



Agriculture and Natural Resources Policy Committee

Meeting Packet

**November 4, 2009
2:00 pm - 5:00 pm
102 Reed Hall**

**Larry Cretul
Speaker**

**Trudi Williams
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 10/29/2009 2:59:48PM)

Amended(1)

Agriculture & Natural Resources Policy Committee

Start Date and Time: Wednesday, November 04, 2009 02:00 pm

End Date and Time: Wednesday, November 04, 2009 05:00 pm

Location: Reed Hall (102 HOB)

Duration: 3.00 hrs

Consideration of the following bill(s):

HB 69 Food Safety by Crisafulli

Workshop on numeric nutrient criteria

NOTICE FINALIZED on 10/29/2009 14:59 by Cunningham.Reid

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 69 Food Safety

SPONSOR(S): Crisafulli and others

TIED BILLS: IDEN./SIM. BILLS: SB 350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Kaiser <i>[Signature]</i>	Reese <i>[Signature]</i>
2) Natural Resources Appropriations Committee			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

HB 69 authorizes the Department of Agriculture and Consumer Services (department) to adopt rules to establish food safety standards to protect the consuming public from tainted tomatoes.

The rules must apply to all aspects of tomato production, harvesting and (re)packing for sale for human consumption by a tomato farm, tomato greenhouse or tomato packinghouse or repacker in the state. The bill authorizes the department to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations, or any vehicle being used to transport or hold tomatoes to ensure compliance with food safety standards and authorizes the department to impose administrative fines¹ or issue a written notice or warning for violations.

The bill also repeals cross-references to the Florida Agricultural Museum, which has not been funded since FY 2008-09.

The department indicates that the cost of performing the inspections is offset by a recently adopted rule² authorizing³ the assessment of a fee for inspection of tomato packing houses and repackers. The effective date of this legislation is July 1, 2010.

¹ Administrative fines may not exceed \$5,000 per violation.

² Rule 5K-4.020, F.A.C.

³ Section 500.12 (1)(f), F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0069.ANR.doc

DATE: 10/14/2009

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1:

Current Florida law does not recognize tomato "repackers" in the definition of "food establishment." The bill adds "repackers" to the definition.

Section 2:

During the 2007 legislative session, CS/HB 651 was enacted authorizing the Division of Food Safety (division) within the Department of Agriculture and Consumer Services (department) to perform food safety inspections, under the Tomato Good Agricultural Practices (T-GAP) inspection program, on tomato farms, in tomato greenhouses, and in tomato packing houses and repackers. Since the enactment of the T-GAP program, the division has been working with the Florida tomato industry to create and implement good agricultural practices, guidelines and standards, as well as to implement an annual audit and inspection program to ensure compliance.

The bill authorizes the department to adopt rules to establish food safety standards to protect the consuming public from tainted tomatoes. The bill requires the rules to be based on federal requirements, available scientific research, generally accepted industry practices, and recommendations of food safety professionals. The rules must apply to all aspects of tomato production, harvesting and (re)packing for sale for human consumption by a tomato farm, tomato greenhouse or tomato packinghouse or repacker in the state. Topics that may be covered by the rules include:

- Registration with the department of persons who produce, harvest, pack or repack tomatoes in the state, such as farms, who do not hold a food permit issued under s. 500.12, F.S.
- Proximity of domestic animals and livestock to the production areas for tomatoes;
- Food safety-related use of water for irrigation during production and washing of tomatoes after harvest;
- Use of fertilizers;
- Cleaning and sanitation of containers, materials, equipment, vehicles, and facilities, including storage and ripening areas;
- Health, hygiene, and sanitation of employees who handle tomatoes;
- Training and continuing education of persons who produce, harvest, pack, or repack tomatoes in the state, and their employees who handle tomatoes; and,
- Labeling and recordkeeping, including standards for identifying and tracing tomatoes for sale for human consumption.

The bill authorizes the department to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations, or any vehicle being used to transport or hold tomatoes to ensure compliance with food safety standards. The department is granted the authority to impose administrative fines⁴ or issue a written notice or warning for compliance violations.

The bill affirms that a person documenting compliance with the department's rules, T-GAPs and tomato best management practices (BMPs) is considered to be in compliance with state food safety standards unless a violation or noncompliance can be shown through inspections. The bill also gives the department rule-making authority to implement the BMP program.

Section 3:

The department currently has the authority⁵ to act as an adviser to producers and distributors and to assist them in the economical and efficient distribution of their agricultural products through a cooperative effort. The bill gives the department rule-making authority to establish BMPs for agricultural production and food safety.

Section 4:

The bill cross-references the duties of the department with regards to food safety inspections on tomato farms, in tomato greenhouses, and in tomato packinghouses and repackers as it relates to the duties of the Division of Fruits and Vegetables.

Sections 5-6:

During the 2008 regular session, the Legislature removed all funding for the Florida Agricultural Museum due to a decrease in use and significant increases in the cost of operation. Various cross-references to the museum are being repealed from statute.

B. SECTION DIRECTORY:

Section 1: Amends s. 500.03, F.S.; revises the definition of "food establishment."

Section 2: Creates s. 500.70, F.S.; provides definitions; allows rule-making authority; sets parameters for rules; authorizes the Department of Agriculture and Consumer Services to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations or vehicles being used to transport or hold tomatoes; authorizes the imposition of administrative fines and/or written notices for violations; and, provides a presumption of compliance under certain circumstances.

Section 3: Amends s. 570.07, F.S.; allows rule-making authority.

Section 4: Amends s. 570.48, F.S.; revises the duties of the Division of Fruit and Vegetables.

Sections 5-6: Amends ss. 570.53 and 570.54, F.S.; conforms cross-references.

Section 7: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

⁴ Administrative fines may not exceed \$5,000 per violation.

⁵ Section 570.07(10), F.S.

2. Expenditures:
See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None
2. Expenditures:
None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

At a meeting on October 30, 2009, as well as in a follow-up email, the Department of Agriculture and Consumer Services (department) indicated that the legislation has no fiscal impact on state government. The department stated the fiscal impact to state government indicated in last year's analysis of this legislation has been offset by the adoption of a rule authorizing the assessment of a \$100 food permit fee for tomato packing houses and repackers.⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not applicable. This bill does not appear to affect county or municipal government.
2. Other:
None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services is given rule-making authority to:

- Establish food safety standards to protect public safety from tainted tomatoes;
- Establish tomato good agricultural practices and tomato best management practices;
- Administer the food safety act as it relates to tomatoes; and,
- Establish best management practices for agricultural production and food safety.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Two sections of statute, which remove statutory references to the Florida Agricultural Museum, were inadvertently included in the bill. An amendment will be offered to remove these sections from the bill.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

⁶ Section 500.12 (1)(f), F.S.; Rule 5K-4.020, F.A.C.

