



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8960

JUL 07 2004



Mimi Drew, Director
Division of Water Resource Management
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee Florida 32399-2400

Re: EPA/State Mutual Agreement on Numeric Nutrient Criteria Development Plan for Florida

Dear Ms Drew:

This letter documents mutual agreement between the Florida Department of Environmental Protection (FDEP) and the United States Environmental Protection Agency (EPA) in regard to the final version of the State's voluntary Numeric Nutrient Criteria Development Plan, December 2003 (Plan), submitted to EPA in final version for review on December 31, 2003.

Nutrient over-enrichment of the nation's waters is a serious problem, but determination of appropriate levels for protection is very complex, and implementation of that protection will be challenging. EPA recognizes that this Plan represents considerable effort undertaken by the State to address this issue. We especially appreciate the close cooperation of your staff with EPA-Region 4 in development of the State's Plan, and your continued support of their participation in our Regional Technical Advisory Group (RTAG). The achievement of mutual agreement on your Plan reflects the success of that process.

EPA's review of your Plan was coordinated between Region 4 and the National Nutrient Team at EPA Headquarters. The Region 4 review included both the Regional Nutrient Coordinators and the Water Quality Standards State Coordinator assigned to your state. Based upon our review, we believe this Plan describes a reasonable process by which the State can develop appropriate protective numeric nutrient criteria for adoption into State water quality standards; and that completion of this process by the target dates indicated in the Plan will provide increased protection of state waters from the effects of nutrient over-enrichment. For your consideration, we have enclosed some comments from our review that might be useful in the further refinement and implementation of your Plan.

At the end of December, 2004 (and annually thereafter), EPA will use the Plan to evaluate the State's progress and determine whether or not the State is likely to complete numeric nutrient criteria development and adoption within the agreed upon time frames. If the State has not met the milestones as scheduled in the plan, EPA will evaluate whether a federal promulgation would be appropriate. At that time, the Administrator may determine that new or revised standards are necessary to meet the Clean Water Act (CWA), and choose to promulgate water quality criteria

for nutrients applicable to surface waters within Florida in accordance with Section 303 of the CWA. However, the Nutrient Criteria Development Plan submitted by FDEP and agreed to here makes this possibility unlikely. EPA will make every effort to assist the State in developing nutrient criteria in a manner consistent with your Plan. We expect the continued cooperation and communication between the State and EPA to lead to scientifically defensible and protective nutrient criteria for the State's waters.

According to the time-line projected in your Plan, we will expect you to submit numeric water quality standards for nutrients for associated waterbody types to EPA for approval during respective Triennial Reviews. In the interim, we request that the State provide annual updates to EPA to document progress according to the Plan. In the event that the Plan needs to be revised, changes can be made with mutual agreement, and EPA will update this letter to document our agreement with the revisions.

We applaud the State for making such a significant commitment of time and resources toward completion of this endeavor. We are very pleased with the quality of your Plan, and appreciate your efforts to prepare and submit it in a timely manner. We look forward to future collaboration and FDEP's productive contributions to the Region 4 nutrient criteria development effort.

If you have any questions now, or in the future, regarding this matter, please feel free to contact the Florida Water Quality Standards Coordinator on my staff, Cecelia Harper at 404-562-9418; or one of the Region 4 Nutrient Coordinators, either Ed Decker at 404-562-9383, or Jim Harrison, at 404-562-9271.

Sincerely yours,



James D. Giattina
Director, Water Management Division

Enclosure

cc: Frank Nearhoof, FDEP
Eric Shaw, FDEP
Greg Knecht, FDEP
Ken Weaver, FDEP ✓
Cecelia Harper, EPA

Review of State of Florida Nutrient Plan for Mutual Agreement
EPA-HQ/OST National Nutrient Team
April 6, 2004

The State of Florida Nutrient Criteria Development Plan (Plan) is clearly written and well thought out. It is clear that the State takes its water quality seriously.

Strong Points

- o The first paragraph speaks to classification which is an important element in the process of nutrient criteria development.
- o Hiring of a consultant, especially one who is an expert and former State limnologist makes imminent sense. Work should be well-executed and coordinated.
- o Using the earlier work on sub-ecoregion and biocriteria work to serve as a basis to develop nutrient criteria should save time and resources.
- o The State has apparently developed an extensive nutrient database for freshwater ecosystems.
- o The plan to fill data gaps is sound.
- o Combining an ecoregional and watershed approach makes sense.
- o The prioritization of waterbodies seems reasonable.
- o The State tested several approaches to nutrient criteria development outlined in the EPA Nutrient Guidance Manuals (paleolimnological coring) and determined that some of these approaches were too expensive to apply on an ecoregional basis but were useful for limited site-specific analysis.
- o The State has formed a Technical Advisory Body that will work with the EPA Region 4 RTAG and coordinated on shared waterbodies among adjoining States.
- o The State will attempt to use the EPA causal and response variables.
- o The plan includes information that suggests the State is aware of the need to refine their designated uses.
- o The use of a physical classification system is desirable to reduce variability in expected relationships.

- o The schedule for nutrient criteria development begins with lakes and streams, then moves to estuaries, and later to wetlands. The data availability is a major determining factor for the schedule.
- o The detailed schedule helps EPA track the important activities.

Some Points for Clarification

- o The plan mentions the expectation that some EPA funds will be needed to make the expected schedule. It is unclear how much funding is needed and how long it will take to carry out the work if the EPA funds are not forthcoming.
- o It is not clear how major dissent by the Environmental Regulatory Commission (ERC) would be managed by the State should such dissent develop.
- o It is not clear whether the State has some idea of minimal data requirements for nutrient criteria development so that major surprises are minimized.
- o It is not clear how criteria between rivers and estuaries will be adjusted when the plan is to begin with rivers. Criteria initially developed to protect designated uses in rivers and streams, may not turn out to be sufficiently protective of downstream estuaries when that analysis is undertaken and may require revision. It is not clearly indicated in the Plan how the State would address this future possibility.
- o Some of the larger estuaries are somewhat protected as they are addressed through the National Estuary Programs in place. It is not clear how the State plans to address the smaller estuaries in terms of priority.
- o The State appears to plan on the use of modeling at some point, but gives little mention of how to balance the approach of combining "reference conditions" with modeling.
- o Although coordination is mentioned, it is not clear how the State will accommodate any differences in designated uses and/or nutrient criteria in interstate waterbodies. This could be one of the more difficult issues to resolve.

Summary

Overall, we find this to be a thoughtful plan. We believe that the plan should lead to improved protection of the State's waterbodies from nutrient over-enrichment.