



## *Proposed Extension of Effective Date for Water Quality Standards for Florida's Lakes and Flowing Waters*

### Summary

The EPA is proposing to extend the March 6, 2012 effective date of the "Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule" (inland waters rule) by 90 days to June 4, 2012. An extension will allow EPA to work with Florida Department of Environmental Protection (FDEP) as it takes the steps necessary to finalize new State standards and submit them to EPA for review.

The EPA's final inland waters rule also included a separate effective date for the site-specific alternative criteria provision, which took effect on February 4, 2011. This proposal does not affect or change the February 4, 2011 date.

### Background

Nitrogen and phosphorus pollution (also known as "nutrient pollution") is one of the largest causes of the water quality problems in Florida. Limiting nutrient pollution across the State will help protect the health of Floridians and also preserve Florida's greatest asset—clean water—and the prosperity and jobs that go with it. Florida's tourism industry, the State's number one industry, employs nearly one million Floridians and pumps billions into the State's economy each year, including generating thousands of jobs and well over \$3 billion in taxes.

Nitrogen and phosphorus pollution causes harmful algae blooms which produce toxins harmful to both humans and animals and deplete oxygen needed for fish and shellfish survival, smother vegetation and discolor water. It can also result in the formation of byproducts in drinking water from disinfection chemicals, some of which have been linked with serious human illnesses. Nutrient pollution originates from stormwater runoff, municipal wastewater treatment, fertilization of crops and livestock

manure. Nitrogen also forms from the burning of fossil fuels, like gasoline.

### *Consent Decree and EPA's Inland Waters Rulemaking*

The Florida Wildlife Federation filed a 2008 lawsuit against the EPA, following which the EPA in January 2009 made a determination under the Clean Water Act (CWA) that numeric nutrient standards are needed in Florida. A consent decree settling the lawsuit, entered into in August 2009, requires the EPA to adopt specific or "numeric" nutrient pollution standards for lakes and flowing waters by November 2010.

On December 6, 2010, the final inland waters rule was published in the Federal Register (75 FR 75762), and codified at 40 CFR 131.43. The final rule established numeric nutrient criteria, i.e., numeric limits on the amount of nutrient pollution allowed in Florida's waters while still protecting applicable designated uses. By this action the EPA sought to improve water quality, protect public health and aquatic life and the long-term recreational uses of Florida's waters, which are a critical part of the State's economy. This promulgation was in accordance with the terms of the EPA's January 14, 2009 determination, an August 2009 Consent Decree, and June 7, 2010 and October 27, 2010 revisions to that Consent Decree.

### *State of Florida's Rulemaking*

On October 24, 2011, FDEP sent to EPA a draft rule on numeric nutrient criteria for inland and estuarine waters. On November 2, 2011, EPA sent a letter to Hershel Vinyard, Secretary of the FDEP outlining the Agency's preliminary evaluation of FDEP's draft rule, which indicates that the State's draft rule is consistent with the requirements of the Clean Water Act. EPA believes that the proposed regulatory numeric criteria developed by FDEP represent very

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significant progress in protecting the State's unique aquatic resources.

While EPA's final decision to approve or disapprove any nutrient criteria submitted by FDEP will follow our formal review of the rule and record under section 303(c) of the CWA, our review of the October 24, 2011 draft rules leads us to the preliminary conclusion that EPA would be able to approve the draft rules under the CWA. The Agency's analysis of the October 24, 2011 draft rules and their consistency with the CWA could change should modifications be made before and/or during the State legislative process, or if our review of the technical information and public comments identifies reasons the final rules do not meet the requirements of the CWA.

On November 10, 2011, FDEP proposed numeric nutrient criteria for inland waters as well as a number of estuarine waters for the State, which were subsequently published in the *Florida Administrative Weekly* (Volume 37, number 45, pages 3753 - 3775). The proposed rules were considered by the State's Environmental Review Commission (ERC) on December 8, 2011 and an amended version was unanimously approved by the ERC.

On December 9, FDEP submitted the ERC-approved rules and amendments to the Florida Legislature for ratification during the upcoming legislative session. (The last day of the 2012 regular legislative session is March 9, 2012.) Since the ERC approved amendments to the proposed rules, FDEP must also publish a notice of change, which is expected to be included in the December 23, 2011 edition of the *Florida Administrative Weekly*.

Should the proposed rules be ratified, FDEP will then submit the new or revised water quality standards to EPA for review pursuant to CWA section 303(c).

### About this Rulemaking

The EPA's final inland waters rule is scheduled to take effect on March 6, 2012, except for the site-specific alternative criteria (SSAC) provision, which took effect on February 4, 2011.

The scope of this proposed rule is limited: it only seeks to extend the effective date of the inland waters rule. Hence, this proposed rule is not a new regulation. The proposed rule does not involve technical standards, or impose any economic impact burden on any small entity.

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging nitrogen or phosphorus to lakes and flowing waters of Florida could be indirectly affected by this rulemaking because water quality standards (WQS) are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits.

Categories and entities that may ultimately be affected include (1) Industry, such as those discharging pollutants to lakes and flowing waters in the State of Florida; (2) Municipalities, such as publicly-owned treatment works discharging pollutants to lakes and flowing waters in the State of Florida, and (3) Stormwater Management Districts, including entities responsible for managing stormwater runoff in Florida.

### For More Information

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