1 A bill to be entitled
 2 An act relating to food safety; amending s. 500.03, F.S.;
 3 revising the term "food establishment" to include tomato
 4 repackers for purposes of the Florida Food Safety Act;
 5 creating s. 500.70, F.S.; defining terms; requiring
 6 minimum food safety standards for producing, harvesting,
 7 packing, and repacking tomatoes; authorizing the
 8 Department of Agriculture and Consumer Services to inspect
 9 tomato farms, greenhouses, and packinghouses or repackers;
 10 providing penalties; authorizing the department to
 11 establish good agricultural practices and best management
 12 practices for the tomato industry by rule; providing a
 13 presumption that tomatoes introduced into commerce are
 14 safe for human consumption under certain circumstances;
 15 providing exemptions; authorizing the department to adopt
 16 rules; amending s. 570.07, F.S.; authorizing the
 17 department to adopt best management practices for
 18 agricultural production and food safety; amending s.
 19 570.48, F.S.; revising duties of the Division of Fruit and
 20 Vegetables for tomato food safety inspections; amending
 21 ss. 570.53 and 570.54, F.S.; conforming cross-references;
 22 providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Paragraph (n) of subsection (1) of section
 27 500.03, Florida Statutes, is amended to read:
 28 500.03 Definitions; construction; applicability.--

29 (1) For the purpose of this chapter, the term:

30 (n) "Food establishment" means any factory, food outlet,
 31 or any other facility manufacturing, processing, packing,
 32 holding, or preparing food, or selling food at wholesale or
 33 retail. The term does not include any business or activity that
 34 is regulated under chapter 509 or chapter 601. The term includes
 35 tomato packinghouses and repackers but does not include any
 36 other establishments that pack fruits and vegetables in their
 37 raw or natural states, including those fruits or vegetables that
 38 are washed, colored, or otherwise treated in their unpeeled,
 39 natural form before they are marketed.

40 Section 2. Section 500.70, Florida Statutes, is created to
 41 read:

42 500.70 Tomato food safety standards; inspections;
 43 penalties; tomato good agricultural practices; tomato best
 44 management practices.--

45 (1) As used in this section, the term:

46 (a) "Field packing" means the packing of tomatoes on a
 47 tomato farm or in a tomato greenhouse into containers for sale
 48 for human consumption without transporting the tomatoes to a
 49 packinghouse.

50 (b) "Packing" or "repacking" means the packing of tomatoes
 51 into containers for sale for human consumption. The term
 52 includes the sorting or separating of tomatoes into grades and
 53 sizes. The term also includes field packing.

54 (c) "Producing" means the planting, growing, or
 55 cultivating of tomatoes on a tomato farm or in a tomato
 56 greenhouse for sale for human consumption.

57 (2) The department may adopt rules establishing food
 58 safety standards to safeguard the public health and promote the
 59 public welfare by protecting the consuming public from injury
 60 caused by the adulteration or the microbiological, chemical, or
 61 radiological contamination of tomatoes. The rules must be based
 62 on federal requirements, available scientific research,
 63 generally accepted industry practices, and recommendations of
 64 food safety professionals. The rules shall apply to the
 65 producing, harvesting, packing, and repacking of tomatoes for
 66 sale for human consumption by a tomato farm, tomato greenhouse,
 67 or tomato packinghouse or repacker in this state. The rules may
 68 include, but are not limited to, standards for:

69 (a) Registration with the department of a person who
 70 produces, harvests, packs, or repacks tomatoes in this state who
 71 does not hold a food permit issued under s. 500.12.

72 (b) Proximity of domestic animals and livestock to the
 73 production areas for tomatoes.

74 (c) Food safety related use of water for irrigation during
 75 production and washing of tomatoes after harvest.

76 (d) Use of fertilizers.

77 (e) Cleaning and sanitation of containers, materials,
 78 equipment, vehicles, and facilities, including storage and
 79 ripening areas.

80 (f) Health, hygiene, and sanitation of employees who
 81 handle tomatoes.

82 (g) Training and continuing education of a person who
 83 produces, harvests, packs, or repacks tomatoes in this state,
 84 and the person's employees who handle tomatoes.

85 (h) Labeling and recordkeeping, including standards for
 86 identifying and tracing tomatoes for sale for human consumption.

87 (3)(a) The department may inspect tomato farms, tomato
 88 greenhouses, tomato packinghouses, repacking locations, or any
 89 vehicle being used to transport or hold tomatoes to ensure
 90 compliance with the applicable provisions of this chapter and
 91 the rules adopted under this chapter.

92 (b) The department may impose an administrative fine not
 93 to exceed \$5,000 per violation, or issue a written notice or
 94 warning under s. 500.179, against a person who violates any
 95 applicable provision of this section or any rule adopted under
 96 this section.

97 (4)(a) The department may adopt rules establishing tomato
 98 good agricultural practices and tomato best management practices
 99 for the state's tomato industry based on applicable federal
 100 requirements, available scientific research, generally accepted
 101 industry practices, and recommendations of food safety
 102 professionals.

103 (b) A person who documents compliance with the
 104 department's rules, tomato good agricultural practices, and
 105 tomato best management practices is presumed to introduce
 106 tomatoes into the stream of commerce that are safe for human
 107 consumption, unless the department identifies noncompliance
 108 through inspections.

109 (5) Subsections (2) and (4) do not apply to tomatoes sold
 110 by the grower on the premises at which the tomatoes are grown or
 111 at a local farmers' market, if the quantity of tomatoes sold
 112 does not exceed two 25-pound boxes per customer.

113 (6) The department may adopt rules pursuant to ss.
 114 120.536(1) and 120.54 to administer this section.

115 Section 3. Subsection (10) of section 570.07, Florida
 116 Statutes, is amended to read:

117 570.07 Department of Agriculture and Consumer Services;
 118 functions, powers, and duties.--The department shall have and
 119 exercise the following functions, powers, and duties:

120 (10) To act as adviser to producers and distributors, when
 121 requested, ~~and~~ to assist them in the economical and efficient
 122 distribution of their agricultural products, ~~and~~ to encourage
 123 cooperative effort among producers to gain economical and
 124 efficient production of agricultural products, and to adopt
 125 rules establishing comprehensive best management practices for
 126 agricultural production and food safety.

127 Section 4. Paragraph (e) of subsection (2) of section
 128 570.48, Florida Statutes, is amended to read:

129 570.48 Division of Fruit and Vegetables; powers and
 130 duties; records.--The duties of the Division of Fruit and
 131 Vegetables include, but are not limited to:

132 (2)
 133 (e) Performing tomato food safety inspections under s.
 134 500.70 on tomato farms, in tomato greenhouses, and in tomato
 135 packinghouses and repackers.

136 Section 5. Paragraph (e) of subsection (6) of section
 137 570.53, Florida Statutes, is amended to read:

138 570.53 Division of Marketing and Development; powers and
 139 duties.--The powers and duties of the Division of Marketing and
 140 Development include, but are not limited to:

141 (6)

142 (e) Extending in every practicable way the distribution

143 and sale of Florida agricultural products throughout the markets

144 of the world as required of the department by s. ~~ss.~~ 570.07(7),

145 (8), (10), and (11) ~~and 570.071~~ and chapters 571, 573, and 574.

146 Section 6. Subsection (2) of section 570.54, Florida

147 Statutes, is amended to read:

148 570.54 Director; duties.--

149 (2) It shall be the duty of the director of this division

150 to supervise, direct, and coordinate the activities authorized

151 by ss. 570.07(4), (7), (8), (10), (11), (12), (17), (18), and

152 (20), ~~570.071~~, 570.21, 534.47-534.53, and 604.15-604.34 and

153 chapters 504, 571, 573, and 574 and to exercise other powers and

154 authority as authorized by the department.

