



Environmental Advisory

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EPA Imposes First Numeric Water Quality Standards for Nutrients

On November 15, 2010, the U.S. Environmental Protection Agency (EPA) issued a controversial final rule establishing—for the first time—numeric water quality limits on the amounts of nutrients that can be discharged into lakes, rivers, streams and springs within five different inland regions in the State of Florida. Acting in response to a federal consent decree, EPA set specific limits for phosphorus and nitrogen, replacing Florida’s “narrative standard”—similar to the standards used in most other states—which allows discharges to continue as long as there is no discernible effect on the water body. According to the EPA, the narrative standards are general and difficult to apply, and the numeric standards will provide specific measurable guidelines. A second phase of the rule that will set numeric nutrient limits for estuarine and coastal waters within Florida is to be issued by August 2012.

EPA’s rationale for the new standards is that nutrient pollution from phosphorus and nitrogen cause algae blooms that produce toxins harmful to both humans and animals, deplete oxygen needed for fish and shellfish survival, smother aquatic vegetation, and discolor water. EPA estimates that approximately 375,000 acres of lakes, 1,900 miles of rivers and streams, and 550 square miles of estuaries in Florida are impaired by nutrient pollution. Nutrients are among the most common causes of impairment of waters in other states as well.

The Cost of Compliance

The new standards have resulted in controversy—sparking reactions from environmental groups, industry and municipal associations, agricultural interests, and politicians. The focus of the controversy has been on how much it will cost to implement the new standards. EPA estimates that the annual cost to implement the new rule in Florida is between \$135 and \$206 million. EPA assumes that this cost will be the result of the need for wastewater treatment plants discharging into impaired waters to install advanced treatment and the need for agriculture operations to implement a range of Best Management Practices.

Opponents of the rule argue that EPA’s estimates are far too low, claiming that the cost of compliance with the new standards could be as great as \$8.4 billion annually. EPA disagrees, saying that such estimates substantially overstate both the number of nitrogen and

phosphorus pollution sources that may be affected by the rule, and the types of treatment that may be needed to meet the new standards.

Scientific Basis for Standards

Opponents also argue that EPA's proposal is not scientifically sound. The Florida Department of Environmental Protection in particular has challenged EPA's approach and methodology. In response to such comments, EPA noted that it had "consulted with scientific experts in Florida and calculated the standards based on a review of over 13,000 water samples that the State collected from over 2,200 sites statewide."

In reaction to some of concerns raised in comments to the proposed rule, EPA extended the effective date of the rule from the 60 days stated in the proposed rule to 15 months from the rule's publication to allow "cities towns, businesses, other stakeholders and the state of Florida a full opportunity to review the standards and develop strategies for implementation while Florida continues to recover from the current economic crisis."

Going Forward

The ultimate impact of the new standards will not be known for some time. The district court administering the consent decree will now allow parties to challenge the final rule. In addition, the district court's approval of the consent decree is on appeal to the Eleventh Circuit. In the meantime, EPA will be working with the State of Florida, and possibly upstream states, over the next 15 months on how to begin to implement the new standards through permit modifications and other measures. Beyond Florida, EPA has made clear its intent to implement similar standards in other states.

The EPA has posted additional information at its website:
http://water.epa.gov/lawsregs/rulesregs/florida_index.cfm

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