



## *Proposed Nutrients Standards for Florida's Streams and Proposed Downstream Protection Values for Lakes*

### Summary

EPA has proposed numeric water quality criteria and downstream protection values to protect aquatic life and human health in certain streams and lakes within the State of Florida from nitrogen and phosphorus pollution. These criteria, and the downstream protection values for lakes, are intended to help reduce water pollution that causes algal blooms.

Algal blooms can discolor water, deplete the oxygen required for fish and shellfish survival, smother vegetation, and produce toxins harmful to humans, animals and ecosystems across the state of Florida. They occur when excess nitrogen and phosphorus, called “nutrient” pollution, flows into waterways via wastewater discharges, urban stormwater runoff and fertilizer runoff.

EPA’s goal is for FDEP to adopt appropriate numeric nutrient criteria for all remaining Florida waters that are determined to be Class I, II, and/or III water bodies, therefore covered by EPA’s January 14, 2009 determination, thereby eliminating the need for EPA promulgation of federal rules. However, court orders resulting from settlement of a 2008 lawsuit required EPA to propose the federal rules announced today.

This proposed rule, along with criteria for certain streams in Florida recently adopted by Florida and approved by EPA, seeks to improve water quality of Florida's streams and lakes, and thereby protect public health, aquatic life and the recreational uses of Florida’s waters, which are a critical part of the State’s economy.

### Background

Florida is known for its abundant and beautiful natural resources, particularly its aquatic resources, which are vital to Florida’s economy. However, nutrient pollution has contributed to

severe degradation of aquatic resources in Florida.

In 2008, the Florida Wildlife Federation filed a lawsuit against EPA, following which EPA made a determination in January 2009 under the Clean Water Act that numeric nutrient criteria are needed in Florida. A December 2009 consent decree settling the lawsuit laid out milestones for EPA to establish criteria in two stages.

The first stage was for inland water bodies outside of the south Florida, which EPA promulgated in December 2010. EPA defined “south Florida” as those areas south of Lake Okeechobee, the Caloosahatchee River watershed west of Lake Okeechobee, and the St. Lucie watershed east of Lake Okeechobee.

Not long after the publication of the final rule for inland waters, EPA received several legal challenges to its rule. These were resolved in a court ruling on February 18, 2012.

While upholding EPA’s January 2009 determination and much of its final December 2010 rule, the court invalidated EPA’s numeric nutrient criteria for Florida’s streams and EPA’s downstream protection value (DPV) for lakes that are meeting the lake numeric criteria established in EPA’s final December 2010 rule (“unimpaired lakes”).

The court ordered EPA to re-propose criteria for these waters. Under the consent decree, EPA’s Administrator is required to sign a rule with proposed criteria for these waters by November 30, 2012 (the current proposal) and to sign a final rule by August 31, 2013. EPA is only required to establish criteria in waters where Florida has not established their own criteria.

On June 13, 2012, Florida submitted water quality criteria that include numeric nutrient criteria for certain streams in Florida to the EPA

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for review pursuant to section 303(c) of the Clean Water Act, and EPA approved these criteria on November 30, 2012. Therefore, under the consent decree, EPA would no longer be required to propose numeric criteria for these waters.

However, due to a provision of Florida's law and a recent legal challenge in Florida, it is unclear whether Florida's streams criteria will take effect. Therefore, EPA is proposing criteria for streams not covered by Florida's criteria, but may end up finalizing criteria for all streams in Florida if Florida's criteria do not take effect.

### **About This Regulation**

For this proposal, EPA is re-proposing the same numeric total nitrogen (TN) and total phosphorus (TP) criteria published in EPA's final December 2010 rule with further explanation on how the proposed criteria will ensure the protection of Florida's streams. EPA is also proposing DPVs that protect unimpaired lakes from a harmful increase in nutrient levels.

### **Criteria for Florida Streams**

EPA is providing evidence from the scientific literature on streams outside of Florida that harmful, adverse effects are likely to occur at concentrations above EPA's proposed stream criteria. This information provides additional evidence that the criteria published in EPA's final December 2010 rule are protective of Florida's streams.

### **Downstream Protection for Unimpaired Lakes**

EPA regulations implementing Clean Water Act section 303(c) require that water quality standards "provide for the attainment and maintenance of the water quality standards of downstream waters."

The proposed rule includes three approaches for calculating DPVs to ensure the attainment and maintenance of the water quality standards in unimpaired lakes. These three approaches supplement the two approaches EPA finalized in the December 2010 rule for protection of downstream lakes.

Florida's EPA-approved water quality criteria also include provisions addressing downstream

protection that establish quantitative approaches to ensure the attainment and maintenance of downstream waters consistent with EPA's regulations. However, the provisions themselves do not consist of numeric values and the consent decree requires EPA to sign rules proposing numeric DPVs for Florida by November 30, 2012.

Therefore, EPA is proposing numeric DPVs to comply with the consent decree. EPA has also amended its January 2009 determination, and will ask the court to modify the consent decree to not require EPA to promulgate numeric DPVs for Florida. If the court agrees, EPA will not finalize the numeric DPVs proposed in this rule.

### **For More Information**

Contact Mario Sengco at (202) 566-2676 or [sengco.mario@epa.gov](mailto:sengco.mario@epa.gov), or visit [http://water.epa.gov/lawsregs/rulesregs/florida\\_inland.cfm](http://water.epa.gov/lawsregs/rulesregs/florida_inland.cfm)