155 Section 7. This act shall take effect July 1, 2010.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment 1

Bill No. **HB 69**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Agriculture & Natural Resources
2 Policy Committee
3 Representative Crisafulli offered the following:
4

5 **Title Amendment**

6 Remove line 2 and insert:

7 An act relating to tomato food safety; amending s. 500.03, F.S.;

8
9
10

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment 2.

Bill No. **HB 69**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Agriculture & Natural Resources
 2 Policy Committee
 3 Representative Crisafulli offered the following:

Amendment (with title amendment)

Remove lines 136-154:

T I T L E A M E N D M E N T

Remove lines 20-21 and insert:

Vegetables for tomato food safety inspections;

12

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment 3.

Bill No. **HB 69**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Agriculture and Natural
 2 Resources Policy Committee
 3 Representative Crisafulli offered the following:

4

5 **Amendment**

6 On lines 63 and 101, remove:

7 and

8

9 And insert:

10 or

11

12

Numeric Nutrient Criteria

Numeric Nutrient Criteria: Legal Update

David Childs
Hopping Green & Sams

Overview

- Regulatory Background
 - Why Water Quality Criteria Matter
 - Florida's Existing Narrative Nutrient Criterion
- Legal Update
 - August 2008 Citizen Suit
 - Necessity Determination
 - Consent Decree
 - November 2009 Citizen Suits

Why Water Quality Criteria Matter

- Water Quality Criteria Are Set to Protect the Designated Uses of Water Bodies
 - Drive water quality protection & restoration projects
 - Ensure appropriate allocation of limited public funds
- NPDES Permittees
 - Point source surface water dischargers must meet criteria
- TMDL Program (safety net)
 - State must restore a water body that does not meet its water quality criteria
 - Regulated entities contributing to the impairment of a water body must do their fair share to clean it up

Two Types of Water Quality Criteria

- Numeric
 - Example: Arsenic: 50 µg/L
- Narrative
 - Example: Nutrient Criterion: “In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural population of flora or fauna.”

Florida's Narrative Nutrient Criterion

- Why does Florida have a narrative nutrient criterion?
 - Nutrients are different than other substances that have a direct impact on waters
 - Water bodies need nutrients to support life
 - Algal blooms (i.e. flora / fauna imbalances) are the result of the improper combination of nutrient loads with other factors, such as pH, shading, water color, biological systems, flow rates, etc.
 - Variance between water bodies
 - ...so developing a scientifically defensible, bright-line number for a specific water body is extraordinarily difficult; developing a defensible number that applies to an entire region of the state is not possible
- EPA regulations indicate that narrative standards are appropriate, particularly when numeric standards cannot be derived.

Legal History

- **August 2008**, EPA sued by environmental advocacy groups for not establishing numeric nutrient criteria for Florida.
- **January 2009**, EPA declares statewide numeric criteria necessary for Florida (*and only Florida*) to be in compliance with the Clean Water Act. EPA documents clearly indicate that the motive was to promote settlement of the lawsuit; not because numeric criteria were “necessary” under the Clean Water Act or scientifically feasible.

Legal History

- **August 2009**, FWEA Utility Council files 60-day “Notice of Intent to Sue” EPA challenging the underlying “necessity determination” as nonscientific & contrary to law.
- **August 2009**, EPA & environmental groups in the Aug. 2008 lawsuit enter into a proposed (i.e. not yet judicially approved) consent decree that would mandate that EPA propose numeric criteria by January 2010 for flowing waters (finalized by October 2010); EPA would propose criteria for marine waters and estuaries by January 2011 (finalized by October 2011).
 - If adopted, the consent decree would frustrate meaningful participation in EPA rulemaking process, particularly with respect to calling into question EPA’s necessity determination and its approach to developing criteria.
- **August 2009**, FWEA Utility Council and others file a motion to intervene into the lawsuit to oppose judicial approval of consent decree between EPA and environmental groups.

Legal History

- **September 2009**, FDEP puts its NNC rulemaking efforts on hold given EPA's proposed consent decree with environmental litigants.
- **October 1, 2009**, DACS files a motion to intervene into the lawsuit opposing entry of the consent decree and arguing that the consent decree has an unreasonable schedule and will lead to arbitrary numeric standards to the detriment of Florida agriculture. DACS also argues that Florida has a progressive water quality standards program and does not need federal intervention.

Legal History

- **October 5, 2009**, FWEA Utility Council and other regulated interests file expert scientific testimony demonstrating why EPA's methodologies for developing numeric nutrient criteria are arbitrary and will devastate the Florida regulated community.
- **October 29, 2009**, Northwest, Suwannee River, and Southwest Water Management Districts file a joint amicus brief with the court stating that EPA's promulgation of numeric standards will cause significant problems for District projects and will not help solve Florida's perceived nutrient problems. South Florida Water Management District is already a party to the lawsuit and is opposing the consent decree.

Next Steps

- **Early November 2009**, Utility Council will file its lawsuit against EPA challenging EPA's determination that Florida needs numeric nutrient water quality standards.
- **November 16, 2009**, Court hearing regarding the consent decree.



