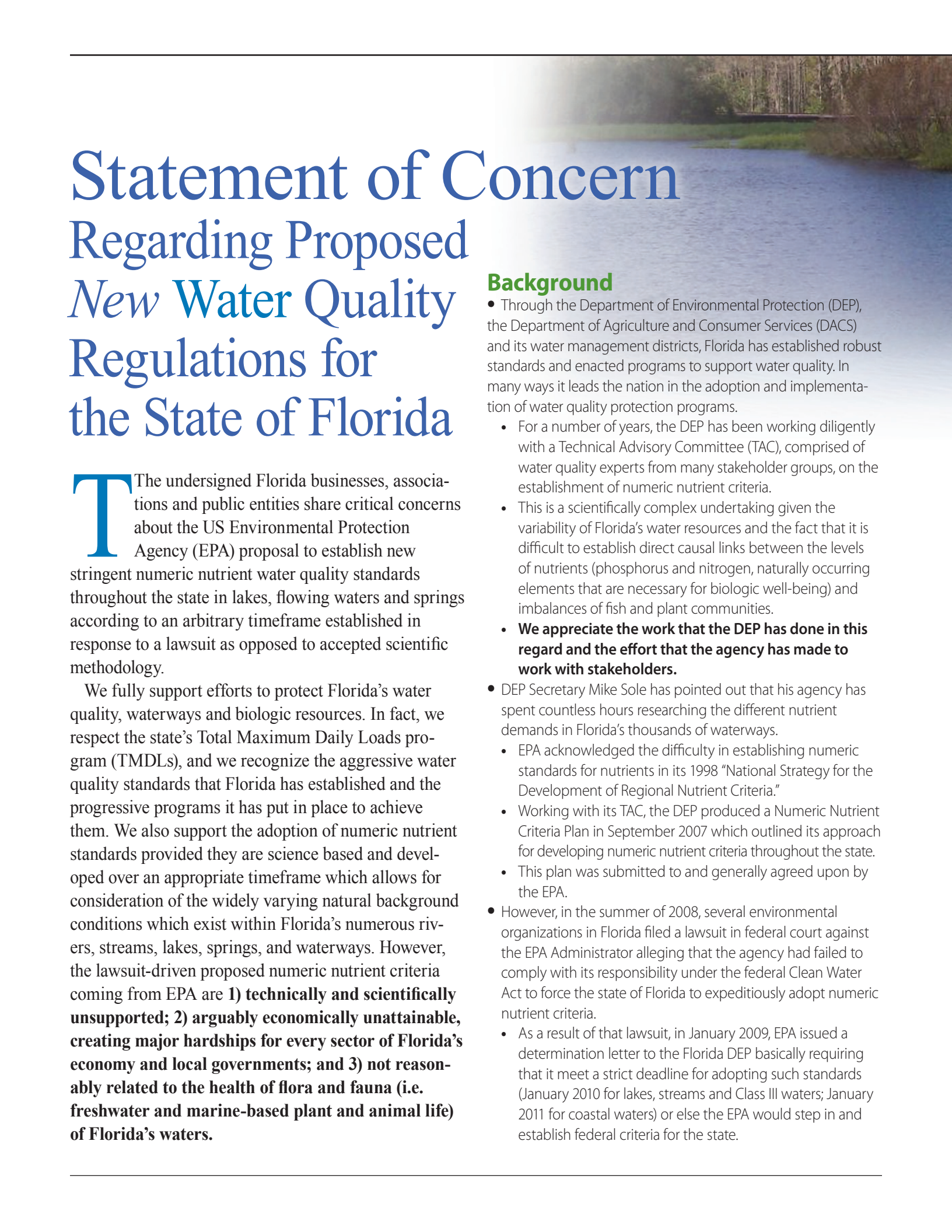




WATER QUALITY REGULATIONS

As of December 8, 2009

*Florida is the only state that has been singled out by the EPA
with such unreasonable deadlines and federal oversight.*



