

# PROTECTING FLORIDA'S WATER RESOURCES

## *The Truth about DEP's Faux Numeric Nutrient Standards*

Nutrients are substances that can be natural or from man-made sources. When man-made nutrients build up to excessive levels, they can form harmful algae blooms and fish kills. Though nutrients themselves are not toxins, the algae they feed can produce toxins that are dangerous to human health and aquatic life.

The Florida Department of Environmental Protection (DEP) has not had defined nutrient pollution limits, which has led to many waterbodies becoming unsafe for fishing or human contact. The US Environmental Protection Agency, in accordance with the Clean Water Act, had proposed effective science-based nutrient limits (known as numeric nutrient criteria). Now, the DEP is proposing alternative standards that would actually be less protective than no numeric nutrient standards.

Myth	Reality
<p>DEP's numeric standards are as protective as those outlined in the federal rule.</p>	<p><b>Not true.</b> DEP's standards might appear as protective - since the number limits are similar to EPA's, but DEP's implementation approach does not trigger enforcement or corrective actions - rendering those numbers meaningless. Instead of preventing algae blooms and other manifestations of biologically unhealthy conditions, the DEP rule actually requires the system to become very unhealthy and polluted before requiring any water quality improvements.</p> <p>The DEP proposed "trend test" to supposedly identify potential problems would still not result in any pollution reductions until biologically unhealthy conditions are confirmed – so the numerical thresholds don't determine if actions are taken to reduce pollution in DEP's rule, toxic biological conditions do.</p>
<p>Implementation costs will be less than EPA's criteria.</p>	<p><b>Not true.</b> Actually, the DEP's assessment process is far more costly and resource intensive than EPA's. While EPA requires only assessment of whether the numeric criteria was being met or not, DEP's approach requires additional studies that are both time consuming and very expensive.</p> <p>The DEP rule requires that in addition to assessing whether a waterbody exceeds a threshold, that its biological condition also be assessed to confirm an imbalance. In some instances, another study is required to link the exceedance with the unhealthy conditions as well. However, DEP does not commit to do the studies it requires for determining impairment – leaving many polluted waterbodies vulnerable to inaction.</p> <p>Since prevention has been proven to be far most cost effective than pollution clean-up – and because the costs of prevention are shared by the polluters while clean-up is almost entirely borne by taxpayers, DEP's approach of allowing pollution to build to harmful levels rather than incentivizing prevention as EPA's does will cost the taxpayers of Florida far more overall.</p> <p>Once a waterbody has been identified as impaired, the cleanup measures are dictated by state regulation and therefore the associated costs would be the same for waterbodies designated as impaired by EPA's approach or DEP's approach. The only way that the DEP rule lowers' costs is to let polluters off the hook by not requiring clean up and pollution containment on-site where it is needed.</p>

<p>Using Total Maximum Daily Load (TMDL) pollution limits as DEP has proposed is equally protective to numeric nutrient criteria.</p>	<p><b>Not true.</b> TMDL limits are supposed to be reviewed every 5 years and modified as new science is available. DEP has proposed to automatically grandfather existing TMDLs, without regards to ensuring they are sufficiently protective of the waterbodies they are designed to protect based on newer best available science. Furthermore, DEP does not propose to use all of its TMDLs or any of EPA's TMDLs; mostly in cases where those TMDLs are more stringent than DEP's proposed general thresholds.</p> <p>EPA's rule allows TMDLs to be used as site specific alternative criteria (SSAC) if DEP demonstrates that they are adequately protective based on current best available science. However, DEP continues to resist this and insists on automatically grandfathering some DEP TMDLs.</p>
<p>DEP approach is supported by the EPA.</p>	<p><b>Not true.</b> EPA has indicated that criteria consistent with the Clean Water Act need to include true criteria, numeric standards in upstream waters to protect downstream water quality (known as numeric downstream protective values) as well as implementation policies that require a waterbody exceeding nutrient standards to be listed as impaired regardless of other factors (such as biologically unhealthy conditions). DEP's rule contains none of those three provisions.</p> <p>While EPA has indicated that the current rule is potentially "approvable", it has not yet analyzed the details of the rule to determine whether they are consistent with the direction EPA has given as to how to establish sufficiently protective numeric nutrient standards under the Clean Water Act.</p>
<p>Rule sufficiently protects downstream waters</p>	<p><b>Not true.</b> The DEP rule proposes to use a narrative standard in upstream waters to protect downstream water quality. Unfortunately, this is the same exact approach that DEP has been using for years, which has been demonstrated time and time again to be unsuccessful in adequately protecting downstream waters.</p> <p>EPA had directed the DEP in 2009 to create numeric downstream protective values and the National Estuaries Program's (who created DEP's proposed estuarine numeric standards in many instances) had calculated numeric downstream protective values - but DEP has refused to incorporate them into their rules.</p> <p>Since the DEP rule has neither true numeric criteria for Florida's flowing waters that would require corrective actions if they are exceeded, nor numeric downstream protective values tied to meeting the estuarine criteria being proposed, it is absurd to claim that it sufficiently protects downstream water quality.</p>
<p>Rule will not turn waterbodies into large mixing zones or hamper ability to regulate specific discharges.</p>	<p><b>Not true.</b> Because these standards are applied as an average across assessment areas that often includes multiple waterbodies, and are then collectively averaged over a year's time, exceeding them at a particular place and time does not trigger an "exceedance". In fact, the average across the entire assessment area would have to exceed two years before it could potentially be deemed impaired. Therefore, seasonal exceedances which can trigger seasonal harmful algae blooms would not necessarily result in any pollution reduction requirements. The DEP could also allow "hotspot" waterbodies to perpetually exceed the thresholds with no consequence - since they are being averaged with other waterbodies. Thus, inappropriate averaging does hamper the ability to regulate specific pollution dischargers.</p>

