

US EPA ARCHIVE DOCUMENT



Numeric Nutrient Criteria for the State of Florida: Withdrawing the Federal Actions

Summary

EPA is withdrawing federal water quality standards (WQS) applicable to waters of the state of Florida now that Florida has adopted—and EPA has approved—relevant numeric nutrient criteria (NNC). Water quality standards including NNC help to protect and restore the quality of the Nation's surface waters, consistent with the requirements of the Clean Water Act (CWA). EPA has also ceased action on three proposed rules applicable to waters of the state of Florida.

Clean water is vital for Florida. Excess nitrogen and phosphorus, or "nutrient pollution," is the primary cause of water quality impairment throughout the state and causes algae blooms—the thick, green mats that can be toxic, deplete oxygen in the water, and completely reduce water clarity. Nutrient pollution threatens human health and the environment, hurts businesses, costs jobs, reduces property values and otherwise impacts the quality of life for all Floridians.

Consent Decree and Determination

In 2009, EPA determined under CWA section 303(c)(4)(B) that new or revised WQS in the form of numeric nutrient criteria were necessary to meet the requirements of the CWA in the state of Florida.

Later in 2009, EPA entered into a Consent Decree with Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, Environmental Confederation of Southwest Florida, and St. Johns Riverkeeper which established a schedule for EPA to propose and promulgate NNC for Florida's springs, lakes, flowing waters, estuaries, and coastal waters.

The Consent Decree provided that if Florida submitted and EPA approved NNC for the

relevant water bodies before the dates outlined in the schedule, EPA would no longer be obligated to propose or promulgate criteria, as appropriate, for those water bodies.

Rulemaking by the State of Florida

In 2012, the Florida Department of Environmental Protection (FDEP) submitted new and revised WQS for review by EPA pursuant to section 303(c) of the CWA. Later that year, EPA approved the provisions of these rules submitted for review that constitute new or revised WQS. These state WQS included NNC that apply to freshwater lakes, springs, some inland flowing waters, and some estuaries, as well as a quantitative approach addressing protection of downstream waters.

In 2013, FDEP adopted into rule the document entitled "Implementation of Florida's Numeric Nutrient Standards." This document further explains how Florida will implement its criteria for flowing waters and clarifies, among other things, how FDEP will determine which flowing waters in the state will not be subject to the state's NNC. Later that year, EPA approved the portions of this document that constitute new or revised WQS.

Also in 2013 FDEP submitted numeric nutrient criteria for all remaining estuaries and coastal waters in the state for review by EPA pursuant to section 303(c) of the CWA. EPA also approved the provisions of these submittals that constitute new or revised WQS.

These 2013 approvals—coupled with EPA's 2012 approval of FDEP's NNC for springs, lakes and flowing waters—result in Florida having established EPA-approved NNC for all fresh water lakes, springs, estuaries and coastal waters, and the majority of flowing waters in the state.

Withdrawing or Ceasing Federal Rulemaking

Inland Waters Rule (Phase I)

In 2010, EPA published a rule finalizing NNC for Florida's lakes, springs, and flowing waters outside of the South Florida Nutrient Watershed Region ("inland waters rule", 40 CFR 131.43). EPA established these WQS to protect Florida's Class I and III freshwaters from nitrogen and phosphorus pollution.

Florida now has state-adopted, EPA-approved criteria for lakes and springs that are applicable for CWA purposes. On January 7, 2014, the court agreed that EPA is no longer obligated to promulgate NNC for any of Florida's waters. Since there is no need for overlapping federal criteria for such waters, EPA is withdrawing these federal criteria.

Also, EPA is not finalizing its December 14, 2012 proposal to temporarily stay the effective date of the Inland Waters Rule, since this proposal to withdraw makes a temporary stay unnecessary.

Remanded Portions of the Inland Waters Rule

Not long after the publication of the final rule for inland waters, EPA received several legal challenges to its rule. The court invalidated portions of the final Inland Waters rule, and required EPA to re-propose those portions of the rule. EPA re-proposed those elements in 2012 (77 FR 74985).

Florida now has state-adopted, EPA-approved criteria for flowing waters that are applicable for CWA purposes. On January 7, 2014, the court agreed that EPA is no longer obligated to promulgate NNC for any of Florida's waters. As a result, EPA is not finalizing this federal proposed rule.

Coastal Waters Rule (Phase II)

In 2012, EPA also proposed criteria for Florida's estuaries and coastal waters not otherwise covered by EPA-approved state NNC, and inland flowing waters in the South Florida Nutrient Watershed Region (77 FR 74923).

Florida now has state-adopted, EPA-approved criteria for estuaries and coastal waters that are applicable for CWA purposes. On January 7, 2014, the court agreed that EPA is no longer obligated to promulgate NNC for any of Florida's waters. As a result, EPA is not finalizing this federal proposed rule.

For More Information

Visit EPA's website at <http://water.epa.gov/lawsregs/rulesregs/florida-index.cfm>. You may also contact Erica Fleisig at (202) 566-1057 or fleisig.eric@epa.gov.