



# WATER QUALITY REGULATIONS

*As of June 1, 2011*

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

ASSOCIATED INDUSTRIES OF FLORIDA



*The Voice of Florida Business Since 1920*



# Statement of Concern

## Regarding Proposed *New Water Quality* Regulations for the State of Florida

**T**he undersigned Florida businesses, associations and public entities share critical concerns about the U.S. Environmental Protection Agency's (EPA) adoption of numeric nutrient criteria for inland waters in the state of Florida. As Florida residents, business owners, employers and employees, we fully support efforts to protect Florida's water quality, waterways and biologic resources. These are all critical to the health of our environment, and the health of our environment is tied directly to the health of our economy.

We respect the impressive job that the state of Florida has done, through its agencies such as the Florida Department of Environmental Protection (DEP), the Florida Department of Agriculture and Consumer Services (DACS) and the water management districts, along with the support and efforts of local governments and regulated interests, to implement the sophisticated Total Maximum Daily Loads (TMDL) program to reduce pollutants in our state's water bodies. No other state in the nation has developed a water quality data base comparable to Florida's, and we are leading the charge when it comes to innovative and collaborative approaches to water quality and environmental restoration efforts. As part of the TMDL program, the state has been establishing numeric standards for nutrients such as nitrogen and phosphorus, and the EPA has been aware of and supportive of Florida's approach to water quality protection for well over a decade. So, what has happened to put the state of Florida, its industries and local governments at odds with the federal government over water quality protection?...

### **Numeric Nutrient Criteria**

These three words have galvanized the concerns of state and local leaders from our congressional delegation in Washington to local governments, Florida businesses, agricultural interests and water and wastewater providers.

These three words signify the most restrictive water quality standards in the nation that are being imposed unilaterally on the state of Florida.

These three words embody the heavy hand of the federal government, the regulatory-wielding power of the EPA forcing litigation-driven regulations on Florida's local governments and businesses.

### **Background**

Since the late 1990's the DEP has steadfastly worked to adopt TMDLs and basin management plans, identifying the safe levels of nutrients — often naturally occurring — such as nitrogen and phosphorus, in water bodies throughout the state. This is a scientifically complex undertaking given the variability of Florida waters and the difficulty in establishing direct cause and effect relationships between levels of nutrients and harm to waters and fish and fauna.

Despite the efforts of the DEP, supported by the EPA, a group of Florida environmental organizations<sup>1</sup> — spearheaded by Earthjustice — filed a lawsuit in the summer of 2008 against the EPA alleging that the Administrator had failed to administer the Clean Water Act by not requiring the state of Florida to adopt numeric rather than narrative standards for limiting the amount of nutrients in waterways. As a result of this lawsuit, in January 2009, the EPA made a Clean Water Act determination that numeric nutrient standards were required for Florida — and only Florida. As such, the DEP immediately undertook a rulemaking process in consultation with a broad-based Technical Advisory Committee to adopt numeric standards. Within less than one month the DEP issued a first draft of its standards. In August of 2009, the EPA entered into a consent agreement with the environmental litigants under which it agreed to step in and take over the numeric nutrient criteria setting for the state of Florida.

To date, the EPA has adopted as of November 14, 2010 extremely restrictive nutrient standards for lakes, streams and springs. As part of its rule adoption, the EPA has delayed implementation of the standards for fifteen months (until March 2012) in order to give local governments and regulated interests time to plan for the upgrades and infrastructure that will be necessary to meet these standards. In addition, the EPA will propose numeric criteria for estuaries, coastal waters and south Florida canals by November 2011 and adopt them by August 2012.

### **What Does This Mean for Floridians?**

Quite simply, any entity that discharges into a water body subject to the unprecedented federal standards will have to treat such water discharges to extraordinary levels of pre-development purity in order to comply with these federal regulations. That means if you are an agricultural operation whose run-off

<sup>1</sup> Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, St. Johns Riverkeepers

enters a stream, a local government whose drainage canals feed into a local lake, a water utility that stores reclaimed water in surface waters, or countless others, you are very likely subject to these new rules.

State leaders, local governments and Florida businesses have voiced the following concerns:

**1) The extremely restrictive criteria that the EPA has adopted are, in many instances, technologically impossible to meet.**

**2) The economic impacts of these new regulations have been grossly underestimated by the EPA and independent as well as state-sponsored economic analyses have demonstrated that these regulations could result in dire consequences for the state's overall economy as well as for food prices nationwide.**

**3) Millions of dollars could be expended to "clean up" water bodies that are biologically healthy, simply to comply with EPA's criteria.**

**4) EPA's nutrient standards could have environmentally harmful consequences. Restoration and reclaimed water projects could be stymied by the regulations and healthy fisheries could be impacted if extremely low levels of nutrients are instigated.**

## The Hue and Cry — Science and Economics

For several years, Florida businesses, state officials and the Florida congressional delegation have repeatedly contacted the EPA with two requests: 1) produce an independent scientific peer review of the regulations that you are imposing on our state and, 2) conduct a third party economic analysis of these standards before imposing them on the state of Florida. These requests, while seemingly reasonable considering a federal regulation of this magnitude, have been largely ignored by Lisa Jackson, the EPA Administrator, and her staff. Only recently has Administrator Jackson, in response to a request from U.S. Senator Bill Nelson, agreed to ask the National Academy of Sciences to conduct a peer review of the economic analysis that EPA conducted as part of its rule making for Florida's rivers, streams, lakes, and springs.

