



Multiple EPA Actions Related to Nutrient Pollution in Florida Waterways

Summary

EPA has approved the Florida Department of Environmental Protection's (FDEP) rules establishing numeric limits on the amount of nitrogen and phosphorus allowed in Florida's waterways. These pollutants, collectively called "nutrients," cause algal blooms and are among the largest contributors to water quality problems in Florida. Following a thorough review of the State's rules and supporting documents, EPA determined they are consistent with the requirements of the Clean Water Act (CWA) and applicable federal regulations for the water bodies they cover.

EPA's goal is for FDEP to adopt appropriate numeric nutrient criteria for all remaining Florida waters that are determined to be Class I, II, and/or III water bodies, thereby eliminating the need for EPA rules. However, court orders resulting from settlement of a 2008 lawsuit with the Florida Wildlife Federation required EPA to propose the federal rules announced on November 30, 2012.

Under a consent decree that resulted from the settlement of a lawsuit with Florida Wildlife Federation, EPA is also proposing two federal rules establishing nutrient limits for Florida water bodies not covered by the State rules. One federal rule serves to clarify some provisions in the 2010 rule EPA promulgated establishing numeric limits on the amount of nutrient pollution allowed in Florida's inland waters. The other proposes numeric limits on the amount of nutrient pollution allowed in Florida's estuaries and coastal waters, as well as in flowing waters in South Florida. Together with FDEP's approved rules, these proposed nutrient limits seek to improve water quality and protect public health, aquatic life and the long-term recreational uses of Florida's waters, which are a critical part of the state's economy.

EPA is also amending a 2009 CWA determination to indicate that numeric downstream protection values are not necessary to meet CWA requirements in Florida. EPA's approval of FDEP's approach to downstream protection is subject to the District Court granting a request to modify the consent decree consistent with the amended determination.

Background

In compliance with the terms of EPA's CWA determination and an August 2009 consent decree, EPA promulgated federal numeric nutrient limits for Florida's inland waters in 2010. Subsequent court orders required EPA to propose limits for Florida's estuaries, coastal waters and inland flowing waters in South Florida. EPA was also required to propose a rule addressing remanded portions of its nutrient limits for inland waters. Because EPA prefers that Florida implement its own numeric nutrient water quality criteria, EPA has withdrawn the water bodies covered in the State's approved rules from the proposed federal rules.

Downstream Protection Values

EPA is amending its 2009 Determination to indicate that numeric downstream protection values (DPVs) are not necessary to meet CWA requirements in Florida. FDEP's interpretation of the narrative downstream protection provision results in appropriate numeric or other discharge permit limitations and allows the state to make timely and appropriate listing decisions. EPA is approving FDEP's approach to downstream protection subject to the District Court granting a request to modify the consent decree consistent with the amended Determination.

In accordance with the current Consent Decree requirements, EPA is re-proposing and taking comment on federal criteria for Class III flowing

waters (streams and rivers, including canals and other waters that may meet the exclusions under FDEP's streams definition) and DPVs for unimpaired lakes in accordance with the Phase I rule remand from the District Court.

EPA is proposing to amend the Phase I rule to remove the numeric DPVs if allowed to do so by the District Court.

Inland Waters Excluded from FDEP Rules

It is EPA's understanding that FDEP's numeric nutrient criteria apply to all Class III flowing waters unless and until FDEP makes an affirmative determination that a particular water body meets one of the exclusions under F.A.C. 62-302.200(36), i.e., it is tidally influenced, a non-perennial stream, or an actively maintained conveyance, such as a canal or ditch. For these waters, the narrative criterion will continue to apply.

It is EPA's view that any waters excluded by Florida's stream definition that are Class I and/or III may still provide important habitat for a diverse range of natural aquatic plants and animals and may be vulnerable to the effects of nutrient pollution.

Therefore, EPA must have federal criteria in place for those Class III flowing waters that may not have numeric criteria until FDEP develops site-specific criteria or conducts a use-attainability analysis to correctly classify the excluded waters.

For waters that meet the definition of a municipal separate storm sewer system in accordance with 40 CFR 122.26(b)(8), EPA will work closely with FDEP to assist in evaluating the appropriate use designations.

FDEP's All-Or-Nothing Provisions

It is EPA's understanding that the provisions of F.A.C. 62-302.531(9) (the all-or-nothing provisions) are not triggered by the actions EPA is taking. However, if those provisions are interpreted in a manner that prevents FDEP's numeric nutrient criteria from becoming effective for Florida's lakes, springs or flowing waters, then EPA will finalize numeric nutrient criteria for all Class III flowing waters in

accordance with the Consent Decree.

EPA intends to withdraw the federal inland waters rule provided that the FDEP rule goes into effect. Final withdrawal or stay of the federal inland rule for lakes and springs, and DPVs for lakes, is dependent on the effect of subsection 62-302.531(9) on the implementation of the FDEP rules that EPA is approving.

Because the all-or-nothing clause does not apply to those provisions of the FDEP Rule addressing estuaries and South Florida marine waters, EPA is not proposing federal criteria for those waters. However, EPA will continue to propose a Phase II rule with federal criteria for those estuaries, coastal marine waters, and South Florida canals that have not been addressed in FDEP's rulemaking, together with numeric downstream protection values for estuaries, coastal and south Florida flowing waters. For numeric DPVs to protect downstream estuaries, the approach to amend the Determination and consent decree would potentially allow EPA to forego the promulgation of numeric DPVs for estuaries. EPA is proposing to amend the inland waters rule to remove the numeric downstream protection values if allowed to do so by the District Court.

EPA welcomes public comment on its proposed rules and will host web-based public hearings & a public information session in January 2013.

EPA must finalize these proposed federal rules by August 31, 2013 (inland remand) and September 30 (estuaries, coastal and South Florida flowing waters), however, EPA is prepared to not finalize—or withdraw—federal rules for any waters that become covered by state law that meets CWA requirements.

For More Information

For EPA's approval of the FDEP rule go to: <http://www.epa.gov/aboutepa/states/fl.html>. For EPA's proposed rules, including information about the public information session, web-based public hearings and guidelines for submitting written comments, see the Federal Register notice and EPA's website at: http://water.epa.gov/lawsregs/rulesregs/florida_index.cfm.
