US EPA ARCHIVE DOCUMENT

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

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August 15, 2014

Carol Baschon
Attorney Advisor
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Re: Withdrawal of Federal Numeric Nutrient Criteria for Florida Waters

Dear Ms. Baschon:

This responds to Region 4's inquiry regarding the legal status of the Department of Environmental Protection's numeric nutrient criteria rule in light of EPA's indication that it intends to withdraw its federal numeric nutrient criteria rule currently applicable in Florida. Specifically, on April 2, 2014, EPA published in the Federal Register a notice of the proposed repeal of 40 C.F.R. § 131.43. This rule section contains federally adopted numeric nutrient criteria for specific categories of Florida waters. The public comment period on this rulemaking closed on June 2, 2014, which now allows EPA to finalize repeal of the rule. If EPA now repeals the federal rule, Florida's numeric nutrient criteria will take force and effect.

It is clear that Florida law does not allow the State's numeric nutrient criteria rule to become final and effective until certain steps are taken by EPA, including the repeal of its numeric nutrient criteria. Section 3 of Chapter 2013-71, Laws of Florida, states that once EPA "withdraws all federal numeric nutrient criteria rules in the State of Florida and otherwise ceases all federal nutrient rulemaking in the State of Florida, then Rule 62-302.531(9), Florida Administrative Code, shall stand repealed." Rule 62-302.531(9) is the Department's regulatory limitation that prohibits having two sets of numeric nutrient criteria for Florida's waters.

Since the enactment of the State statute and the rule – and consistent with "the Path Forward" negotiated by EPA and the Department – EPA has issued amendments to the 2009 Necessity Determination, approved the Department's numeric nutrient criteria rules, and has asked the U.S. District Court that entered a Consent Decree requiring federal numeric nutrient criteria to approve a modification of the Consent Decree to conform with the amended Necessity Determination. These actions satisfy two of the

three requirements in Chapter 2013-71, leaving the final hurdle of concluding rulemaking that removes federal numeric nutrient criteria in response to the approval. Once EPA effectuates the repeal of 40 C.F.R. § 131.43, all conditions of section 3 of Chapter 2013-71 will have been met. At that time, the Department's numeric nutrient criteria rules covered by 2013-71 will become effective, as the only such rules covering Florida water bodies.

I appreciate your inquiry and the opportunity to partner with EPA in this important matter. If you have any questions, please contact me at (850) 245-2295.

Sincerely,

Matthew Z. Leopold
General Counsel

cc: Lee Schroer, EPA OGC
Peter Ford, EPA OGC
Jim Giattina, EPA Region 4
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Tom Frick, DEP