



Florida Department of Environmental Protection

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Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

August 10, 2010

Ms. Danielle Salvaterra
United States Environmental Protection Agency
Office of Water
Mailcode: 4305T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

Dear Ms. Salvaterra,

The Florida Department of Environmental Protection, (Department), has begun our review of the supplemental notice of data availability and a request for public comment related to the Environmental Protection Agency's (EPA) January 26, 2010, notice of proposed rulemaking, proposing numeric nutrient for lakes and flowing waters within the State of Florida. After our initial review, we have concluded that we need more information in order to prepare meaningful comments. We respectfully ask that you provide the following information or answer the following questions so that a proper review of the notice can be conducted.

1. Nutrient Watershed Regions: The notice of data availability proposed using the same nutrient watershed regions for total nitrogen (TN) and total phosphorus (TP). The reasoning behind the delineation of the regions for TP is fairly clear. The reasoning for TN is not apparent. The notice states that EPA decided to use the same TP regions for TN because "differences in the resulting TN criteria based on these stream classification schemes were minor and the approaches were comparable." The Docket does not contain any information to help the Department and the public understand this statement and subsequently review the application of nutrient watershed regions to TN. Please provide the technical reasoning behind this statement and the supporting analysis so the State can properly comment.
2. Stream Criteria: EPA is requesting comment on two potential approaches to deriving stream criteria, but neither approach contains information regarding what final criteria would be derived by the procedures. Specifically, the proposed criteria contained in the notice of data availability do not contain the required averaging period (duration) or the allowable frequency of exceedance

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(frequency). [See Florida Public Interest Research Group Citizen Lobby, Inc., *Save our Suwannee, Inc., et al. v. EPA, et al.*, 386 F.3d 1070 (11th Cir. 2004).] The Division has looked over the compilation of the data and may be able to make presumptions regarding the duration component, but cannot draw any conclusions regarding frequency. Please provide the duration and frequency associated with the proposed concentrations produced by these methods so that the Florida citizenry can be fully informed when preparing comments.

3. Downstream Protection of Lakes: The EPA is considering the use of the BATHTUB model for deriving criteria for the protection of downstream lakes. The Division supports EPA's movement towards a modeling approach, but more clarification is needed to fully understand how to comment on the application of BATHTUB or WASP for this purpose. Would the model be used to assure attainment of lake Chlorophyll a, or would it also be used to ensure attainment of TP and TN criteria? How would the criteria associated with the model output be expressed?

The Department may realize that more information is needed as we continue our review, but this represents the greatest need at this time. We will ensure that all additional information provided to the Department by EPA is made available to the public. As you know, the September 2nd deadline for submitting comments is only weeks away, so a timely response would be greatly appreciated by all.

Sincerely,



Drew Bartlett, Assistant Director
Division of Environmental Assessment and Restoration

DB/ad