**Florida Water Environment Association
Utility Council**

Address to

**Florida House Committee Workshop
on Numeric Nutrient Criteria**

Paul Steinbrecher, PE
FWEAUC Vice President
JEA Director Environmental Services



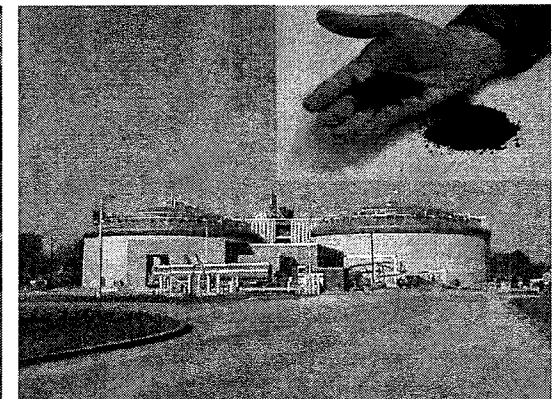
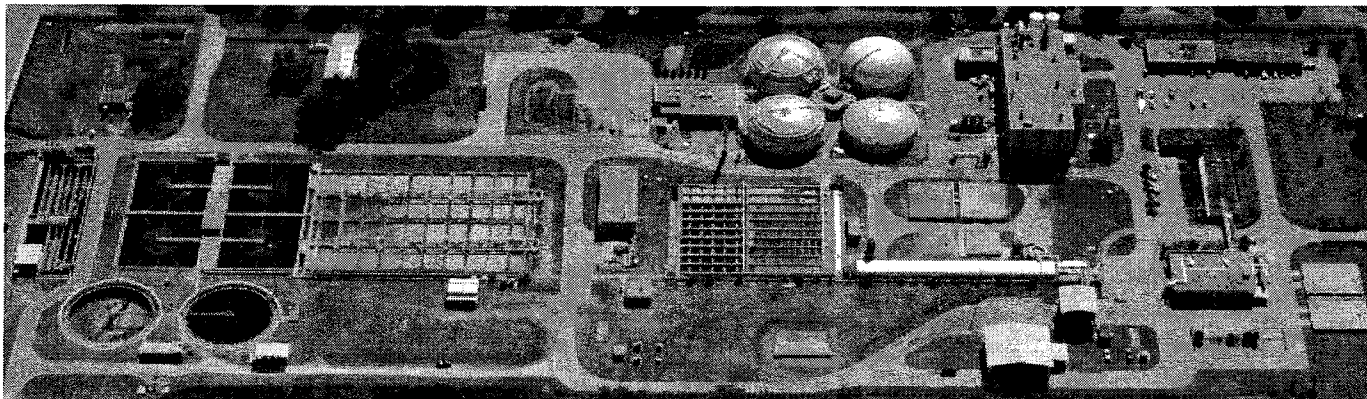
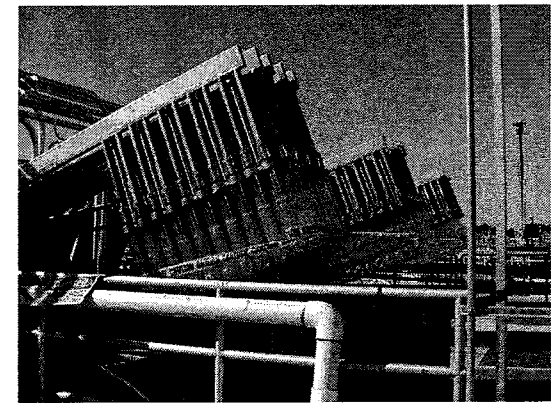
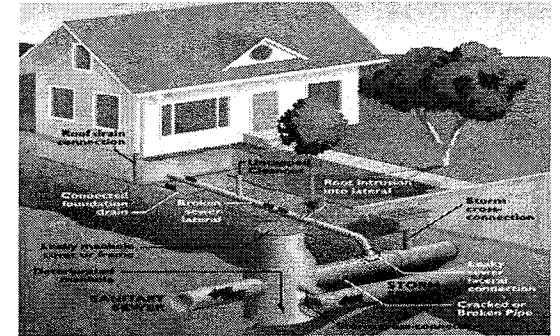
The Florida Water Environment Federation Utility Council

- Membership – Wastewater Utilities serving 7 Million Floridians
- Mission - to assist its members to achieve sound public health and environmental goals
- The Utility Council supports the adoption and implementation of effective wastewater legislation, regulations and policy

*Protection of Public
Health and the
Environment is our
members primary
mission.*

The Services We Provide our Communities

- Wastewater collection/conveyance
- Wastewater treatment and disinfection
- Biosolids treatment
- Beneficial reuse of treated effluent and biosolids
- Cost effective services to ratepayers





Summary of UC's Position on EPA's Florida Numeric Nutrient Criteria Initiative

- Nonscientific and contrary to law
- Is singling Florida out
- Much more stringent limits with no specific ecological driver
- Derails DEP's scientifically focused efforts
- Dubious environmental benefit
- May actually reverse some environmentally focused initiatives



Wastewater Treatment Basics

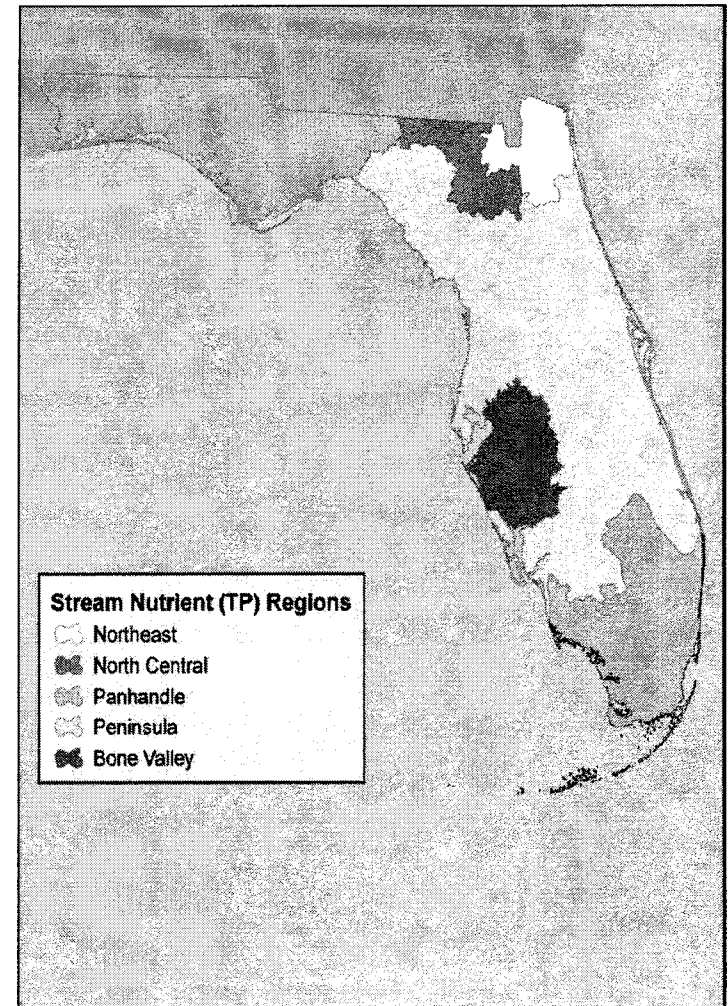
- Primary - Floating material & solids removed
- Secondary – Dissolved organics “eaten” and metabolized by bacteria
- Advanced - Nutrient removal. Nitrogen (and sometimes Phosphorus) removed by bacteria
- Effluent Disinfection
- Effluent Disposal/Recharge/Reuse

Some Techniques to Meet Expected EPA NNC Levels

Technology	Issues
100% Reuse	Unmanageable storage volumes to accommodate wet weather/demand cycles
Reverse Osmosis	Very expensive capital cost Very expensive operating cost Green house gas intensive Concentrate disposal issues Not expected to be permittable at many sites
Ion Exchange	Very expensive capital cost Very expensive operating cost Regenerant disposal issues

Approach Not Focused on Environment

- Nutrient impairment is water body specific. (i.e. separate standards needed by water body type to account for complex function of numerous parameters such as color, temperature, pH, streamflow)
- Regional statistical approach is not water body specific, and thus results in arbitrary standards based on geographical grouping of streams with no accounting for actual causes to impairment





