

# **SUMMARY OF PUBLIC COMMENTS ON PROPOSED REVISIONS TO CHAPTER 62-302.400, F.A.C., AND PROCESS DOCUMENT FOR RECLASSIFICATIONS**

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# Public Comments and Responses

- ◆ Inadequate time to comment on revisions
  - ◆ *Additional public workshop scheduled on 2/22/10 with extended comment period (target May for adoption)*
- ◆ Changes to the Classification system should be made after adoption of numeric nutrient criteria
  - ◆ *Classification proposal is not specific to nutrients*
  - ◆ *Need to more accurately characterize waterbody uses, independent of nutrient criteria.*

# Public Comments and Responses

(continued)

- ◆ Petition process too onerous and expensive for petitioners; DEP should propose criteria; improve SSAC efficiency
  - ◆ *Petition for reclassification must be based on comprehensive and defensible scientific evidence to ensure that the existing use is fully protected*
  - ◆ *DEP will develop more appropriate criteria for parameters of interest as data are produced.*

# Public Comments and Responses

(continued)

- ◆ Process document should be changed to include professional determination by all qualified scientists from any entity.
  - ◆ *Change made; the limitation was unintended.*
- ◆ Focus on stream segments for reclassification, not whole waterbodies
  - ◆ *Proposed rule language edited to reflect focus on portions of waterbodies.*

# Public Comments and Responses

(continued)

- ◆ Rule would undermine pollutant source control efforts; Reclassifications could interrupt progress of state and local governments toward BMAPs and TMDLs
  - ◆ *The proposed rule requires that downstream water quality to be protected in all cases, therefore, local source control will remain a critical component of water quality protection*
  - ◆ *Reclassification of appropriate waterbodies can actually enhance restoration by properly focusing treatment efforts*

# Public Comments and Responses

(continued)

- ◆ DEP should better define when a reclassification is in the “public interest”
  - ◆ *“Public interest” now better defined in the Process Document as a balance of uses, taking into account public input, especially from elected local government bodies, and economic analysis*
- ◆ UAA should not be required for upgrade
  - ◆ *Terminology amended in the Process Document to reflect that UAA is not required for upgrade. However, the attainability of a proposed higher use still must be demonstrated to justify an upgrade*

# Public Comments and Responses

(continued)

- ◆ Inadequate protection of downstream waters; Burden of water quality control will shift from source control to downstream waters; There is no implementation plan for protection of downstream waters.
  - ◆ *Process Document states that modeling or empirical evidence must demonstrate that downstream criteria will be achieved*
  - ◆ *If this is not the case, petitioner must demonstrate how **water will be effectively treated before it reaches the downstream waters**, or the reclassification to a lower class will not be approved*
  - ◆ *Additional language added to the proposed rule in (9)(c) and (11)(a) and Process Document.*

# Public Comments and Responses

(continued)

- ◆ Further restrict Class III-Limited; focus on physical conditions, not habitat conditions; refine definition; limit to primarily created.
  - ◆ *Document clarified to reflect DEP's intent to restrict potential Class-III waters to artificial and altered portions of waterbodies.*
  - ◆ *Process document requires determination of best attainable physical and biological potential.*
  - ◆ *Applicant must determine:*
    - ◆ *how the system could be restored and at what cost,*
    - ◆ *if restoration is feasible and in the public interest.*

# Public Comments and Responses

(continued)

- ◆ Support a class for exceptional aquatic communities
  - ◆ *Exceptional Class not proposed at this time; however, entities can petition for Type I SSAC to offer additional protection for aquatic life.*
- ◆ Support larger classification matrix as in Florida Stormwater Association petition
  - ◆ *ERC members indicated that they would be hesitant to approve such a complex proposal*

# Public Comments and Responses

(continued)

- ◆ Only methods adopted as water quality standards may be used for a UAA
  - ◆ *A UAA is structured scientific assessment of the factors affecting the attainment of the waterbody's designated uses, including appropriate and scientifically defensible water quality, biological, hydrological, and habitat studies*
  - ◆ *The only CWA requirement for a UAA is that scientifically defensible methods be used. Tools such as the SCI (which is in the IWR) and habitat assessment are scientifically defensible.*

# Public Comments and Responses

(continued)

- ◆ Some commented that ALL criteria must be in place when changing a designated use
  - ◆ *All criteria ARE in place - Class III-Limited criteria are identical to those for Class III*
  - ◆ *As is the case for other Classes, Site Specific Alternative Criteria can be developed for Class III-Limited, but for the case of Class III-Limited, we have "limited" the criteria that are eligible for a SSAC, which must be adopted as part of the classification change*

