

# NUMERIC NUTRIENT CRITERIA FOR FLORIDA WATERS

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# Overview

- Numeric Nutrient Criteria Litigation in Florida
- Potential Impact of Numeric Nutrient Criteria on Florida's Municipal Wastewater Treatment Facilities

# August 2008

## Citizen Suit Against EPA

Plaintiffs alleged:

EPA documents from 1998 were the equivalent of a “necessity determination” declaring the need for numeric nutrient criteria in Florida.

The 1998 necessity determination triggered a mandatory duty requiring that EPA promptly promulgate numeric nutrient criteria for the State of Florida.

# January 2009

Assistant Administrator Grumbles signs letter January 14, 2009 advising FDEP Secretary Sole that he has determined that numeric nutrient criteria are necessary for Florida to remain in compliance with the CWA.

# April 2009

Judge advises counsel for Plaintiffs that if they do not accept that January 14<sup>th</sup> letter is a formal determination, certainly the 1998 guidance document would not be.

Advised Plaintiffs' counsel to amend again to address the promptness of the promulgation of the criteria.

# July 2009

Plaintiffs file amended complaint to address promptness issue and seek 60 day stay of proceedings to pursue settlement talks with EPA/DOJ

# August 18, 2009

EPA signs consent decree committing to proposing criteria for Florida freshwater streams and lakes by January 14, 2010; consent decree commits EPA to finalize those criteria by October 15, 2010.

Criteria for estuarine/marine waters to be proposed by January 14, 2011 and finalized by October 15, 2011.



# November 16, 2009

Hearing to be held as to entry of consent decree before Judge Hinkle

FWEA-UC filed motion to intervene on August 25, 2009; motion has not been granted but the FWEA-UC was allowed to file materials in opposition to consent decree on October 6, 2009.



# FDEP Proposed Criteria\*

Geographic Area (Nutrient Region)	Total Phosphorus Annual Geometric Mean (mg/l)	Total Nitrogen Annual Geometric Mean (mg/l)
Panhandle Region	0.069	0.82
North Central Region	0.322	1.73
North East Region	0.101	1.73
Peninsular Region	0.116	1.73
Bone Valley Region	0.415	1.73
South Florida Region	TBD	TBD
<b>Comparison to AWT</b>	<b>1.0</b>	<b>3.0</b>

\*EPA's proposed criteria, which have not yet been publicly released, will likely establish lower TP & TN numeric criteria.

# Impact on Florida POTWs

- **WWTF Surface Water Discharges**
  - NPDES permittees will in most cases need to meet the numeric criteria in their effluent
- **WWTF Surficial Aquifer Discharges**
  - Surficial aquifer dischargers cannot cause / contribute to surface water impairment for nutrients
  - Land application systems, RIBs, biosolids land application sites
- **Reclaimed Water Irrigation**
  - Reclaimed water irrigation practices cannot cause / contribute to surface water impairments for nutrients
  - Municipal Stormwater Discharges (MS4) permittees will be forced to significantly reduce nutrient loads in discharges
- **Alternative Water Supplies**
  - R/O reject discharged to surface waters

# Points of Concern

## ■ Science

- Regional criteria not based on causal relationships between TN / TP and biological responses in streams (i.e. not tied to impairment thresholds)
- Instead, line drawn on scatter of regional nutrient data, each region's streams falling on the 'wrong' side of the line deemed impaired (e.g. FDEP's reference stream approach would result in 25% of Florida's best streams being deemed impaired)
- For nutrients, causal dynamics change as a function of multiple factors discounted in EPA's approach, including pH, water temperature, light availability, flow regime, etc.
- Will lead to impairment designations and TMDLs to 'recover' water bodies to nutrient levels they would not naturally meet

## ■ State Process

- FDEP forced to abandon causal approach and use a variation of EPA's probabilistic approach

## ■ Clean Water Act

- Regional criteria not tied to designated uses

## ■ Ratepayers

- Must establish that expensive nutrient controls would protect stream ecosystems

# Desired Outcome

- Work with FDEP/EPA to ensure that nutrient criteria are scientifically defensible and that needed nutrient reductions are tailored to individual water bodies, as currently happens under the existing narrative standard.
- Ensure that nutrient criteria are science-based, thus protecting state water ecosystems and protecting utility ratepayers from the economic burdens of unsound regulatory policy.



# Numeric Nutrient Criteria & Florida: A Sneak Preview for You State?

- Nutrient data
- Stream variability
- Interstate streams
- Nonpoint sources
- Status of ongoing state efforts



# Discussion

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