Outcome of Non-Scientific Approach

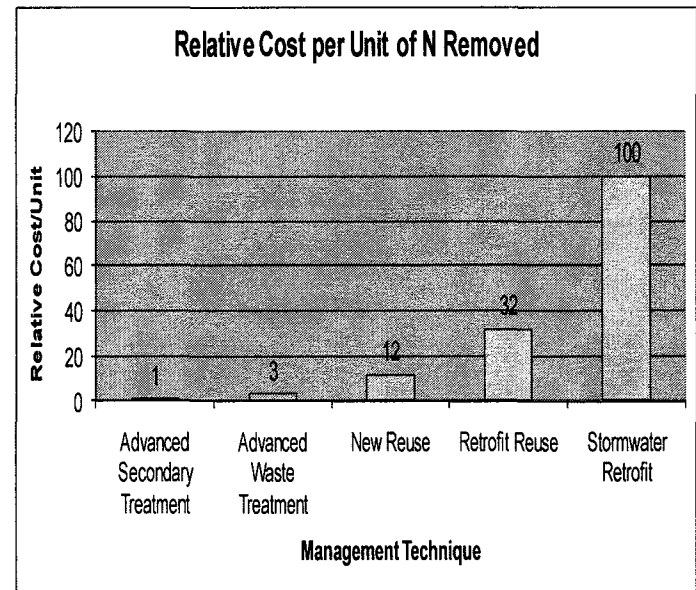
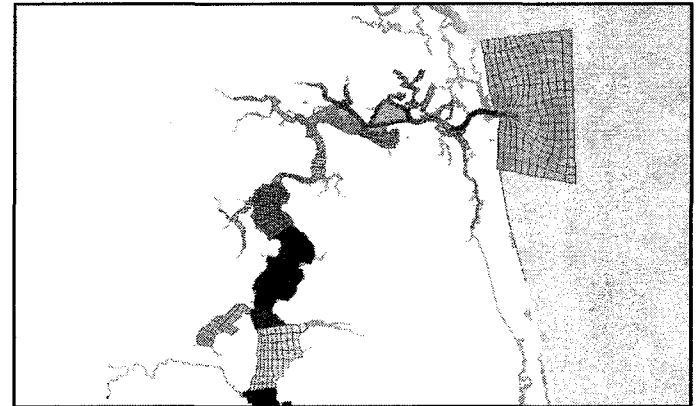
- De-rails science based solutions at great public cost
- Resources get allocated to cleaning pristine waters, and to bringing other waters to well below their natural condition (with no additional ecological benefit to doing so)

Real World Example

Now ...

NE Florida's Lower St. John's River Initiative

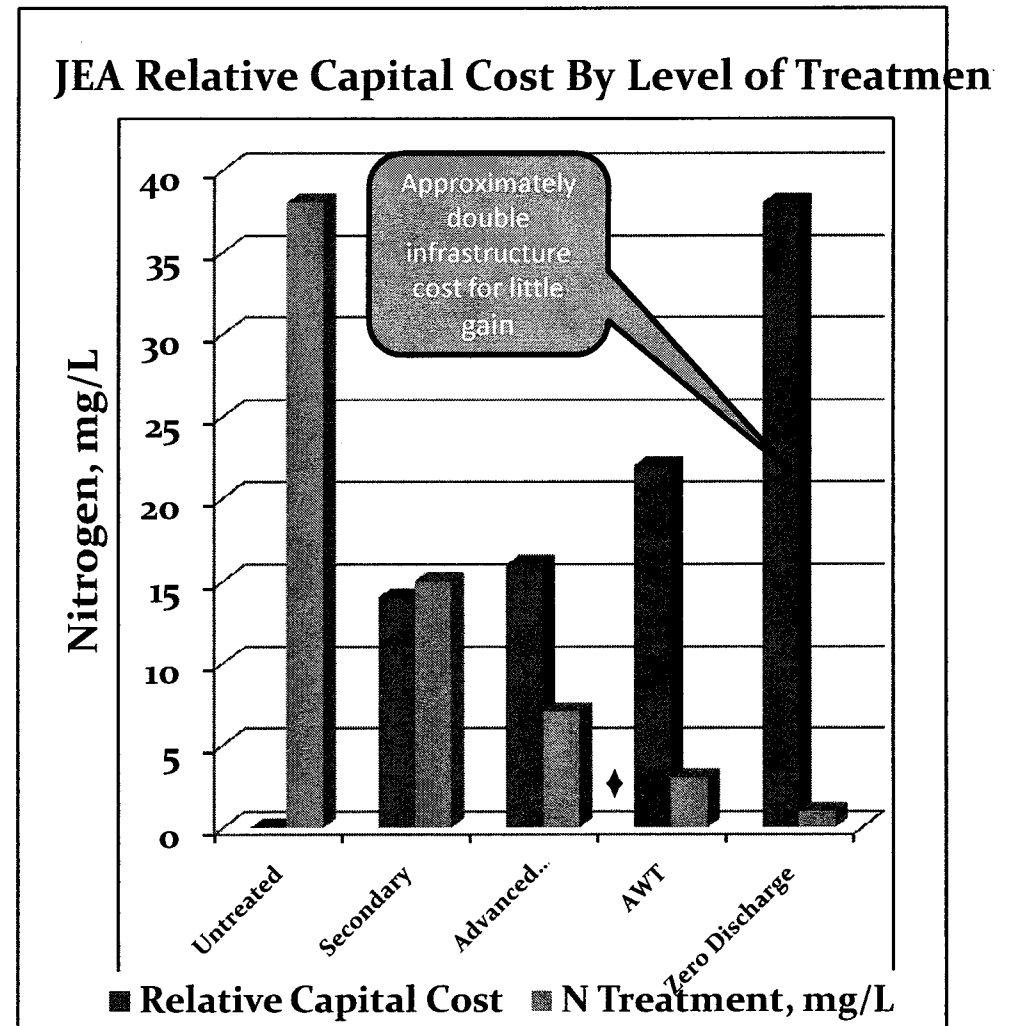
- Stakeholder driven process set scientifically derived nutrient reduction goals to restore river
- Water quality credit trading approach allows efficiencies for Ag/City's/Utilities
 - Allows utilities to optimize projects
 - Allows entities to meet environmental goals for lowest public cost
- ~\$500MM in projects planned, underway or completed in basin to restore river



Real World Example Continued With NNC

NE Florida's Lower St. John's River Initiative

- Arbitrary NNC targets could require each entity to meet limits – removes benefit to environment and public of water quality credit flexibility
- Would approximately double utility cost of compliance with no additional environmental benefit
 - JEA estimates \$2 billion to meet NNC criteria





Example

GRU's Paynes Prarie Initiative

Now...

\$20MM Project underway
meets multiple objectives

- Restores 1300 acres of wetlands
- Cost effectively meets TMDL nutrient goals
- Creates 150 acres of high-quality wetland habitat and public use
- Restores water balance due to 1930's Ag diversion of water from Prairie

With NNC

Arbitrary NNC limits would derail this project and preclude environmental restoration of the Prarie through this project

- 400% the Capital Cost
- 50% increase in Energy Use

EPA's NNC Approach Harms Florida

Interests

- Approximately doubles the typical residential water/sewer bill for most utilities
- Cost of this will be born by our citizens and businesses for dubious environmental benefit
- Diverts public resources

Estimated Capital Costs and Increases in Sewer Rates for Eight Florida Utilities and an Average Florida Case to Construct Facilities to Meet Proposed Numeric Nutrient Limits		
	Capital Cost	Monthly (Annual) Sewer Rate Increase per Household
STATE OF FLORIDA¹	\$24,400,000,000- \$50,700,000,000	\$62.² (\$740)
Bay County	\$42,000,000	\$ 57 (\$685)
Broward County	\$425,000,000	\$ 66 (\$793)
Destin Water	\$34,000,000	\$ 48 (\$581)
Escambia County	\$275,000,000	\$ 49 (\$591)
Hollywood	\$370,000,000	\$ 82 (\$996)
Jacksonville	\$2,000,000,000	\$ 67 (\$815)
Point Buena Vista ³	\$2,000,000	\$257 (\$3,094)
Cross City ³	\$5,800,000	\$ 28 (\$336)
South Walton ³	\$16,000,000	\$ 12 (\$147)
Notes:		
1. The low end of the range provides the probable opinion of cost assuming only plants with surface water discharges will be required to meet numeric nutrient limits while the high end of the range assume that all plants will need to meet numeric nutrient limits.		
2. Estimated average costs for the State of Florida include annual O&M expenses, and are shown for comparative purposes.		
3. Assumes 2.5 persons per connection and 150 gpcd.		

