

## ***EPA CAVES TO POLITICAL PRESSURE FROM POLLUTERS AND STATE ON NUMERIC NUTRIENT POLLUTION STANDARDS FOR FLORIDA!***

Last Friday, the US Environmental Protection Agency and the Florida Department of Environmental Protection announced an “agreement in principle”. Below is a synopsis of how that action affects the ongoing effort for developing and implementing numeric nutrient pollution criteria for all fresh and estuarine Class I & Class III waters, as well as in-stream numeric downstream protective values for all Class III flowing waters flowing to freshwater lakes or estuaries/coastal waters.

### **What was supposed to be covered per the Clean Water Act and 2009 Consent Decree?**

- All Class I (Drinking) and Class III (Swimmable/Fishable) lakes and flowing fresh waters and coastal and estuarine waters throughout the entire state of Florida are to be covered by having numeric nutrient criteria (NNC) water quality standards (with the only exception being Class III freshwaters considered to be wetlands) as required by a federal consent decree between the US EPA and the environmental groups who sued EPA to compel the adoption of these standards.
- EPA has interpreted this to include numeric standards for both Total Nitrogen and Total Phosphorus nutrient pollution.
- Additionally, EPA had determined that numeric downstream protective values were needed for Class III flowing waters to sufficiently protect the water quality of downstream freshwater lakes or estuaries/coastal waters.

This would have ensured that nutrient pollution was adequately controlled at its source to a level that ensured both upstream and downstream waters would be safe for swimming and fishing - the stated goal of the Clean Water Act.

### **What is now going to be covered per the new EPA-DEP agreement?**

- ✓ Freshwater lakes
- ✓ Freshwater natural rivers north of the Caloosahatchee River, Lake Okeechobee and St. Lucie Rivers (but only those with no channelization or Water Management control structures)
- ✓ Estuaries and coastal waters (Note: EPA is now withdrawing its standards for these waters not covered under state rule, and allowing the state to develop state NNC for them instead)

The small minority of the state’s flowing waters that will have state “numeric thresholds” have to become biologically impaired or manifest prolonged unsafe levels of algae in order to even have criteria developed and applied. Exceeding the state’s streams “nutrient thresholds” does not necessarily trigger any nutrient pollution control efforts under the state’s implementation plan.

### **What is not going to be covered per the new EPA-DEP agreement that was supposed to be?**

- ✗ Intermittent rivers and streams
- ✗ Rivers or streams north of Lake Okeechobee that have been altered through channelization or installation of water management control structures\*

- ✘ Current Class III (Swimmable/Fishable Designated) canals
- ✘ Tidal waters
- ✘ Class III flowing waters (whether totally natural or altered/artificial) south of the Caloosahatchee River, Lake Okeechobee, and St. Lucie Rivers
- ✘ Class III flowing waters in the Everglades Protection Area (EvPA) and Everglades Agricultural Area (EAA) \*\*
- ✘ “Marine lakes”

By EPA’s own calculations, this will allow 85% of Florida’s fresh Class I / Class III flowing waters to be excluded from having numeric nutrient pollution water quality standards entirely. All of these waters will continue to be regulated solely by the current narrative criteria that do nothing to control nutrient pollution until the waters become “impaired” or have prolonged very high algae levels, i.e. unsafe for swimming and fishing.

### **What does the new EPA-DEP agreement mean for numeric Downstream Protective Values (DPVs)?**

- EPA had previously determined numeric DPVs applied in-stream to all Class III flowing waters to freshwater lakes and estuaries/coastal waters were necessary to adequately protect downstream waters.
- Per the Consent Decree, EPA proposed numeric DPVs in their finalized rules and standards – (albeit proposed “pour point” DPVs for South Florida flowing waters to be measured at outfall point to coastal waters, as opposed to original in-stream DPVs to be applied throughout the upstream water as EPA had originally proposed).
- EPA has now reversed its position, amending its prior determination to say that the narrative downstream protection approach the state uses is sufficient.
- EPA is indicating that it will seek to amend the Consent Decree to withdraw all of their numeric DPVs altogether, leaving the current ineffective narrative approach in place.

The absence of numeric DPVs applied in-stream to all Class III flowing waters to freshwater lakes and estuaries/coastal waters, coupled with weak or absent flowing waters numeric nutrient criteria for those fresh and tidal flowing waters themselves, will make it impossible to control pollution discharges into these waters until after the downstream water becomes “impaired” – i.e. not adequately ensuring sufficient protection of any downstream waters.

### **What’s next?**

Much of what EPA has done violates the federal Consent Decree and thus, will have to go back to federal court. Our coalition is still working through advocacy and litigation means to secure the implementation of all of the requirements in the federal Consent Decree, which dictates the timely development and implementation of numeric nutrient criteria to ensure all Florida Class I waters are safe for drinking and Class III waters are safe for both swimming and fishing.

*For more information, please feel free to contact Conservancy of Southwest Florida Director of Natural Resource Policy Jennifer Hecker at (239) 262-0304 x250.*

\*unless the public can prove *frequent* swimming and fishing use; however, the process for proving frequent use is unclear and the decision would be made by the state.

\*\* The EvPA has numeric criteria for Total Phosphorus but *not* Total Nitrogen. The EAA has neither.