

November 11, 2011

Dear Friends of Florida waters:

Last week was a very busy week and I have a lot to report to you. I tried to keep this short, but couldn't. The first and foremost thing I want you to know is that the next Environmental Regulation Commission (ERC) meeting has been moved to **December 8th**. That is the meeting where the ERC will vote on the state's proposed numeric nutrient criteria. That means that we have an extra week to spread the word that we want the ERC to support our amendment to the state's proposed rule. See below.

Here's what is on the news list for this week:

1. Meeting with legislators last Tuesday on Numeric Nutrient Criteria.
2. ERC meeting on Thursday (briefing on the state's proposed Numeric Nutrient rule).
3. How you can help this week!!!

1. **Meeting with legislators last Tuesday on Numeric Nutrient Criteria.**

Last Tuesday I was invited to meet with Democratic members of the House Committee Ag and Natural Resources Subcommittee to discuss the state and federal numeric nutrient criteria (NNC). It was a great opportunity to start educating them about what is wrong with both rules and why they will not help clean up our waters. It is amazing how uninformed they are on this important issue, but at least they are making the effort to get informed. Here are a couple of statements that were made that you may run into and what my response was:

A. Well, isn't it a good thing that there will at least be numbers that we can point to and say, "here is what the nutrient levels should be in the water?"

MY ANSWER: The numbers would be great if they meant anything or could be used as a target or goal. The problem is that EPA and DEP will very quickly say that the numeric criteria are not meant to apply at any one place in the water and definitely not at the end of any discharge pipes. The criteria are annual geometric means of the entire spatial area of the water body. That means that if the criteria for nitrogen is .5 mg/l for example, then the level of nitrogen in a certain spot near of sewage plant discharge, or a farm, or a paper mill could be 10 mg/l on a regular basis and that would not be a problem as long as all the samples in the entire water body (stream, bay, etc) did not exceed .5 mg/l after a geometric mean of two year's worth of data was calculated. So, the numbers are very misleading when you take them at face value because they are not applied that way.

B. A one-size-fits-all approach doesn't work for Florida because we have such diverse geography.

MY ANSWER: The state and federal NNC rules are adjusted geographically across the state so this statement is made in total ignorance by someone who hasn't even looked at the rule. I told the legislator who said this that before you would even need to worry about the numbers, there is the annual geometric mean issue and then there are numerous loopholes that make it okay for a water body to exceed those numbers. Additionally, the state rule adds another requirement that the water must be impaired biologically before the numbers (even as annual geometric means) even matter at all. So essentially, this statement should embarrass anyone who says it.

Okay – so back to the Legislative meetings: Everyone seems to agree that once again in this year's session there will be water legislation related to water supply, water quality and water regulations. With the current leadership in the Legislature and the current Governor, we cannot expect any of it to be pro-environment. We will try to keep an eye on what's happening and keep you informed. Also Sierra Club has an excellent lobbyist and I will pass on his alerts to you as they come to me.

Rich Budell with the Dept. of Agriculture gave an interesting presentation on Florida's water supply issues and touched on the issue of the federal and state numeric nutrient criteria. He mentioned that it is too stringent from Ag's perspective but then mentioned that it does not affect or regulate ag in any way. So I'm not sure what he thinks is too stringent about it. It was the first time I have heard anyone in the ag business or an ag regulator admit that the federal rule does not affect agriculture AT ALL!!! The FL Dept of Agriculture supports DEP's proposed rule of course and specifically said that they like the state requirement to get biological confirmation that a water body is adversely impacted by nutrients before any limits at all kick in.

What more can I say? If you could see me now, I'm just shaking my head and rolling my eyes!!!

2. ERC meeting on Thursday (briefing on the state's proposed Numeric Nutrient rule).

On November 3rd, the Environmental Regulation Commission (ERC) received their official briefing by FDEP staff on the proposed changes to Chapter 62-302, and 62-303 F.A.C. regarding numeric nutrient criteria. Additionally Jim Giattina, EPA Region 4 Water Program administrator was there to sing the praises of Florida's proposed nutrient criteria. Clearly EPA is happy to wash its hands of Florida's nutrient issues and will sign off on anything that allows them to go back into hiding. Many of you and various reporters have asked me what is the primary difference between EPA's nutrient rule and Florida's proposed nutrient rule. Here's what DEP reported to the ERC members on that question:

