EPA

Moderator: Jim Giattina
March 8, 2011
10:00 a.m. ET

Operator: Good morning. My name is (Connie), and I will be your conference operator today.

At this time, I would like to welcome everyone to the Federal Site-Specific Alternative Criteria Procedures Conference Call. All lines have been placed on mute to prevent any background noise.

If you should need assistance during the call, press star then zero and an operator will come back online to assist you. Thank you.

I would now like to turn the call over to Mr. Jim Giattina. Please go ahead, sir.

Jim Giattina: Thank you, (Connie), and welcome to everybody that has joined the Webinar today. As (Connie) said, we're going to be discussing the federal site-specific alternative criteria procedures, the draft procedures that we have put out for limited comment.

Today, the Webinar is designed to reach out to the public to discuss the issues related to implementation of the Florida Numeric Nutrient Criteria. And as I said in this Webinar, we're specifically addressing implementation through the site-specific alternative criteria process. Staff and managers from EPA are here both in Region 4 and, I believe, from the headquarters or on the phone line to answer your questions.

As you may be aware, EPA's final rule for numeric nutrient criteria for lake and flowing waters provides for an effective date 15 months after the rule is published in the Federal Register, so that date will be – they will be effective as of March 6, 2012.

The delayed effective date enables us to address issues and answer questions related to implementation of the final rule, something that we have been doing over the last number of weeks both with individual parties as well as in numerous Webinars. The rule also provides for flexibility where site-specific conditions warrant. And one of the areas of flexibility that is built into the rule is the ability to establish site-specific alternative criteria at the federal level, and you can do that where local data supports numeric criteria that are different from that in the final rule.

Many of the stakeholders throughout this process have agreed with the need for numeric standards to meet the goal of claiming safe waters in Florida, so I don't think the goal is in question but many have also emphasized the need for balance and ensuring that we try to approach this implementation in a reasonable and cost-effective manner and in a way that allows for appropriate planning and appropriate next steps. And at the federal level, of course, we view the site-specific alternative criteria as really one way to provide that flexibility.

So after some logistical information, Lauren Petter of the Water Quality Standards Section is going to lead us in the presentation today. For the question-and-answer session, she'll be joined by others here to help answer the questions.

The principals that I have here around the table, in addition to Lauren, include Joanne Benante who is our Water Quality Planning Branch Chief, Annie Godfrey who is the Section Chief, Ed Decker who is one of our nutrient water quality experts, and Tim Wool who is our water quality modeling expert. And then there's a sundry of other folks scattered around the room that, if necessary, can chime in.

Is there any one from EPA headquarters on the line to introduce themselves? OK. All right. They may not have a special line, so we will just proceed.

So again, thank you all for participating in the Webinar. I'm going to hand it over to Annie Godfrey to give you some logistical information about how to manage your questions during the Webinar, and then we'll proceed with a brief presentation from Lauren. Thanks.

Annie Godfrey: Thank you, Jim. In order to ensure that all participants can listen in without issues, we will be muting the audio line for the participants. However, in order to allow for the question-and-answer portion of this Webinar, you will be able to submit your questions electronically through the Chat/Question function located on the menu bar.

If you would like to submit a question, locate the menu bar on the right side of your screen. Expand the Question/Chat box window found near the bottom of the menu bar. Type in your question and then select Send. This will submit your question for our compilation. Please use this option for asking questions as opposed to the option to raise your hand because the muted line prevents us from addressing your raised hand.

As questions are received, they will be compiled and once the presentation portion is over, the EPA panelists will provide answers to the questions. The specific questions will be read to the entire audience followed by an answer or information on how to obtain an answer.

Today's presentation will be made available on EPA's Florida Nutrient Criteria Web site. The specific link is contained in today's presentation slide. In addition, it is our expectation to provide the corresponding portion of the audio once it is made available to us.

To ensure that everyone benefits from a response to their question especially those questions, which we are not able to answer within the scheduled Webinar or may include additional information, EPA will be working on developing a question-and-answer document as a result of the questions and discussion that takes place following the presentation portion of the Webinar.

Once the document is developed, you will be able to view it on EPA's Florida Nutrient Criteria Web page as well.

As you are watching the presentation or at anytime during the Webinar, you can minimize the menu bar by clicking on the orange box with the white arrow located near the top left corner of the menu bar. To expand the menu bar screen again, simply click on the arrow button again.

Lastly, towards the end of the Webinar, a poll will be made available. You may elect to take this poll but you are not obligated to do so.