## Let's Take the Science

EPA's numeric nutrient criteria were spawned by litigation, not science-driven concerns. Repeatedly, the DEP, DACS and regulated interests have raised serious questions regarding the scientific validity of EPA's criteria. EPA has continued to rely on a scientifically flawed methodology that ignores the diversity of Florida's waters. EPA's own Science Advisory Board has criticized EPA's method for developing rivers and streams nutrient standards. In simplest terms, the EPA has designated six regions in the state of Florida. For five of those regions, north of south Florida canal-impacted waterways, the Agency has identified the purest waterways and waterbodies and has applied the concentrations of nutrients in those waters to all rivers, streams and lakes

throughout these regions which span thousands of square miles. The result is a set of standards that are well below reasonable and natural conditions for many water bodies in Florida which will require utilities, local governments, agriculture and industry to attempt to reduce nutrient concentrations below necessary and even natural conditions. In the words of a former Florida DEP Secretary, echoed by his predecessors and many water management experts in the state, "Compliance will force an investment of billions of dollars without environmental benefit."

## How About the Economics

The EPA has estimated that the cost to implement its regulations will be on the order of \$135.5 to \$206.1 million per year — or roughly \$40-72 per household a year. THIS IS A JOKE, and it needs to be pointed out that the real costs will be borne by disadvantaged individuals and industries. The DEP has estimated that the EPA mandates will impose \$21 billion in capital costs on municipal wastewater treatment and stormwater utilities. The DACS, together with the University of Florida, has concluded that these mandates will cost the agriculture industry \$1.148 billion annually and up to 14,500 full and part-time jobs. The Florida wastewater industry has estimated that compliance costs could amount to an increase in customer bills of \$700 year. In addition, a Cardno ENTRIX study has validated that costs to attain the EPA standards will range from \$3.1 – \$8.4 billion per year over the next thirty years depending on the implementation mechanisms that are successfully applied for by Floridians and approved by EPA — such as Site Specific Alternative Criteria, variances, Best Management Practices, mixing zones, etc. — none of which have been agreed to by the EPA to date. Suffice it to say that the cost of virtually everything in Florida will be impacted by these new litigation-imposed federal rules.

## TMDLs Versus Numeric Nutrient Criteria

The state of Florida's Total Maximum Daily Loads (TMDL) program for impaired water bodies is a very sophisticated, scientifically robust approach to addressing pollutant reduction in our state's water bodies. Given its site-specific emphasis on the level of nutrients and pollutants that can safely be assimilated by Florida waterways, the DEP had predicted that TMDLs for numerous water bodies should serve as site-specific alternatives to regional nutrient criteria levels. These include the Lower Suwanee River Basin, the Santa Fe River Basin, the Lower St. Johns River Basin, the Ocklawaha River Basin, the Middle St. Johns River Basin, the Wekiva Springs Study Area, the Upper St. Johns River Basin, the Indian River Lagoon, the Alafia River, the Hillsborough River Basin, the Peace River Basin, and southeast Florida's Lake Okeechobee.

Suffice it to say ... in Florida, one shoe does not fit all when it comes to water quality protection. We need to put our resources where we can get the biggest environmental benefit for impaired water bodies while recognizing that an unreasonable standard for ALL waterbodies is not reasonable nor logical.

# Concerned Florida Businesses, Associations and Public Entities

## Presently...

Not surprisingly, the adoption of numeric nutrient criteria by the EPA has spawned a new spate of lawsuits, led by the state of Florida — the Attorney General's Office on behalf of the Florida Department of Agriculture and Consumer Services. Other litigants challenging the rule include water and wastewater utilities in northwest Florida, the Florida Stormwater Association and League of Cities, local governments and business interests. Ironically, the environmental plaintiffs who brought the original lawsuit which set this all in motion have also challenged the EPA's rule ... claiming that the opportunity for regulated interests to seek Site Specific Alternative Criteria as outlined in the rule runs counter to the Clean Water Act.

## Final Thoughts

The heavy hand of the federal government, driven by environmental fervor, is wreaking havoc on the state of Florida when it can least afford a further economic descent into maelstrom. Florida has sound, reliable, and effective programs for addressing water quality, environmental restoration, and sustainable water supply development. Indeed, we are the model and the envy of the nation. As concerned citizens and businesses in this state, we ask you, our representatives, to respect the interests of us all and relieve our state of the unnecessary, costly and scientifically unproven regulations that are being imposed on us by the bureaucrats in Washington.

While there is no price to be put on clean water, there is a big price to be put on water that is already too clean to clean ... and that is what the EPA regulations are all about. ■

## Chronology

- Summer 2008** – Environmental plaintiffs file suit against the EPA alleging that it has not enacted the Clean Water Act requiring numeric nutrient criteria in the state of Florida.
- January 2009** – EPA issues a “determination letter” to the Secretary of the Florida DEP indicating that the state has failed to protect water quality and must adopt numeric nutrient criteria.
- July 2009** – Florida DEP promulgates its rule for the adoption of numeric nutrient criteria.
- August 2009** – EPA enters a consent agreement with the environmental plaintiffs in the 2008 lawsuit agreeing to step in and set numeric nutrient criteria for the state of Florida.
- November 2010** – EPA adopts stringent nutrient criteria for inland waters in Florida. Implementation of the federal rule is delayed 15 months until early 2012.
- December 2010** – State of Florida and other interests sue to challenge the EPA regulations.
- November 2011** – EPA set to propose numeric nutrient standards for coastal and estuarine waters.
- August 2012** – EPA set to adopt coastal and estuarine and South Florida canal numeric nutrient criteria standards.

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  
Florida Water Environment Association Utility Council  
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  
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