

EPA's Final Rule Adopting Numeric Nutrient Criteria for Florida's Fresh Waters

National Association of Clean Water Agencies
Charleston, South Carolina
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Chronology

- September 2007: EPA Approves DEP Plan
- July 2008: EPA Sued
- January 14, 2009: Determination
- August 2009 – EPA Signs Consent Decree
- August 2010 NODA Published in Federal Register
- November 15, 2010 Pre-publication Version of Final Rule Released
- December 6, 2010 Published in Federal Register (75 F.R. 75762)
- March 6, 2012 Criteria Effective; SSAC Provision Effective Feb. 6, 2011

EPA Final Criteria Released November 15, 2010

- Numeric Criteria for Lakes (e.g. Lake Apopka, Lake Marion)
- Stream Criteria (e.g. Suwannee River, Franklin Street Ditch)
- Lake Downstream Protective Values (Bathtub or alternative model such as WASP) (e.g. Reedy Creek to Lake Russell)
- $\text{NO}_3\text{-NO}_2$ for Springs – Springs Only – Not Streams
- Federal SSAC
- 15 Month Delayed Effective Date

Downstream Protective Values for Lakes

- BATHTUB Model in lieu of Vollenweider
- “Another Scientifically Defensible Technical Model” (e.g. WASP)
- Default DPVs:
 - 1) Lake Attains All Lake Criteria: *reduce* stream criteria to existing ambient levels at pour point;
 - 2) Lake Fails One Lake Criterion (Chl-a, TP, TN): *reduce* stream criteria to Lake criteria.

Federal SSAC Process

- Site Specific Alternative Criteria
- Reviewed by Regional Administrator
- State Must be Provided Copy of Submittal
- Based Upon
 - Replicate EPA Stream Criteria Process
 - Replicate EPA Lakes Criteria Process
 - Biological, Chemical & Physical Assessment
 - Another Scientifically Defensible Approach
- RA Shall Provide Public Notice/Receive Comment

Suits Filed - Venue in Tallahassee

■ Pensacola Division, Northern District of Florida

- 12-07-2010 State of Florida (AG, DACS)
- 12-07-2010 The Fertilizer Institute
- 12-07-2010 The Mosaic Company
- 12-09-2010 CF Industries, Inc.
- 12-16-2010 Destin Water Users, et. al.
- 01-10-2011 Fla. League of Cities, FSA
- 01-27-2011 Fla. Pulp & Paper

■ Tallahassee Division, Northern District of Florida

- 07-17-2008 Florida Wildlife Federation I
- 11-04-2009 FWEA-UC
- 11-09-2009 Fla. Electric Power Coordinating Group
- 11-15-2010 Florida Wildlife Federation II
- 04-28-2011 Fla. Cattlemen's Association

Determination Under 303(c)(4)(B) Final Agency Action

- Judge ruled September 30, 2011 that EPA January 14, 2011 “necessity determination” is Final Agency Action under the APA.
- Denied Subsequent Motion for Reconsideration on October 25, 2011.
- Prior to Ruling, EPA Claimed No Record, Not Final Agency Action (FOIA Request, Hearing)

State Rulemaking

- DEP filed petition with EPA to withdraw rule base on Stoner 8-Step Memo; EPA refused by DEP has proceeded with rule development.
- ERC Briefing *November 3, 2011*; ERC approval *December 1, 2011* (then to Legislature for in January for ratification).
- Major Difference: hierarchy plus biological validation linked to stream criteria.