# Public Comments and Responses

(continued)

- ◆ Rather than current proposal, use “supplemental classifications” (“swamp waters,” “outstanding resource waters,” “nutrient sensitive waters.”)
  - ◆ *This suggestion is applicable to the development of individual criteria for different waterbody types; however, those waterbodies have the same use, so reclassification is not the appropriate mechanism to differentiate between them.*

# Public Comments and Responses

(continued)

- ◆ Broaden waterbodies considered for Class III-Limited. Currently prevents reclassification of most reservoirs, impoundments, or lined storage ponds. Waters altered through *permitted activities* after 1975 should be considered for reclassification
  - ◆ *Artificial waters are eligible*
  - ◆ *Waters modified post-1975 were required to meet Class III use as basis of permit approval, therefore a reclassification is likely not appropriate because it would remove an existing use*

# Public Comments and Responses

(continued)

- ◆ Establish Class III-Artificial category for reclaimed mine waters
  - ◆ *If physical conditions are such that Class III-limited would apply, that is an appropriate option*
  - ◆ *If physical conditions are such that Class III-limited would NOT apply, Type I or II SSACs may be appropriate*
- ◆ If Local Government is the applicant, then special consideration should NOT be afforded to them, as in Section 9(b) of the rule
  - ◆ *DEP disagrees with this position, as local elected official best represent the cross section of local public interest*

# Public Comments and Responses

(continued)

- ◆ Downgrading of Class I or Class II should be prohibited
  - ◆ *Downgrade of Class I or Class II waters can only occur if the drinking water or shellfish harvesting uses, respectively, have never been attained since 1975 (i.e., they are not existing uses). DEP does not anticipate such downgrades.*

# Public Comments and Responses

(continued)

- ◆ Persons who can petition for reclassification to lower class should be limited to those regulated for discharge into the waterbody of interest.
  - ◆ *DEP disagrees, the CWA has no such limitations*
- ◆ For estuarine and marine, peer-reviewed and scientifically defensible methods should be added for proper consideration of Class III-Limited
  - ◆ *Language added to the Process Document, although DEP does not anticipate many downgrades of marine waters.*

# Public Comments and Responses

(continued)

- ◆ DEP should not assume that aquatic life limitation exists in all canals.
  - ◆ *DEP acknowledges that there is valuable aquatic life in canals, but it generally cannot be expected to reflect the natural condition of Florida's streams and rivers. Freshwater canals will likely be composed of more tolerant taxa. The UUA must identify the best potential community possible in light of the habitat and hydrology of each system. Those communities will be protected by Class III-Limited designation.*

Changes made to the document,  
*“Process for Reclassifying the  
Designated Uses  
of Florida Surface Waters ”*

# Process Document Changes

- ◆ Restructured to clarify and make more succinct
- ◆ Expanded assurance of downstream protection
- ◆ Guidance added for:
  - ◆ Determining if change is in the public interest;
  - ◆ Determining appropriate geographical extent of portion to be reclassified; and
  - ◆ Biological assessments for various waterbody types.
- ◆ Added references to rule language to clarify the application of information

# Process Document Changes: Upgrades

- ◆ Added Chapter 2 specific to upgrades which describes DEP's current process and clarify they do not require UAAs
  - ◆ Determining existing or attainable use
  - ◆ Consideration of effect on upstream uses
  - ◆ Data on 6 factors **not required**, but DEP will consider available information
  - ◆ Determine public interest

# Document Restructuring

- ◆ Chapter 3: Reclassification to Lower Class
  - ◆ Focused on UAA process
    - ◆ Is reclassification appropriate?
    - ◆ Components and considerations for UAA
  - ◆ Chapters 4 and 5 provide detail on specific components of Use Attainability Analyses

# Document Restructuring

- ◆ Chapter 4: Waterbody Assessments Relevant to Reclassification to Class III-Limited
  - ◆ Class III-Limited for Recreation
  - ◆ Class III-Limited for Aquatic Life, including guidance for various waterbody types
- ◆ Chapter 5: Economic Analyses for UAAs

# Process Document Changes: Public Interest

- ◆ Identify all uses of waterbody
- ◆ Economic impact of attaining current use
- ◆ Economic impact of reclassification
- ◆ Relative value of competing uses to public
  - ◆ Flood control
  - ◆ Aquatic life support
  - ◆ Recreation
- ◆ Special consideration to local governments that represent full range of uses

# Conclusions

- ◆ DEP carefully considered all public input
- ◆ Process document has been improved as a result of constructive comments
- ◆ Thanks for your input