


Numeric Nutrient Criteria Update

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Water quality standards
are the basis for
protecting and regulating
the quality of surface
waters in Florida



Two Types of Water Quality Criteria

- **Numeric Standard**

- EPA has proposed that numeric nutrient criterion be used
- Example: Arsenic -- 10 μ g/L

- **Narrative Standard**

- Florida's current regulatory system uses a narrative nutrient criterion
- DEP regulates nutrient pollution on a site-specific basis through narrative criteria
 - In response to permit applications or as a result of an algae bloom or other perceptible aquatic impairment
 - Created for a waterbody or stream segment
 - Adopted by rule – chapter 120 procedures apply
- Example: “In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural population of flora or fauna”



History

- DEP began developing numeric nutrient criteria pursuant to DEP's Numeric Nutrient Criteria Development Plan ("Plan")
 - DEP used a "dose-response" approach in order to develop scientifically defensible criteria
- EPA agreed to Plan in 2002
 - Plan provided for adoption of the numeric nutrient criteria by the end of 2010
- July 2008: Earthjustice, representing the Florida Wildlife Federation, the Conservancy of Southwest Florida, the Environmental Confederation of Southwest Florida, St. John's Riverkeeper, and the Sierra Club filed a lawsuit against EPA.
 - The suit: 1) claimed that there was an unacceptable delay by the federal government in setting limits for nutrient pollution; 2) claimed that EPA had previously determined that numeric nutrient criteria are necessary as described in the Federal Clean Water Act; and 3) further argued that EPA was obligated to promptly propose these criteria for Florida.



History (cont.)

- January 14, 2009: EPA issued a determination letter that numeric nutrient criteria are necessary for Florida to implement CWA
 - Established a schedule for criteria development
 - Criteria for lakes – January 14, 2010
 - Criteria for estuaries – January 14, 2011
- DEP accelerated its schedule by formally initiating rulemaking in January 2009 by proposing changes to chapter 62-302, F.A.C. (water quality standards) and chapter 62-303, F.A.C. (impaired waters rule)
- August 2009: EPA enters into a Consent Decree with Earthjustice and other environmental groups
 - EPA is now obligated to promulgate numeric nutrient criteria for Florida's streams and lakes by October 15, 2010 and estuaries by October 15, 2011 unless EPA approves DEP's proposed criteria prior to that date
- DEP suspends its numeric nutrient rulemaking



History (cont.)

- January 14, 2010: EPA Administrator Jackson signed a proposed rule called “Water Quality Standards for the State of Florida’s Lakes and Flowing Waters.”
- January 26, 2010: Proposed rule was published in the Federal Register
- March 17, 2010: EPA announces that it will delay a portion of the proposed rule (see new schedule)
- April 28, 2010: Revised deadline to submit written comments to EPA on the Proposed Rule – 1000s of comments submitted
- June 7, 2010: EPA and Earthjustice file notice with the Court that they have agreed to extend several timeframes in the Consent Decree
- August 3, 2010: EPA published in the Federal Register a notice of supplemental data availability and request for comment regarding the development of numeric nutrient criteria for Florida’s inland flowing waters and lakes – **Tab 1**



Revised Adoption Schedule

- Lakes, Streams and Springs – No Change
 - Numeric nutrient criteria will be published by October 15, 2010
- Canals, Estuaries, Coastal Waters and Downstream Protection Values – DELAYED
 - Numeric nutrient criteria will initially be published by November 14, 2011 with the rule being finalized by August 15, 2012



Activities

- Monitored Florida legislation regarding numeric nutrient criteria/process (March/April)
- Meetings with DEP staff (March – ongoing)
- Meetings with Florida Legislators (March and April)
- Timely submitted comments to EPA on behalf of the Peace River Manasota Regional Water Supply Authority (April)
- Meetings with stakeholders (March – ongoing)
- DC FLY-IN – meetings with Florida Congressional Delegation asking for assistance with EPA (July)
 - Congressional Letter Submitted to EPA dated August 2, 2010 – **Tab 2**
- Review EPA's Notice of Supplemental Data Availability & Request for Comment Re: Numeric Nutrient Criteria to determine if additional comments necessary (August)

Next Steps

- September 2, 2010: Deadline to submit written comments to EPA related to the recent notice
- Inclusion of numeric nutrient criteria and its impacts information in utility bill by member governments (September/October)
 - **Tab 3: Palm Beach County Utilities**
 - **Tab 4: Florida Rural Water Association**
- Additional meetings with congressional members while in District (August)
- Informational campaign regarding impacts to residents – **Tab 5**
- Second DC FLY IN (September)
- Adoption by the Peace River Manasota Regional Water Supply Authority of resolution expressing concern regarding current criterion and process
 - **Tab 6: City of Boca Raton**
 - **Tab 7: Palm Beach County League of Cities**
- October 15, 2010: Date for finalization
- November 2010: Publication of Final Rule unless delayed by US EPA pursuant to Consent Decree
 - Rule takes effect even if rule challenges are subsequently filed
- File litigation