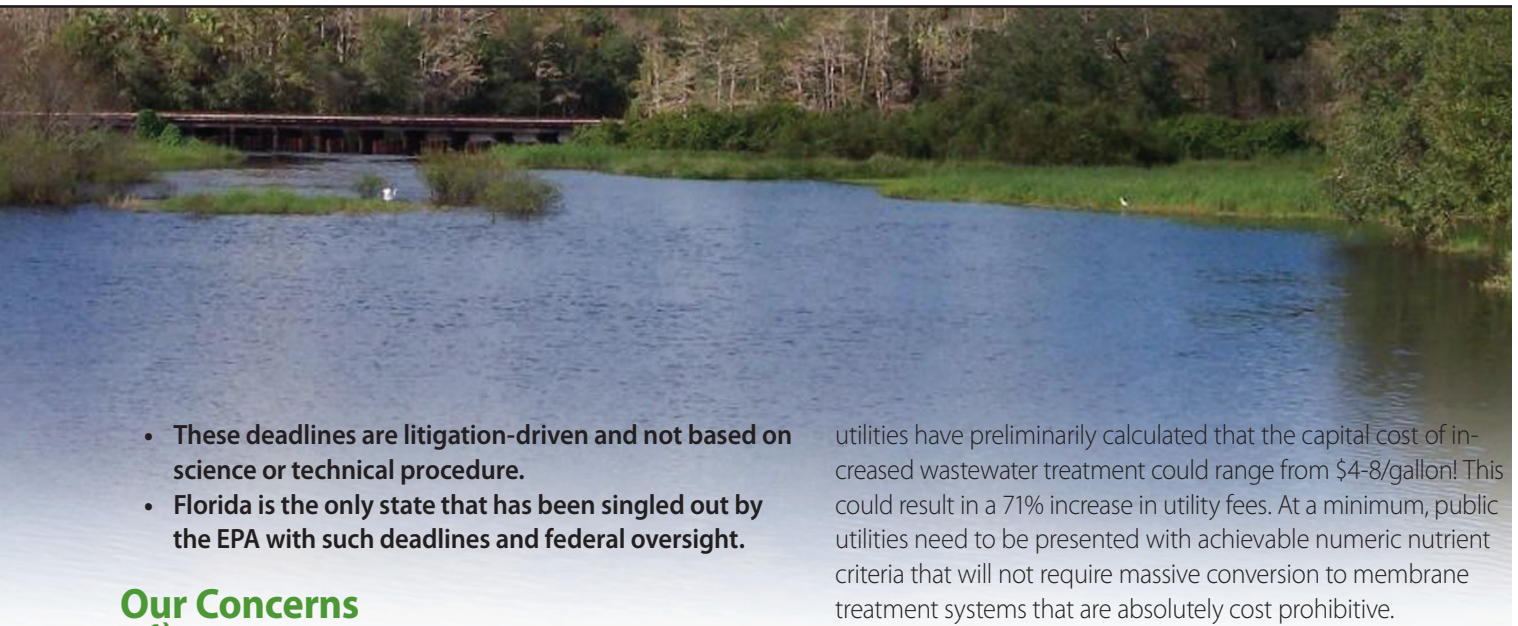
Statement of Concern Regarding Proposed New Water Quality Regulations for the State of Florida

The undersigned Florida businesses, associations and public entities share critical concerns about the US Environmental Protection Agency (EPA) proposal to establish new stringent numeric nutrient water quality standards throughout the state in lakes, flowing waters and springs according to an arbitrary timeframe established in response to a lawsuit as opposed to accepted scientific methodology.

We fully support efforts to protect Florida's water quality, waterways and biologic resources. In fact, we respect the state's Total Maximum Daily Loads program (TMDLs), and we recognize the aggressive water quality standards that Florida has established and the progressive programs it has put in place to achieve them. We also support the adoption of numeric nutrient standards provided they are science based and developed over an appropriate timeframe which allows for consideration of the widely varying natural background conditions which exist within Florida's numerous rivers, streams, lakes, springs, and waterways. However, the lawsuit-driven proposed numeric nutrient criteria coming from EPA are **1) technically and scientifically unsupported; 2) arguably economically unattainable, creating major hardships for every sector of Florida's economy and local governments; and 3) not reasonably related to the health of flora and fauna (i.e. freshwater and marine-based plant and animal life) of Florida's waters.**

