward attainment of WQS.

## Benefits of the Project

This project has the best potential to achieve the TMDL for phosphorus in the proposed watershed. It would demonstrate an effective watershed approach that could be used in other watersheds and perhaps for other pollutants. The phosphorus PSRIP and NSRIP to attain the TMDL will have the critical local support from the stakeholders necessary for them to be successful.

## Performance Expectations/Project Evaluation

Ultimately, the goal of the Cooperative Agreement is attainment of WQS with cost-effective, locally driven stakeholder initiatives that reduce both point and nonpoint source phosphorus loadings. Therefore, involvement of the major point sources and representatives of the respective nonpoint source entities is critical to the success of the Cooperative Agreement.

As a requirement of the Cooperative Agreement, the parties will develop a PSRIP and a NSRIP and produce an annual progress report, which summarizes the progress made toward meeting the water quality goal of the TMDL. The report will include summaries of semi-annual meetings, which will be held to discuss progress on overall and individual performance of activities directed towards meeting WQS, and to review and modify, if appropriate, the PSRIP and the NSRIP for phosphorus reduction. The report will also summarize progress made on

each item identified in the plans, highlighting local successes in phosphorus control. Finally, the report will include a summarization of point source effluent data, assessments of nonpoint source practices achieved, and other efforts to reduce loading from nonpoint sources.

Effectiveness of the project will be measured by assessing the following:

- Level of participation of point and nonpoint contributors to the watershed.
- Participants' development and agreement to the PSRIP that will accomplish the aggregate or individual WLA, specifying the proposed needed reductions of phosphorus from point source contributors.
- Participants' development and agreement to a NSRIP to accomplish the LA, specifying the proposed needed reductions from nonpoint source contributors.
- Whether the identified control measures and management practices identified in the plans are being implemented.
- Estimates of the phosphorus loading reductions to the watershed that were accomplished.
- Measured improvements to water quality.

#### Stakeholder Process

There has already been extensive stakeholder involvement in the Lake Allegan watershed. This stakeholder process has included multi-stakeholder involvement in developing waterbody goals, endpoints, milestones, allocations, and implementation plans. Under this project, this involvement will increase, and the process will become even more locally driven. Stakeholder participation will occur throughout the project, and will be documented under the project.

#### Duration of the Project

Accomplishing necessary phosphorus loading reductions in the Lake Allegan watershed is a multi-year project, with full implementation of some of the nonpoint source corrective programs taking up to ten years. The MDEQ commitment to individual NPDES permit holders to maintain the current phosphorus limitations is for one permit term (five years). Following the five-year period, the permits will be modified or reissued to establish aggregate and individual WLA as enforceable requirements of the permits, wherein exceedance of the individual number would not be a violation unless the aggregate number is also exceeded.

The MDEQ may seek to expand the project to include additional watersheds and potentially other pollutants. If at any point during project implementation it is determined that the project is not successful in achieving the needed phosphorus loading reductions, the MDEQ may terminate the project and pursue reissuance of permits under the traditional approach.

Project Contact for the Divisions

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