<p>DEP's rules establish true numeric nutrient standards for all fresh and marine waters.</p>	<p><b>Not true.</b> DEP's rules, as discussed in the first item above, do not propose true numeric nutrient standards. Instead, they propose "thresholds" for only a small subset of Florida's fresh and marine waters, which can be routinely exceeded without requiring any water quality improvements or pollution reductions.</p> <p>Springs (outside the spring vent), very low or high flow rivers/streams, intermittent river/streams, tidal creeks/rivers, and many other types of waterbodies would never have any numeric nutrient standards under DEP's rule. DEP also has now amended its rule to totally exempt all altered or artificial flowing waters (from canals to natural rivers with water control structures potentially); indicating that they should be re-designated to a lower "designated use" and therefore, have no numeric nutrient criteria (which are only being set for their current higher use) – leaving the downstream waters they flow into with even higher pollution inputs.</p>
<p>DEP's rule requires nutrient pollution reduction requirements for waters exceeding numeric standards.</p>	<p><b>Not true.</b> DEP's rule put waterbodies exceeding its numeric thresholds on "study" or "planning" lists – neither of which requires any pollution reduction requirements. It's not until subsequent studies (which are not required to ever be done) confirm biological condition failure of the waterbody and link that condition to the nutrient exceedance that the waterbody would potentially be verified impaired – thus possibly requiring pollution reductions.</p> <p>However, even if a waterbody routinely exceeds DEP's thresholds coupled with biological assessments, DEP can selectively disregard the data if DEP believes the data were taken during extreme high or low rainfall / flow events or were taken in areas that are non-representative of the ambient water quality (despite its already having been screened and determined as acceptable per DEP's stringent data quality control standards). Therefore, DEP's rule never requires pollution reductions in instances where thresholds are exceeded based on the exceedance alone.</p>
<p>DEP's rules for estuarine systems were well vetted with proper public and stakeholder participation.</p>	<p><b>Not true.</b> DEP stated from the beginning of this rule development process that nutrient standards for estuaries would not be part of the current proposed rules. Not until less than a month before the rule was scheduled to be finalized did DEP mention it would include estuarine standards. These standards had in some instances been developed by the National Estuary Programs with limited stakeholder participation, but in other instances were developed by DEP without any public stakeholder involvement or knowledge during the prior year. Additionally, there was only one public workshop to address the proposed rule language which incorporated these standards for estuaries throughout the state. At this workshop, DEP unveiled the proposed rule language with only a 10 business day comment period for dozens of pages of legal language with hundreds of pages of newly released supporting documentation.</p> <p>DEP formulated their proposed criteria using a "healthy existing conditions" approach, including for estuaries known to be severely degraded. While some estuarine standards were analyzed to ensure they supported state dissolved oxygen standards or the needs of endangered species that inhabited them, other estuarine standards were developed totally in the absence of such analysis. They even set criteria lower than existing water quality for several designated Outstanding Florida Waters, which are supposed to be protected from any lowering of water quality. Therefore, the standards proposed were not properly vetted or have been demonstrated to ensure that they are technically sound and appropriately protective.</p>