Background

- Through the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS) and its water management districts, Florida has established robust standards and enacted programs to support water quality. In many ways it leads the nation in the adoption and implementation of water quality protection programs.
 - For a number of years, the DEP has been working diligently with a Technical Advisory Committee (TAC), comprised of water quality experts from many stakeholder groups, on the establishment of numeric nutrient criteria.
 - This is a scientifically complex undertaking given the variability of Florida's water resources and the fact that it is difficult to establish direct causal links between the levels of nutrients (phosphorus and nitrogen, naturally occurring elements that are necessary for biologic well-being) and imbalances of fish and plant communities.
 - **We appreciate the work that the DEP has done in this regard and the effort that the agency has made to work with stakeholders.**
 - DEP Secretary Mike Sole has pointed out that his agency has spent countless hours researching the different nutrient demands in Florida's thousands of waterways.
 - EPA acknowledged the difficulty in establishing numeric standards for nutrients in its 1998 "National Strategy for the Development of Regional Nutrient Criteria."
 - Working with its TAC, the DEP produced a Numeric Nutrient Criteria Plan in September 2007 which outlined its approach for developing numeric nutrient criteria throughout the state.
 - This plan was submitted to and generally agreed upon by the EPA.
 - However, in the summer of 2008, several environmental organizations in Florida filed a lawsuit in federal court against the EPA Administrator alleging that the agency had failed to comply with its responsibility under the federal Clean Water Act to force the state of Florida to expeditiously adopt numeric nutrient criteria.
 - As a result of that lawsuit, in January 2009, EPA issued a determination letter to the Florida DEP basically requiring that it meet a strict deadline for adopting such standards (January 2010 for lakes, streams and Class III waters; January 2011 for coastal waters) or else the EPA would step in and establish federal criteria for the state.
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- **These deadlines are litigation-driven and not based on science or technical procedure.**
- **Florida is the only state that has been singled out by the EPA with such deadlines and federal oversight.**

Our Concerns

1) We believe the extremely restrictive criteria coming from the EPA will be impossible to meet. For example, in the Panhandle, the newly proposed phosphorus concentration is fourteen times more stringent (69 parts per billion) than the current standard for Advanced Wastewater Treatment. Total nitrogen levels of 0.8 mg/L in the Panhandle will be even more difficult to meet, especially for wastewater treatment systems — even those that currently comply with Advanced Wastewater Treatment. Meanwhile, in south Florida, efforts to establish numeric nutrient criteria are stymied by the fact that the region's water regimes are so based-upon and influenced by thousands of miles of canal systems.

2) The economic impacts of these regulations have not been estimated, yet alone analyzed, and could result in dire consequences for the state's overall economy. Every major industry will be affected — agriculture, landscaping, power generation, silviculture, mining, seaports, development, small businesses, even tourist attractions and recreational facilities — basically any enterprise which discharges water. Clearly, such a regulatory climate will put Florida in a severely disadvantaged position, compared to other states, when it comes to retaining or attracting businesses.

3) Presently, "artificial" water bodies such as drainage facilities, stormwater lakes, agricultural holding ponds, flood protection systems and even reservoirs for alternative water supply and restoration projects would be required to make enormous investments in water quality technologies in order to meet the criteria and continue to operate for public health and safety and food production. Local governments could be especially hard hit in terms of massive retrofits to drainage facilities, and public utilities. Palm Beach County utilities estimates that just to continue to store its reclaimed water (primarily in golf course and homeowner development stormwater systems), it could cost as much as \$125 million. Panhandle

utilities have preliminarily calculated that the capital cost of increased wastewater treatment could range from \$4-8/gallon! This could result in a 71% increase in utility fees. At a minimum, public utilities need to be presented with achievable numeric nutrient criteria that will not require massive conversion to membrane treatment systems that are absolutely cost prohibitive.

Clearly, it makes no sense to expend enormous amounts of public and/or private funds attempting to meet what may be unattainable water quality standards in artificial water bodies where there will be little or no benefit to natural resources. At a minimum there needs to be a cost-effectiveness analysis developed to determine whether these same limited dollars could be put to better use in achieving real environmental protection and gains.

4) The imposition of such nutrient standards could have detrimental environmental consequences: excessively reducing concentrations of nutrients could damage fisheries in some of Florida's most productive lakes; environmental restoration could become impractically expensive to undertake; reclaimed water projects could be stymied or cost prohibitive to communities and customers.

Current Status

The DEP has been working diligently with the TAC and interested parties throughout the year to promulgate its proposed criteria. Until recently, it had planned to take the numeric nutrient standard to the Environmental Regulatory Commission (ERC — the body which establishes water quality standards for the state) in October in order to meet EPA deadlines. However, on August 19, 2009 the EPA entered a consent decree in the federal lawsuit under which it would proceed to propose federal criteria for the state in January 2010 and adopt such rules by October 2010. With respect to numeric nutrient criteria for coastal waters and estuaries, the EPA would issue criteria by January 2011 and adopt them in October of that year. As Sec. Sole has expressed, this turn of events has left the agency frustrated. "In light of that decision (by the EPA) to independently propose numeric criteria for Florida's waters, the Florida Department of Environmental Protection is considering whether it would be prudent to continue its own rulemaking efforts on this issue."