I'll now turn over to Lauren for the presentation.

Lauren Petter: Right. Thank you, Annie.

As the operator said, we will be talking about the Federal Site-Specific Alternative Criteria Procedures today. So first, I'll go over the objectives of this Webinar. And just to remind everybody there will be some slides that have more detail and you don't have to worry about capturing them all because we will make this available online.

So the main objective of today's Webinar will be to provide background on the federal SSAC provision. Additionally, we're going to describe when a SSAC is appropriate and then we're going to summarize the procedural steps, the necessary components for an application, and EPA's expectations for those SSAC submissions.

Lastly, we will provide clarification on how TMDLs fit into the SSAC process.

With regard to background on the federal SSAC provision on December 6, 2010, EPA's final inland rule was published in the Federal Register. This notice included the SSAC provision specifically. As you can see, 40 CFR 131.43 Paragraph E is that specific location. The SSAC provision became effective on February 4th of this year, which was 60 days from its publication in the Federal Register.

The next few slides – in the next couple of slides, we'll go over generically the language that is provided in that provision to give you an idea of what's contained in the regulation.

SSAC may apply to specific surface waters in lieu of the criteria established in the 2010 final rule. A request for a SSAC should include a supporting rationale that is suitable to meet the needs for EPA's technical support document. I'll discuss the technical support document on the next slide.

Additional provisions that are – statements that are included in the Federal Register speak to that there will be a public notice and an opportunity for comment on EPA's proposed determination. Furthermore, the technical support document which will be based on the applicant's information, and I mentioned on the last slide will address the SSAC and the justification for each proposed determination that EPA will be providing.

The regional administrator shall maintain and make available to the public an updated list of its determinations. This list will be on – available on EPA's Nutrient Criteria website so that the public can keep informed on what changes have been made.

Now, for some more general background on what a SSAC can look like. A SSAC can be developed for total nitrogen, total phosphorus, or in the case of lakes, chlorophyll a and in the case of springs, nitrate-nitrite. SSAC can be applicable to any length of a water body or a watershed so long as the documentation addresses the particular size.

Lastly, SSAC can be more or less stringent than the generally applicable criterion. Additionally, any entity may submit a request for a SSAC. I will discuss who this can be in a couple of slides.

All SSAC must be accompanied by scientific justification documenting that the criteria are protected of the designated uses of the water body. You may be wondering what does scientific justification mean in this case.

Scientific justification for the site-specific criteria may be based on one or more of the following approaches. These specific approaches are outlined in the Federal Register and the CFR itself.

The first option is to replicate the process for developing the stream or lake criteria that was contained in EPA's final rule. The second option will be to conduct a biological, chemical, and physical assessment of a water body's condition. Lastly, the other approach that can be used will be any other scientifically defensible approach as long as it's protective of the designated use.

So I think it's worth mentioning and this is something that we have tried to expand on in our technical assistance document that we'll talk about a little bit later, but it's a discussion on when is the SSAC appropriate.

In order to determine whether a SSAC is appropriate, it's important to realize that SSACs do not modify the designated uses of a water body, rather they are intended to be alternatives to the otherwise applicable criteria that also protect the designated uses of the affected water. So in the case of Florida, the designated uses would be relevant in this case would be Class I or Class III.

Class III represents the fishable/swimmable use and what will be protected in this case and it's specific to, you know, aquatic life and recreation. This is the most common classification in the state.

There are non-SSAC mechanisms that allow – would allow an applicant to address site-specific conditions and those include variances, designated use changes, and compliance schedules with permits. Although not on the slide, there is also the range concept that is part of the rules themselves and allow for a modification of a lake criteria.

The next slide that I will go over would just be sort of the decision flowchart that helps if you were to be considering which situation applied for your given water body, how you would pick the appropriate mechanism.

So there's quite a bit on this slide but I've tried to label the different mechanisms with different letters. So you'll see that box A is modifications to

criterion that's allowed by this rule. It's basically is used in instances where you have either a higher or lower total phosphorus or total nitrogen that meets the chlorophyll a criterion that is within the range that's specifically specified in EPA's rule.

If you follow downwards from the box A, you'll see that this is referring to the range Lake Modification option, which is a one-time option for modifying the total phosphorus and the total nitrogen.

Next, you'll have box B, which is instances where a higher or lower value than the final rule concentration also happens to support the designated use. This, as you can see, if you follow down to the next – the box below it is related to the Federal SSAC process. That's the emphasis of this Webinar and the emphasis of EPA's technical assistance document.