Costs Will Disproportionately Effect Low Income Citizens

Impact of NNC on Monthly Water and Wastewater Charges

- NNC Requirements Projected to Increase Water/Sewer Rates >100%
- Current Median Monthly Combined Water and Wastewater Bill = \$ 56
- Projected Median Monthly Combined Water and Wastewater Bill After NNC = \$118

Source: GRU Comparison of 18 Utilities, June 2009

Affordability for Low Income Utility Customers

- 2009 Poverty Threshold for Family of 4 = \$22,050
- Water and Wastewater Costs Less Than 4% of Household Income Considered "Affordable"
- Combined Water and Wastewater Monthly Charge of \$73.50 Affordable for Florida Families in Poverty
- 12.1% of Florida Citizens At or Below Poverty Level
- Cost to Implement NNC Requirements will make Water and Wastewater Costs Unaffordable for Floridians in Poverty

Source: Water Affordability Programs, AWARF 1998, Margot Saunders, Phyllis Kimmel, Maggie Spade, Nancy Brockway



FWEA Utility Council Goals

Science based nutrient criteria that protect state water ecosystems, while also protecting Florida citizens and businesses from the economic burdens of unsound regulation



*Florida Department of
Environmental Protection*

Nutrient Criteria

*Division of Environmental Assessment & Restoration
Jerry Brooks, Director*

*Prepared for: House Agriculture & Natural Resources Policy Committee,
November 4, 2009*



Background

- **What are Nutrients?**
 - **Nitrogen and Phosphorus**
- **What are Water Quality Standards?**
- **DEP's Development of Nutrient Criteria**



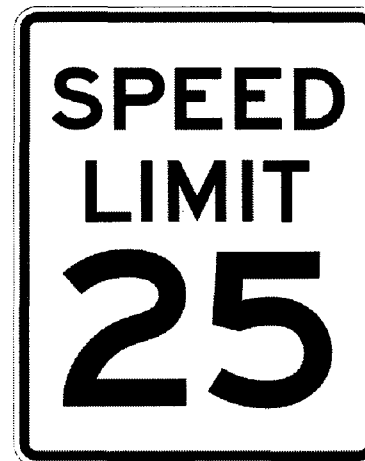


Nutrient Criteria

- **Narrative vs. Numeric**
 - **Current criteria: an imbalance of flora & fauna**



VS.



- **Complexity of nutrients**

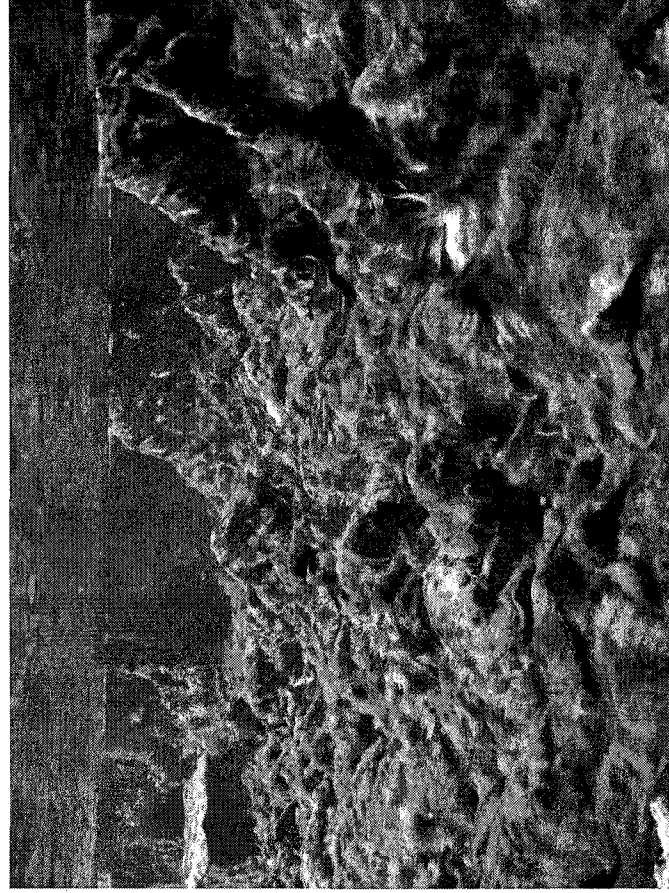




Nutrient Criteria

continued

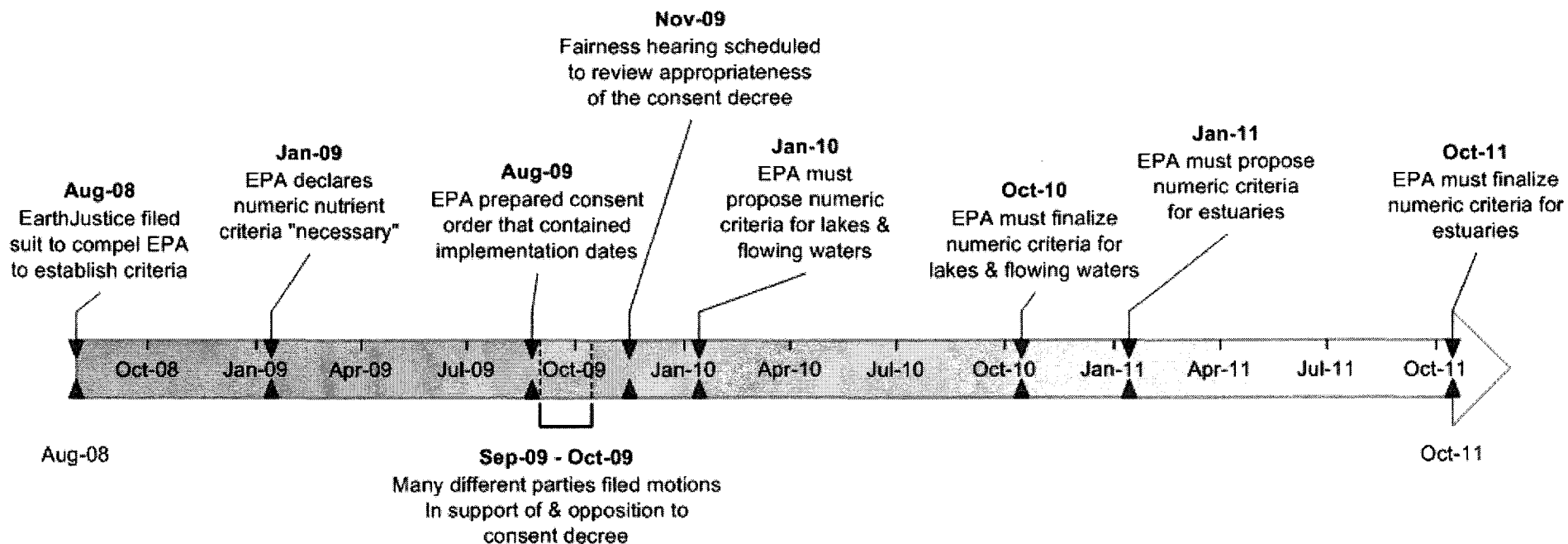
- Why is this issue important?