The Secretary's frustration is understandable and cer-

tainly reflects the concern and frustration of Florida's businesses, cities, water utilities, and drainage districts as we try to make sense out of what the federal EPA will do regarding the establishment of these strict standards. We respectfully request our Congressional Delegation in Washington, DC to intervene in these procedures and demand that statewide numeric nutrient criteria be established through a science-driven process with adequate time to address concerns and questions of regulated communities, and appropriate, realistic procedures and timeframes for achieving compliance.

Recent Developments

Legal Front

On November 16th, Federal Judge Robert Hinkle conducted a fairness hearing on the EPA litigation. The Florida Department of Agriculture and Consumer Services intervened in the litigation and the Suwannee River, Northwest Florida and Southwest Florida Water Management Districts filed amicus briefs with the court in support of the DACS intervention. Judge Hinkle did indicate his plan to accept the EPA/Earthjustice consent agreement. However, he also entered a motion on November 17th granting the intervenors' motions to allow a cross claim against the EPA regarding its failure to follow the federal Administrative Procedures Act in its determination of the necessity of numeric nutrient criteria only for the state of Florida.

Public Information Front

A coalition of Florida concerned citizens, businesses and stakeholders has organized a group — "Don't Tax Florida" — headed by two former secretaries of the Florida Department of Environmental Protection — Virginia Wetherell and Colleen Castille — and supported by such organizations as Florida TaxWatch, Associated Industries of Florida and the Florida Chamber of Commerce to educate the public and the media about the potential consequences of the federal government's new water regulations for the state of Florida.

Washington Front

On December 3, 2009, 23 members of the Florida Congressional Delegation sent a letter to EPA Administrator Lisa Jackson acknowledging the delegation's concern about the economic impacts of the federal government's regulations on the state of Florida and requesting that the EPA follow the state's DEP lead in terms of science-based regulations promulgated with full access and involvement of stakeholders interests.



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516 North Adams Street • Post Office Box 784 • Tallahassee, FL 32302-0784
Phone: 850.224.7173 • Fax: 850.224.6532 • E-mail: aif@aif.com • www.aif.com

Concerned Florida Businesses, Associations and Public Entities

Associated Industries of Florida (AIF)
Association of Florida Community Developers
Audubon Ranch
BCI Engineers & Scientists, Inc.
Busted Rail Groves, John B. Allen
Carlton & Carlton Ranch
CF Industries
City of Flagler Beach
Clay County Utility Authority
Colleen Castille, Florida DEP Secretary, 2003-2007
Consolidated Tomoka Land Co.
Crop Production Services
D & S Cattle Company, Inc.
D3 Farms
DCR Services
Dover Fresh Produce, LLC
ELD Groves
ENTRIX, Inc.
Epperson & Company
First Coast Manufacturers Association
Florida Agriculture Coalition
Florida Aquaculture Association
Florida Association of Special Districts
Florida Cattlemen's Association
Florida Chamber of Commerce
Florida Citrus Mutual
Florida Engineering Society
Florida Farm Bureau Federation
Florida Fence Post
Florida Fertilizer and Agrichemical Association
Florida Fertilizer Company
Florida Forestry Association
Florida Fruit & Vegetable Association
Florida Home Builders Association
Florida Land Council
Florida Minerals and Chemistry Council
Florida Nursery, Growers and Landscape Association
Florida Pest Management Association
Florida Pulp and Paper Association Environmental Affairs, Inc.
Florida Strawberry Growers Association
Florida TaxWatch
G and F Farms, LLC
Gulf Citrus Growers Association, Inc.
Hamilton Farms
Hardee Ranch Supply, Inc.
Heart of Florida Greenhouses, Inc.
Heartland Agricultural Coalition
Heartland Growers Supply
Highlands County Citrus Growers Association
Hillsborough County Farm Bureau
Hobe St. Lucie Conservancy District
Indian River Citrus League
International Ship Repair
Iron Workers Local Union 397
Jahna Concrete
Jemy West Hinton
Johnson Harvesting
Krause Grove Service
L C Groves
M&B Products, Inc.
Manufacturers Association of Florida
McCauley Cattle Service
Mosaic
North Florida Growers Exchange
Owens Rd. Grove
Paul Steinbrecher, Florida Water Environment Association Utility Council
Peace River Valley Citrus Growers Association
Port of Tampa Maritime Industry Association
Rayonier
SATCO
Southeast Milk, Inc.
Sugar Cane Growers Cooperative of Florida
Sunbelt Milk Producers
Sure Shot Piping
Sylvite
Tampa Bay Wholesale Growers
The Florida Water Quality Coalition, Inc.
Tom Herndon, Florida Alliance of Concerned Taxpayers
Torrey Oaks Golf Course
Virginia Wetherell, Florida DER/DEP Secretary, 1993-1999