Additionally, there is a box C. You can see these are other modifications that are available per the Clean Water Act and instances where the final rule criteria are not attainable based on one of the 10(g) factors found at 40 CFR 131.10(g). There are other mechanisms that would be appropriate. And you can see, if you follow the box below that this would be consistent with a mechanism that falls under the state rulemaking process. Depending on the short or long-term nature of the need, you could either use a variance or a designated use change.

Last is box D, which is instances with the final rule criteria are attainable but treatment upgrades are required. You can see if you follow down to the box below it that the way that that mechanism would be addressed would lead to the permitting process and you could consider applying for a compliance schedule to allow for that additional time.

On the next slide, I will go through the process for submitting a proposed SSAC. Again, don't worry about capturing all of this information because it will be available later.

If you start with box A at the beginning, the idea here is sort of quickly walk through and let you know that if you were to submit a SSAC, here is kind of the process that you would through. So starting in box A, an entity submits

the SSAC to EPA Region 4 and provides a copy to the Florida Department of Environmental Protection.

As I mentioned earlier, a little bit more detail on who an entity can be, it can be anybody – a county, the state, an environmental organization, or industry – that sort of thing as long as if it isn't the state a copy of that SSAC request should be submitted to EPA – excuse me to the Florida Department of Environmental Protection.

If you go down, you see that once we have received the SSAC request from the entity, EPA will update its Web site so that the public can be aware of what request have been received. At that point, EPA will evaluate the submission to determine whether or not it is complete. Complete is intended to address whether or not there is sufficient information to proceed with EPA's technical review or if more information is needed.

You can see that if EPA evaluates that if the package will be incomplete, it would go to box B in which EPA would return the proposal to the entity and provide comments as to what else would be necessary, and this information will also be updated on EPA's Web page so that the public can be informed.

Alternatively, if EPA determines that the submission is complete, you would move to box C in which EPA reviews the submittal per the Clean Water Act. Following its review, EPA would next complete its technical evaluation which is labeled as box D and then from that point, you can see that there's two decisions, either EPA proceeds to a rulemaking or EPA concludes that the SSAC did not meet the Clean Water Act requirements and that SSAC would not be appropriate.

It looks like our screen has just cut out – (inaudible) EPA expectations. OK. So I think – so we can still see it?

Female: I can see requirements (inaudible)…

Lauren Petter: OK.

Female: …which is quite a lot.

Lauren Petter: Sorry. OK. So I hope everyone can still see it.

So next, I will be talking about the requirements and EPA's expectations following the – sorry. We will – let me just make sure that – that you were seeing slide 11.

Joanne Benante: OK. Take a short break.

Lauren Petter: OK.

Jim Giattina: Having a little technical difficulty on this end, so we're just taking a short break here.

Lauren Petter: OK.

Joanne Benante: OK.

Lauren Petter: Right. Sorry about that. So proceeding on, the requirement and EPA's expectations, as I previously said, there are three possible approaches. The first is utilizing the methodologies contained in EPA's final regulation. This can be through the lakes or streams methodologies. Second, would be utilizing a combination of biological, chemical, and physical assessment measures, or lastly, you could utilize other scientifically defensible approaches to modify the total nitrogen, total phosphorus, nitrate-nitrate, and/or chlorophyll these, you know, being water body specific.

Continuing on with our requirements and our expectations, the entity's documentation should fit into one of these three approaches in order to demonstrate the protection of the designated uses. The SSAC application should also demonstrate the SSAC will ensure attainment in maintenance of water quality standards of downstream waters.

There is significant detail that will be too much to go into on this particular Webinar but in order to make sure that the public is aware of all of the detail of our expectations and requirements, EPA will be providing a technical assistance document in the near future on EPA's Web page. We have provided that Web site below in addition to an EPA email address, which will

be able to be used for SSAC applications if you received – very likely received announcement of this Webinar from that email address.

We – for this Webinar, we have included an example fact sheet of something that could be included with your submittal. The point here is this is to give you a snapshot of what the types of information that could be – would be included in the submittal. Obviously, it's important to show – provide location information so that as EPA approved the SSAC, we can clearly distinguish where that SSAC would apply.

In addition, you would also need to include what the existing criteria would be in the absence of the SSAC and what the proposal - the entity is requesting for an alternative criteria. There's also protection of designated use, history of assessment, and identification of downstream waters. These are just – it's like I said a snapshot and additional detail is going to be included in the technical assistance document.