Why now?

- FDEP Started Developing Numeric Criteria in 2001
- Litigation began in 2008





DEP progress

- **Plan A** - Attempted to find the amount of nutrients that causes harm to lakes and streams
- **Plan B** - Identified the amount of nutrients in the healthy and undisturbed streams

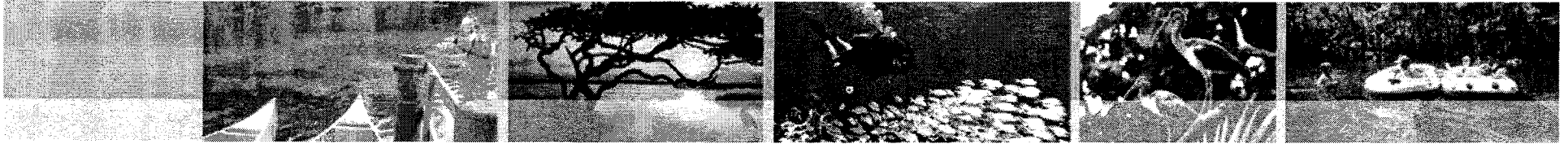




Expected Impact of Numeric Criteria

- **Increased monitoring and assessment of Florida Waterways**
 - Criteria will prompt many waterbody assessments
- **Increased focus on and control of nutrient discharges to Florida waterways**
 - Significant costs in treatment upgrades, or removal/relocation of discharge
 - Investments in sustainable agricultural practices

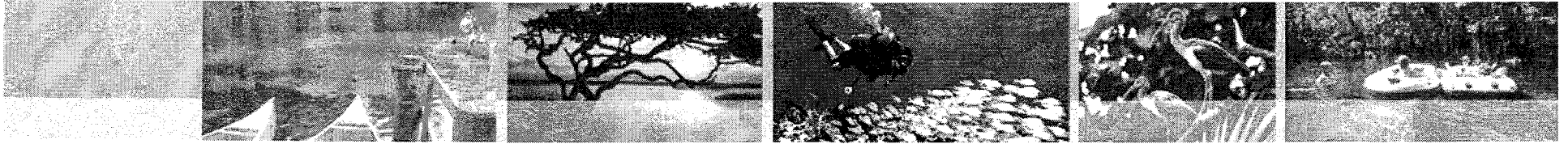




Expected Differences with EPA Criteria

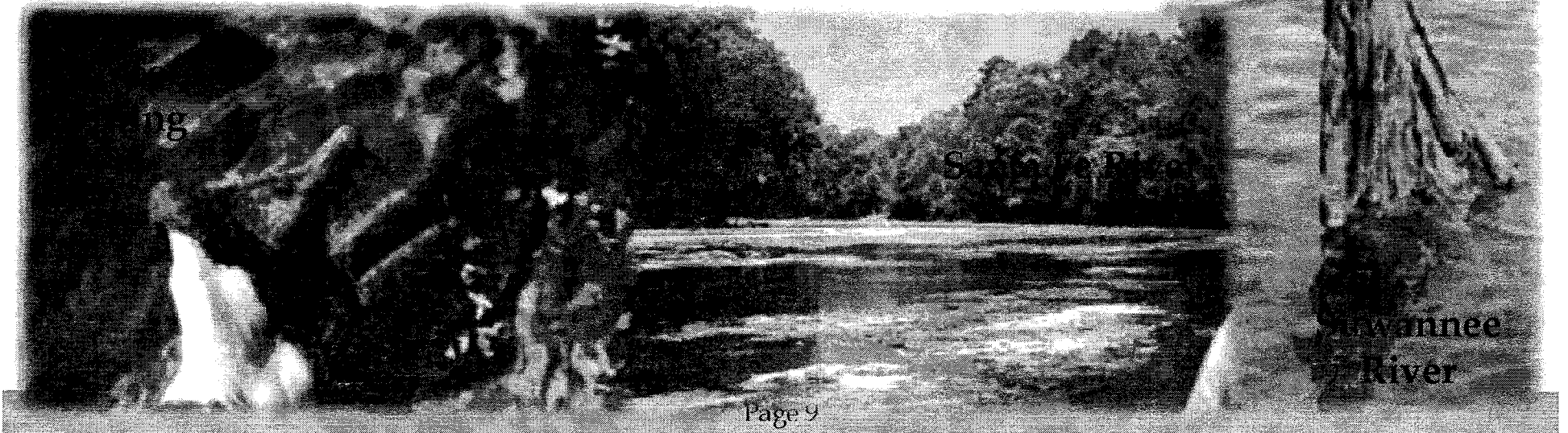
- **Identifying healthy streams as impaired**
- **Inland standards derived to address downstream waterways**
- **No acknowledgement of already established limits and restoration efforts**
 - **Lake Okeechobee and the St. Johns River**





What next?

- **DEP will continue to pursue development of numeric criteria**
- **EPA will propose numeric criteria**
- **Important for Florida interests to comment**
 - **FDEP will facilitate public comment**





Questions?

For more information please contact:

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Agriculture and Natural Resources Committee
Development of Numeric Nutrient Water Quality Criteria for Florida
Florida Department of Agriculture and Consumer Services
November 4, 2009

Background

If numeric nutrient water quality criteria are needed in Florida, then these criteria should be science based and developed by the Department of Environmental Protection (DEP).

The Department of Agriculture and Consumer Services (DACS) does not support a federal take over of state responsibility to establish water quality standards under the Clean Water Act (CWA).

- Establishment of water quality standards is primarily a state responsibility under the CWA
- The DEP forms Numeric Nutrient Technical Advisory Committee (TAC) in 2002
- DACS has a scientific representative on the TAC, participates in 22 public meetings since 2002
- Challenges: Hydrologic diversity of Florida's springs, lakes, flowing waters; Establishing cause and effect relationships between nutrients and environmental impacts
- Numeric Nutrient Plan approved by EPA in 2007, DEP on schedule to propose criteria by rule by the end of 2010
- July 17, 2008 – suit filed against the Environmental Protection Agency (EPA) alleging failure by EPA to exercise a non-discretionary duty under the Clean Water Act (CWA), asks that EPA be directed to promptly set nutrient criteria for the state of Florida
- EPA modifies timeframe for DEP to establish numeric nutrient criteria to January 2010
- Neither DEP nor DACS intervened in the July 2008 suit; EPA committed to state process?
- January 14, 2009 – EPA determination that numeric nutrient water quality criteria necessary in Florida
- July 2, 2009 – suit against EPA amended to include the January 14 “determination” as basis
- August 2009, EPA and Plaintiffs enter proposed Consent Decree to settle the suit; Florida and Intervenors excluded from Consent Decree negotiations

If accepted by the court, the Consent Decree, applicable only to Florida, would obligate EPA to propose numeric nutrient criteria for lakes and flowing waters by January 14, 2010 and promulgate final criteria by October 15, 2010, unless EPA approves criteria proposed by DEP prior to that date. Similarly, EPA would propose and promulgate numeric nutrient criteria for coastal and estuarine waters by January 14, 2111 and October 15, 2111, respectively.

