



Florida Farm Bureau Issue Brief

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Numeric Nutrient Criteria

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Issue

In November 2010, the United States Environmental Protection Agency (EPA), finalized water quality standards for the State of Florida, known as numeric nutrient criteria. Numeric nutrient criteria are quantitative water quality standards that will apply only to the State of Florida. By imposing a unilateral federal regulation, EPA is essentially undoing the positive efforts already underway by the state agencies that are most familiar with Florida's unique needs.

Background

Over the past decade, Floridians have spent millions of dollars evaluating water quality and putting in place practices that are effective in improving the state's surface waters. Florida leads the nation in the amount of water quality data collected and protections adopted to preserve or enhance the quality of our waters. The agricultural community has been a key player in the state's evaluation process, encouraging the development and implementation of 'Best Management Practices' which have made a positive impact on Florida's water quality.

Agricultural producers need clean water and support a science-based effort to further protect Florida's waters.

To date, Florida's water quality standard has been a narrative standard, which states: "in no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of flora or fauna." (Chapter 62-302.530, Florida Administrative Code)

A narrative water quality standard has been used for several years because nutrients are unique and unlike any other "pollutant" regulated by the federal Clean Water Act. Unlike most pollutants, nutrients are not only present naturally in aquatic systems, but are absolutely necessary in order for biological communities to function properly.

EPA's water quality standards are litigation driven and establish specific limits on the amount of phosphorus and nitrogen permitted in Florida's lakes and flowing waters.

Why did EPA propose numeric nutrient criteria for Florida?

In the summer of 2008, several environmental groups filed a lawsuit seeking a court order that would force EPA to overstep the efforts already underway in Florida and hastily impose scientifically questionable limits on nutrients. The Florida Department of Environmental Protection (FDEP) made it an agency priority to begin the rulemaking process to establish numeric nutrient criteria. FDEP began their rulemaking process, hosting several public workshops and technical advisory committee meetings which were open to all interested parties.

FDEP's rulemaking efforts were derailed in August 2009, when EPA entered into a settlement agreement with the environmental groups, setting a firm schedule to federally propose and finalize numeric nutrient criteria for the State of Florida. EPA agreed to publish proposed regulations setting forth numeric water quality criteria for lakes and flowing water in the state by January 14, 2010, and to finalize the rules by October 15, 2010. In addition, EPA agreed to publish proposed regulations setting forth numeric water quality criteria for coastal and estuarine waters by January 14, 2011, and to finalize the rules by October 15, 2011.

On June 7, 2010, EPA and the environmental groups agreed to an extension of a few of the consent decree deadlines. EPA agrees that peer review is necessary in the development of: numeric nutrient criteria for estuaries and coastal waters, downstream protection values for estuarine waters, and numeric nutrient criteria for flowing waters in the South Florida region (including canals). EPA will propose numeric nutrient criteria for estuaries and coastal waters, downstream protection values for estuarine waters, and numeric nutrient criteria for flowing waters in the South Florida region by November 14, 2011 and will finalize these criteria by August 15, 2012.

Who should be concerned with EPA's proposed numeric nutrient criteria?

All agriculture producers and citizens of the State of Florida should monitor this regulation closely. There is much concern with the pace at which EPA has agreed to set such specific standards. FDEP has been working towards numeric nutrient criteria for over a decade, and EPA has agreed to finalize statewide numeric criteria for fresh waters within ten months. It is imperative that any criteria established, is scientifically defensible. Good science takes time and cannot be rushed by litigation.

As stated earlier, EPA is mandating regulations that will apply solely to the State of Florida. By placing additional regulatory burdens on the citizens and business in the state, Florida will be at a competitive disadvantage with the rest of the country, where such standards do not exist.

What is the economic impact of EPA's proposed numeric nutrient criteria to Florida's agricultural industry?