So next, we're going to discuss how TMDLs will fit into the SSAC process since this is something that many people are interested in.

So with regard to consideration of the information that is contained in an existing TMDL, the preamble of the final rule acknowledges that EPA-established or EPA-approved TMDLs may, in some cases, provide sufficient information to support a SSAC. In those cases, the analysis contained in the preparation of a TMDL target could be reused in preparation of the documentation.

Specifically, the SSAC technical assistance document provides possible approaches for the development of SSAC. These aren't any different than what would be required for a water body that doesn't have a TMDL completed. The idea here is just to use the information in your TMDL and any other scientific information that has become available in determining your specific situation, and which approach fits your existing information best. The SSAC technical assistance document will provide further detail on these approaches.

Just for a little bit of extra information, some of the questions that will be important to consider when looking at TMDLs related to SSAC development would be, are the original assumptions still appropriate? Is there a new information since the TMDL was developed that needs to be considered? And does the TMDL analysis ensure adequate protection of downstream water quality standards?

This last bullet just highlights that given the significant amount of analysis and data considered as part of the record for the final rule, this would seem to represent new information that should be considered in light of SSAC development and historical TMDL development.

So next we have – there are common questions that we have received and we know that people have asked and so before we get to the Q&A session that – where people have submitted questions, I will go through some of these that are common because we expect that lots of people will be interested in these particular answers.

So with regard to the first question, can a SSAC be based on load instead of concentration?

I will just offer that on page 75790 of the Federal Register, there is a statement that says, "To successfully develop a federal SSAC for a given lake, stream or spring, a thorough analysis is necessary that indicates how designated users are being supported both in the water body itself and in downstream water bodies at concentrations of either TN, TP, chlorophyll a, or nitrate-nitrite that can be either higher or lower than the federally promulgated applicable criteria."

EPA established the federal criteria as concentration based on several factors – the ability to directly measure the amount of nutrients in water, concentrations are easy to understand and assess and capture the ecological response of the effects of excess nutrients. Therefore, SSAC, which are alternatives to those criteria must be expressed as concentrations. However, a corresponding loading consistent with a concentration may be included in the proposal for the SSAC.

Second, the question is, can I just submit a TMDL as a SSAC?

As I said on some of the previous slides, much of information contained in the analysis and development of TMDL targets will likely be useful in the development of SSAC.

However, EPA is requesting additional information to assist in the review. There may be additional relevant information now available that was not available at the time the TMDL was established. Such information including information developed by EPA during its criteria development process should be addressed in the application. We recommend that you refer to the technical assistance document the EPA will be posting on the Web site in the near future.

Another question that we've received is, can I use less than three years of data to develop my SSAC?

Three years of data reflects the minimum requirement to ensure that the natural variability in the system can be captured. For more details on the minimum requirements, we recommend you refer to the technical assistance document that I mentioned earlier.

The last question on this slide is, does the SSAC address the parameters in the – I guess, it should be, can the SSAC address the parameters in the federal rule or can other parameters be used?

The federal SSAC can only be for total nitrogen, total phosphorus for either a water body type. And in case of lakes, chlorophyll a in addition, and for springs, nitrate-nitrite. If a federal SSAC is not requested for all of the variables, the other parameters would remain the generally applicable criteria for that specific water body.

We have just a couple of more common questions. How does an applicant demonstrate downstream use protection?

An applicant can demonstrate downstream use protection by using the methodologies used by EPA in the final inland rule by using other scientifically – another scientifically defensible approach.

The last common question we have is, is it possible to develop a SSAC for an impaired water?

A SSAC can be developed for a waterbody whether or not it is designated as impaired and whether or not there has also been a TMDL developed.

An absence of impairment is necessary to show existing conditions support the designated uses. However, it is not to say that the water body cannot receive the SSAC if it is currently impaired such as in the case of TMDL waters. The SSAC application must demonstrate that the SSAC will be protective of the use even if a designated use is not being met currently. Other methods described in the technical assistance document may be used to establish SSAC for an impaired water. The water body would then be assessed against the SSAC and any TMDL would be established to implement the SSAC.

That concludes the common questions as part of this Webinar. And I'll – the next slide contains information we previously mentioned, the email address and the Nutrient Criteria Web site on EPA's Web page.

And with that, I'll pass it over to Jim Giattina.