- September 30, 2009 – DACS files motion to intervene in the suit
- DEP suspends numeric nutrient water quality criteria rule development

Effect of Numeric Nutrient Water Quality Criteria on Agriculture

- **This action by EPA will affect all Floridians.**
- **Disproportionate effect on Florida's economy, potentially devastating to agriculture.** Compared with all other states not subject to similar action by EPA, Florida's economy, including agricultural producers would be disproportionately affected.
- Although the CWA exempts discharges from some agricultural sources, including agricultural stormwater runoff and return flows from irrigated agriculture; agriculture will still be greatly affected.
- **NPDES Permits.** Federal criteria will affect National Pollutant Discharge Elimination System (NPDES) permits; examples for agriculture include large dairies and other large animal operations, agricultural processing facilities and packing houses. If the state does not adopt the federal criteria it may have the effect of returning this federal permitting program, which is now delegated to DEP, back to EPA.
- **TMDLs.** Florida has a nationally recognized Total Maximum Daily Load (TMDL) program. Because the CWA specifies that EPA must review and approve state (TMDLs), federal criteria will affect the TMDL program regardless of whether or not Florida ultimately adopts the EPA criteria. This will affect agricultural operations that are required by state law to implement Best Management Practices adopted by DACS rule to meet TMDLs.
- **BMAPs.** There could be a negative effect on the Basin Management Action Plan (BMAP) process the legislature has established to implement TMDLs.
- **ERP Permits.** The effect of the EPA criteria on the state Environmental Resource Permit (ERP) program, such as permits for dredge and fill or stormwater retention, is less clear and will probably depend on whether the state adopts the federal criteria.

EPA Developing Federal Water Quality Standards for Florida Surface Waters

Issue:

- The U.S. Environmental Protection Agency (EPA) plans to propose stringent numeric nutrient water quality standards for Florida by January 2010 for streams, canals, and lakes and by January 2011 for coastal waters. EPA determined that Florida -- and only Florida -- needs federal standards in this short timeframe, even though:
 - EPA's promulgation of standards derailed the Florida Department of Environmental Protection's (FDEP's) efforts to develop scientifically defensible nutrient numbers; EPA had formally endorsed FDEP's efforts as recently as September 2007
 - EPA's approach to developing numeric nutrient standards has serious scientific flaws that will lead to arbitrary standards that will not protect the environment but will have drastic economic consequences for Floridians
 - EPA cannot feasibly develop good numbers by its self-imposed deadlines
 - EPA's approach will cause healthy water bodies to be deemed "impaired" and require substantial investments to "recover" water bodies to nutrient levels they would not naturally meet
 - EPA's federal intervention will disrupt ongoing water quality restoration efforts, because the federal criteria will unseat the state water quality standards that form the basis for those programs.
 - Florida municipal wastewater treatment utilities, agriculture, storm water utilities, and a range of industries will bear the substantial costs of complying with this unsound regulatory policy. The costs will be passed down to Floridians in their utility bills and will put Florida agriculture and industry at a competitive disadvantage with the rest of the country, where numeric nutrient standards do not exist.

Background:

- In August 2008, several environmental groups sued EPA for allegedly failing to promulgate numeric nutrient criteria for the State of Florida based upon the theory that EPA's 1998 Clean Water Action Plan triggered a mandatory duty for EPA to generate new nutrient water quality standards for the State (Florida was not mentioned in the document).

EPA Developing Federal Water Quality Standards for Florida Surface Waters

- To help settle the lawsuit, and avoid setting nationwide precedent, EPA provided a letter to FDEP Secretary Mike Sole on January 14, 2009, declaring that numeric nutrient criteria must be developed for Florida surface waters. In its January 14th letter, EPA stated that it would propose numeric nutrient criteria for flowing waters (streams, rivers, canals) within one year (January 14, 2010); EPA would propose criteria for marine and estuarine waters within 2 years (January 14, 2011). The nutrients of concern are nitrogen (TN) and phosphorus (TP).
- EPA's settlement strategy worked and on August 18, 2009, the environmental groups signed a consent decree settling the case by committing EPA to deadlines set out in the January 14, 2009 document. Under the consent decree, EPA must propose numeric nutrient criteria for Florida fresh waters by January 14, 2010 and finalize the adoption of those criteria by October 15, 2010. For Florida marine and estuarine waters, criteria must be proposed by January 14, 2011 and finalized by October 15, 2011. The consent decree must be ratified by the judge in the case.
- Several members of the regulated community are contesting court approval of the consent decree. These groups highlight the fact that the January 14, 2009 necessity determination was produced to settle the suit; was not the product of any reasoned deliberative process concerning the state's water quality; and commits EPA to develop federal criteria for Florida (and only Florida) in an unrealistic timeframe. The regulated interests have also provided sworn declarations from scientists to the Court emphasizing that there is no methodology for developing statewide numeric nutrient criteria for all Florida waters and that EPA has committed itself to doing the impossible by an unattainable deadline.
- FDEP has been developing numeric nutrient criteria for Florida waters under an EPA-approved development plan for several years. The State's efforts have been slowed, if not suspended, upon learning that EPA settled the suit and committed to proposing federal criteria by the unrealistic timeframes.
- Because EPA cannot possibly determine the nutrient concentrations that will cause impairment for every water body throughout the state by its self-imposed deadlines, EPA is likely to use a "reference water approach" whereby one looks at nutrient data from presumptively clean or healthy waters and draws an arbitrary line on a graph of the data to estimate a criterion that supposedly is the proper concentration for hundreds of diverse

EPA Developing Federal Water Quality Standards for Florida Surface Waters

water bodies across the state. EPA's approach is not endorsed by the scientific community.

- Water quality experts across the country confirm that EPA does not have a scientifically defensible peer-reviewed methodology for establishing statewide criteria for TN and TP and that EPA cannot propose meaningful science based criteria by January of 2010 or 2011 and certainly cannot finalize those criteria by rule by October 15, 2010 (fresh waters) or October 15, 2011 (marine waters).
- EPA is forcing the arbitrary criteria upon the State of Florida and, so far, only the State of Florida regardless of the scientific invalidity of the criteria and with no regard to the devastating financial impact upon the State's already suffering economy.
- Rather than assure environmental benefit, the criteria will force publicly owned wastewater treatment plants and Florida's industrial community to waste resources that could otherwise be directed to legitimate environmental improvements by attempting to meet unsupportable and unreachable nutrient endpoints.
- Facilities currently operating under valid discharge permits may simply be unable to meet the scientifically indefensible criteria. Domestic wastewater facilities will be forced to reduce nutrient discharges to a fraction levels considered to be Advanced Wastewater Treatment (AWT) which allows the discharge of an annual average 3 mg/l total nitrogen and 1 mg/l total phosphorus. Many of these facilities have spent or borrowed millions of dollars to upgrade to AWT. Municipal stormwater permittees, discharging under NPDES MS4 permits, will not be able to attain the criteria as proposed. For many industries contributing significantly to Florida's economy, no technology exists to meet the proposed criteria.