# Florida Farm Bureau Issue Brief

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# Proposed New Water Quality Regulations for the State of Florida

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## *Issue*

Florida Farm Bureau has been monitoring a proposal that could have catastrophic effects on agriculture if adopted into rule. The U. S. Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection (DEP) are proposing to enact new stringent numeric nutrient water quality standards in lakes, flowing waters and Class III waters by January 2010 and in coastal waters by January 2011.

Florida Farm Bureau members have adopted policy that supports efforts to protect Florida's water quality. We have been instrumental in working with the state's model Total Maximum Daily Loads program and have developed the County Alliance for Responsible Environmental Stewardship (CARES) program to recognize agricultural operations that are actively participating in the program. However, the proposed numeric nutrient criteria that the DEP published in June 2009, and potentially even more restrictive criteria that may be forthcoming from the EPA, are 1) technically and scientifically debatable; 2) economically unattainable, creating major hardships for Florida's agricultural economy; and 3) potentially adverse to the health of flora and fauna (i.e. freshwater and marine-based plant and animal life).

## *Background*

Through the DEP, the Department of Agriculture and Consumer Services and the five water management districts, Florida has established robust standards and programs to support water quality. In many ways it leads the nation. And for a number of years, the DEP has been working with a Technical Advisory Committee (TAC) comprised of water quality experts from many stakeholder groups on the establishment of numeric nutrient criteria. This is a technically complex undertaking given the variability of Florida's water resources and the fact that it is difficult to establish direct causal links between the levels of nutrients (phosphorus and nitrogen, naturally occurring elements that are necessary for biologic well-being) and imbalances of fish and plant communities; especially when many other factors come into play with respect to the health of an ecosystem.

DEP Secretary Mike Sole has pointed out that his agency has spent countless hours researching the different nutrient demands in Florida's thousands of waterways. Likewise, EPA acknowledged the difficulty in establishing numeric standards for nutrients in its 1998 "National Strategy for the

Development of Regional Nutrient Criteria." Nonetheless, working with its TAC, the DEP produced a Numeric Nutrient Criteria Plan in September 2007 which outlined its approach for doing the necessary research, modeling and methodologies for developing numeric nutrient criteria throughout the state. This plan was then submitted to and generally agreed upon by the EPA.

However, approximately one year ago, several environmental organizations in Florida filed a lawsuit in federal court against the EPA Administrator alleging that the agency had failed to comply with its responsibility under the Clean Water Act to force the state of Florida to expeditiously adopt numeric nutrient criteria. As a result of that lawsuit, in January 2009, EPA issued a determination letter to the Florida DEP basically requiring that it meet a strict deadline for adopting such standards (January 2010 for lakes, streams and Class III waters; January 2011 for coastal waters) or else the EPA would step in and establish federal criteria for the state. **It should be observed that these deadlines are litigation-driven and not based on science or technical procedure. Furthermore, Florida is the only state that has been singled out by the EPA with such deadlines and federal oversight. Water quality, at least in northern Florida, is influenced by surface water flows entering the state from Georgia and Alabama, but neither of these states, nor any other state in the country, is being subjected to the nutrient criteria that Florida is facing.**

## *Our Concerns*

1) **We believe the extremely restrictive criteria that the DEP is proposing will be impossible to meet.** To put it simply, the DEP has identified the most pristine lakes and waterways in the state's six different water regions. The concentrations of phosphorus and nitrogen found in these water bodies are then being applied to all water bodies and discharges of water within these regions. It is difficult to comprehend how waters in more developed areas and discharges from commercial, agricultural and public water utilities could replicate absolutely pristine conditions. For example, in the Panhandle, the newly proposed phosphorus concentration is fourteen times more stringent (69 parts per billion) than the current standard for advanced wastewater treatment. Meanwhile, in south Florida, the DEP has decided that numeric nutrient criteria are "To Be Determined," insofar as the agency has not developed a plan for dealing with a region whose water regimes are so based upon and influenced by thousands of miles of canal systems.

2) Although agricultural water supplies are Class IV waters, this only includes the "secondary and tertiary canals". **Agriculture still can "cause or <u>contribute</u>" to the pollutants of a downstream water body.**

3) **The economic impacts of these regulations are inestimable, resulting in dire consequences for the state's overall economy.** Every major sector industry will be affected – agriculture, landscaping, power generation, silviculture, mining, seaports, development, small businesses, even tourist attractions and recreational facilities – basically any enterprise which discharges water. As Secretary Sole was recently quoted, "This is going to affect you and I as Floridians." Clearly, such a regulatory climate will put Florida in a severely disadvantaged position, compared to other states, when it comes to retaining or attracting businesses.

4) **Presently, "artificial" water bodies such as drainage facilities, stormwater lakes , agricultural holding ponds, flood protection systems and even reservoirs for alternative water supply and restoration projects could be required to make enormous investments in water quality technologies in order to meet the criteria and continue to operate for public health and safety and food production.** Clearly, it makes no sense to expend enormous amounts

of public or private funds attempting to meet unattainable water quality standards in artificial water bodies where there will be little or no benefit to natural resources when these same scarce dollars could be put to better use in achieving real environmental protection and gains.

5) **The imposition of such infinitesimal nutrient standards could have detrimental environmental consequences**: excessively reducing concentrations of nutrients could damage fisheries in some of Florida's most productive lakes; environmental restoration could become impractically expensive to undertake; reclaimed water projects could be stymied or cost prohibitive to communities and customers.

## *Conclusions*

The DEP has been working diligently with the TAC and interested parties, such as Florida Farm Bureau, throughout the year to promulgate its proposed criteria. Until recently, the TAC had planned to take the numeric nutrient standard to the Environmental Regulatory Commission (ERC – the body which establishes water quality standards for the state) in October to meet EPA guidelines. **However, on August 19, 2009, the EPA entered into a consent decree in the federal lawsuit under which it would proceed to propose federal criteria for the state in January 2010 and adopt such rules by October 2010. With respect to numeric nutrient criteria for coastal waters and estuaries, the EPA would propose criteria by January 2011 and adopt criteria by October 2011.** As Secretary Sole has expressed, this turn of events has left the agency frustrated. "In light of that decision (by the EPA) to independently propose numeric criteria for Florida's waters, the Florida Department of Environmental Protection is considering whether it would be prudent to continue its own rulemaking efforts on this issue."

**The Secretary's frustration is understandable and certainly reflects the concerns and frustrations of Florida's agriculture industry, businesses, counties, cities, and utilities as we try to make sense out of what the state and federal governments will do regarding the establishment of these strict standards. We respectfully request our membership to contact their state leaders in Washington, Tallahassee and at local levels and ask them to intervene in these procedures and demand that statewide numeric nutrient criteria be established through a science-driven process with adequate time to address concerns and questions of regulated communities, and appropriate, realistic procedures and timeframes for achieving compliance.**