1. The state rule states specifically that Site Specific Alternative Criteria (SSACs) will take precedence over the base criteria that EPA has adopted for Florida and that DEP's rule does not change. EPA's rule allows for SSACs but doesn't give specific precedence to the SSACs in the body of their rule as Florida's does. This will only matter if there was a court case.
2. The state's rule will only attempt to reduce nutrients when proven necessary to protect the biological integrity of a water body. EPA's rule would take affect before the water body

becomes impaired and the impairment is documented over a two year period. The state rule also takes an two year average of the level of impairment. So one year of toxic algal blooms would not be enough to trigger the numeric criteria. If there were toxic algal blooms one year and not the next then if on average the numbers look okay to DEP, then there would be no reason to get concerned. With EPA's rule, you still need two years worth of problems (water body-wide, annual geometric means that exceed the criteria) and then you still have the opportunity to use SSACs, variances, designated-use downgrades, long-term compliance plans, etc. before you actually have to make any polluters reduce their pollution). Again, this is why I'm very unimpressed with EPA's numeric nutrient criteria as well as the state's.

3. The state rule is designed to eliminate the need to even apply for SSACs and other loopholes. DEP thinks this is too much trouble to go through. EPA thought they were doing Florida's polluters a favor when they included these loopholes in their version of the rule, but DEP has thumbed its nose at EPA's loopholes and says they are cumbersome and too expensive and require too many opportunities for the public to be notified and potentially object. So with the state rule, the numeric nutrient criteria only kicks in if:

- A. There is proven biological impairment (over 2 year average) of the water body;
- B. If there is not already a TMDL for nutrients and/or dissolved oxygen - which would take precedence;
- C. If a SSAC is not established;
- D. There is not an estuary-specific interpretation;
- E. There is not a WQBEL or some other kind of SSAC available.

Here are a few other random facts that were thrown out by FDEP:

1. There is no criteria for "Eutrophic" lakes and there won't be for a long time - if ever;

2. All canals and man-made waters will be downgraded in their designated uses (no longer fishable/swimmable). EPA made a point of saying that they will approve this;

3. Where nutrient limits are established (TMDLs, SSACs, etc) they will largely be in the form of "water body loads" rather than concentrations. This will make it impossible for anyone to take enforcement action against a state or a discharger when nutrients continue to cause toxic algal blooms, nuisance plant growth, fish kills, etc.

4. The estuary criteria will not apply to tidal creeks. It is unknown when criteria will be available for these types of water bodies;

I wish I had a more positive report for you on this issue. HOWEVER, all is not lost for our waters, so **PLEASE DON'T GIVE UP**. There are many local efforts to improve waters around the state and I'm starting to build a website to share these projects with you. I hope that they will be encouraging and will give you ideas for your own community. If your community (on any level) is working to reduce nutrient pollution to your local waters, please send me a note so I can look into it and add your local project to our website. **I think over the near future, local efforts will be our best hope for monitoring and improving our waters.**

3. How you can help this week!!!

I have attached my latest op-ed which is titled "Socialized Pollution" for you to use in any way that you want. Here are some suggestions:

A. It has been sent to most of the major papers around the state but there are numerous small papers that I haven't sent it to. If you would like to send it to your local paper, please do and ask them to consider publishing it; If you haven't seen it yet in a larger paper near you, give the editor a call and ask him to

publish it.

B. You may also want to post it on your group website;

C. You can send it to your state legislators, or your federal legislators (Congressional rep and the two Senators);

D. You can use it to write a letter to the ERC members who will be voting on December 8th on the state's proposed rule.

E. You can forward it to all of your friends and family who care about Florida's waters and ask them to join our campaign effort for the next few weeks.

Also you can write to the ERC members and ask them to support the Clean Water Network of FL amendment to the state's proposed rule language. Our amendment will require sewage plants and industrial discharges into streams and estuaries to meet nutrient limits for Advanced Wastewater Treatment (AWT) at a minimum. You received the fuller explanation in our comment letter that was sent to you in the last Weekly Update. The ERC members will know exactly what you are talking about because I sent it to them as well and then discussed it when they gave the public an opportunity to speak at the November 3rd meeting. Here are the ERC members' contact information:

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If you can only do one thing to help us this week, please send an email to the ERC (Roth and Joyce are hopeless, but you can email them anyway if you want to) members and ask them to support the CWN-FL amendment.

Thank you to everyone who has been sending letters and emails on this issue. I appreciate all the copies of your letters that you have sent to me. Keep them coming my way. They inspire me and make me smile when I get discouraged. We have the ability to protect our waters if we all work together!

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