The economic impacts and compliance costs of implementing the EPA's proposed numeric nutrient criteria will be significant for Florida's agricultural industry. The Florida Department of Agriculture and Consumer Services, the University of Florida Institute of Food and Agricultural

Sciences, and Florida agricultural engineer Del Bottcher, have prepared a study which analyzes the economic impacts and compliance costs of the EPA's proposed rule.¹

The EPA's analysis of estimated agricultural acreage, as well as methods used for analysis was incomplete and inaccurate. The EPA estimated in the proposed rule that 6.13 million acres of agricultural land will be directly affected by the implementation of numeric nutrient criteria. However, based on water quality data and modeling, a more accurate acreage of agricultural land directly impacted by the implementation of numeric nutrient criteria would be 13.6 million acres.

Florida agricultural producers will most likely have to implement BMPs in addition to on-farm storm water treatment and retention practices, and still may not be able to meet the EPA's proposed numeric nutrient criteria. The total initial costs for implementing both typical BMPs and on-farm storm water treatment and retention practices for all agricultural sectors in Florida is estimated to be \$3.069 billion. Approximately 10 percent of agricultural land will need to be taken out of production to construct the facilities, with a total annual revenue loss of \$631 million. This scenario would lead to a direct loss of 7,780 full-time and part-time employment opportunities in the state's agricultural industry.

Since the EPA's proposed rule fails to provide for agricultural implementation, the economic impact assessment presents a range of costs. The estimated total initial costs for Florida agriculture to implement all applicable practices will range from \$855 million (for implementing typical BMPs) to \$3.069 billion (for combined costs of implementing typical BMPs and additional on-farm water treatment/retention). The annual recurring costs will range between \$271 million and \$974 million.

Rather than the EPA's suggested estimated annual costs of \$135 - \$206 million, the agricultural and natural resources economic impact assessment asserts that a more justifiable estimate of direct costs is from \$902 million to \$1.605 billion annually, and indirect economic impacts to the state would reach \$1.148 billion annually.

Written Comments on EPA's Proposed Numeric Nutrient Criteria

On April 28, 2010, EPA closed the written comment period on their proposed numeric nutrient criteria rule. Florida Farm Bureau Federation (FFBF) and over 22,000 other concerned citizens, local governments, businesses, and organizations submitted comments to EPA.

The EPA's proposed numeric nutrient criteria will broadly classify waters throughout the State of Florida as impaired, force communities and agricultural operations to reduce nutrients regardless of demonstrated need, and unnecessarily exhaust the state's critical economic resources. Predicting that nutrients are causing problems, even in areas classified by the state

¹ Budell, R., Pride, T., Stone, H., Clements, J., Hodges, A.W., Stevens, T.J., Rahmani, M., Borisova, T., Bottcher, D., *Economic Impacts and Compliance Costs for Florida Agriculture of Proposed EPA Numeric Nutrient Criteria*, Florida Department of Agriculture and Consumer Services, Office of Agriculture Water Policy, University of Florida/IFAS, Food & Resource Economics Department, and Soil and Water Engineering Technology, Inc., April 22, 2010. (To view the study in its entirety, refer to Attachment B).

as pristine, demonstrates that the proposed rule bears no reasonable relationship to actual environmental needs. The EPA's proposed numeric nutrient criteria, in many instances, will produce a net environmental detriment by wasting energy and severely impacting local economies.

FFBF has requested that the EPA seriously consider withdrawal of the proposed numeric nutrient criteria rule and allow the FDEP to develop scientifically defensible criteria.

In the alternative, FFBF asked that the EPA consider the following:

- Correct technical deficiencies within the proposed rule,
- Provide clear and concise implementing provisions,
- Provide viable alternative regulatory approaches, and
- Recognize the state's existing Total Maximum Daily Load program as site specific alternative criteria.

Legislative Status

State Level

The State Legislature has been closely monitoring the federal setting of numeric nutrient water quality criteria, holding several hearing during the 2010 Legislative Session. During the 2011 Legislative Session, several pieces of legislation have been filed addressing numeric nutrient criteria.

Representative Trudi Williams filed House Bill 239, which if passed would:

- Prohibit implementation of certain federal numeric nutrient water quality criteria rules by FDEP, water management districts, & local governmental entities;
- Authorizes FDEP to adopt numeric nutrient water quality criteria for surface waters;
- Provide that certain total maximum daily loads & associated numeric interpretations constitute site specific numeric nutrient water quality criteria; and
- Provide for effect, governance, & challenge of such criteria.

The bill is co-sponsored by Representatives Brodeur, Caldwell, Steube, Van Zant and Burgin. The companion bill, Senate Bill 1490, has been filed by Senator Greg Evers.

Senator Charles Dean has filed a similar bill, Senate Bill 1090. This bill prohibits the FDEP, the water management districts, and other governmental entities from implementing federal rules relating to numeric nutrient water quality criteria. This bill also provides that the prohibition does not limit a water management district or a state, regional, or local governmental entity from applying for a pollution discharge permit or complying with the permit or from implementing certain practices or measures.

Representative Greg Steube has filed House Bill 1401, a memorial which urges Congress to keep EPA from overextending its mandate and directs EPA not to intrude into Florida's previously approved clean water program.

Federal Level

Florida's Congressional Delegation has been monitoring EPA's setting of numeric nutrient criteria and is engaged at the federal level. On several occasions, a bipartisan effort has voiced concern with the lack of sound science and economic analysis provided by EPA. The delegation has requested that EPA's numeric nutrient criteria be peer reviewed and that an independent economic analysis be conducted.

In February 2011, Congressman Tom Rooney filed an amendment to the Continuing Resolution which prohibited funding of EPA's numeric nutrient criteria through September 2011. Congressman Rooney's amendment to the Continuing Resolution passed on a vote of 237 yeas to 189 nays. To date, only short term continuing resolutions have been passed and Representative Rooney's amendment has not been included. We appreciate the efforts of the Florida Congressional Delegation and the U.S. House of Representatives. Expect our elected officials at the federal level to continue to voice concerns with EPA's numeric nutrient criteria.

Legal Status

On February 17, 2011, American Farm Bureau Federation and FFBF joined the Fertilizer Institute's lawsuit seeking to vacate the EPA's water quality standards imposed on Florida waters for nitrogen and phosphorus.

The Fertilizer Institute filed suit in December 2010, challenging EPA's water quality standards imposed on the State of Florida. The complaint alleges that:

- EPA's final rule is unlawful and should be vacated because it establishes water quality criteria that ignore causation, regulate water bodies that are achieving their designated use, and restrict nutrients that do not cause impairment;
- By using simple and overly broad statistical principles EPA's rule will classify a certain percentage of water bodies as impaired when they in fact are not;
- EPA's new criteria usurp Florida's statutory authority to develop standards and are fundamentally in conflict with Florida's existing efforts to implement narrative water quality standards for nutrients;
- EPA unlawfully ignored the requirements that water quality criteria be based on true biological impairment and instead established numeric criteria for nitrogen and phosphorus in water bodies where they would not actually cause such an imbalance;
- EPA's shortcut numeric criteria are not based on sound science;
- EPA has ignored its own Science Advisory Board and set nitrogen standards when in fact nitrogen is not limiting (and thus not responsible) for impairment in fresh water bodies.

Farm Bureau Policy

AFBF Policy:

We believe the Clean Water Act (CWA) and the Coastal Zone Management Act should allow state flexibility to develop programs to protect water quality as long as they are no more restrictive than federal mandates. The authority for determining impaired waters, establishing standards and criteria, and developing and implementing appropriate response programs and plans should remain with the state with input from farmer representation. Funding should be expanded for research in new technologies and methods that will enable producers to achieve effective environmental stewardship.

The attainment of water quality standards established by federal action under the CWA should take into consideration the particular and difficult problems caused by naturally occurring pollutants. Solving these difficult problems should not come at the expense of the established users of water.

FFBF Policy:

We encourage the EPA to continue working with USDA, States and agricultural organizations toward the goals of Total Maximum Daily Loads (TMDLs). We also encourage the EPA to recognize functionally equivalent programs for agricultural non-point source discharges as a mean to protect and/or improve water quality. We support the establishment of incentive based BMP programs adopted by the FDACS pursuant to state law and further support the continuation of the CWA exemption of agricultural discharges.

We oppose any attempt to broaden the jurisdiction of the CWA.