



FWEA Utility Council

Protecting Florida's Clean Water Environment

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Update: Numeric nutrient criteria

The FWEA Utility Council has assumed a leadership role opposing EPA's plans to promulgate federal numeric nutrient water quality standards for Florida. On August 13, 2009, the Utility Council filed a notice of its intent to sue EPA for EPA's failure to comply with the Clean Water Act, when (in January 2009) EPA decided that Florida – and only Florida – needed statewide numeric nutrient water quality standards. The Utility Council had obtained documents from EPA which indicated that EPA's motivation for setting federal standards was to promote settlement of an ongoing lawsuit in Florida and avoid the potential national implications of a negative ruling in that lawsuit. EPA's legal strategy worked; on August 19, 2009, EPA and the environmental litigants in the lawsuit entered into a consent decree (i.e. a settlement agreement that requires judicial sign-off) that committed EPA to adopting statewide numeric standards by October 2010 (for streams, canals, and lakes) and October 2011 (for coastal waters). Less than a week after EPA submitted this consent decree with the judge for his signature, the FWEA Utility Council filed a motion to join the litigation in an effort to block judicial entry of the ill-conceived consent decree.

The Utility Council's position is that the existing narrative nutrient criteria have served the State well. The Utility Council is supportive of science-based criteria that protect waters of the state, and was actively participating in an ongoing program by the Florida Department of Environmental Protection to evaluate water body specific nutrient criteria. EPA's actions, unfortunately, have derailed this scientific approach. Therefore, we must however oppose EPA's actions as being contrary to law and unscientific. The Utility Council believes that EPA's actions will have numerous unintended consequences, including:

- Result in cleanup standards for numerous streams that are at their natural condition
- Divert public resources from effective projects to projects aimed at achieving arbitrary standards that provide limited or no environmental benefit in many cases.
- Reduce the beneficial use of reclaimed water

Because of this, the Utility Council is actively opposing EPA's plans to promulgate federal numeric nutrient water quality standards for Florida. We will provide member utilities with periodic updates of our progress. The following is a summary of recent and upcoming activities.

Recent Events

- **October 1, 2009.** Florida Department of Agriculture and Community Services file a motion to intervene into the underlying EPA/environmental groups' lawsuit and is opposing entry of the consent decree. DACS filed a brief with the court that makes a

strong case that the consent decree commits EPA to an unreasonable schedule that will lead to arbitrary numeric standards to the detriment of Florida agriculture. DACS also makes the case that Florida's existing water quality standards program is one of the most progressive in the nation and does not need fixing.

- **October 5, 2009.** FWEA Utility Council and other regulated interests file expert scientific testimony with the court demonstrating why EPA's methodologies for developing numeric nutrient criteria are arbitrary and will devastate the Florida POTW sector and other members of the regulated community. International Paper and other interests filed cross-claims against EPA alleging that EPA has failed to comply with the Administrative Procedures Act.
- **October 29, 2009.** Northwest, Suwannee River, and Southwest Water Management Districts file a joint amicus brief with the court stating that EPA's promulgation of numeric standards will cause significant problems for District projects and will not solve Florida's perceived nutrient problems. The South Florida Water Management District is already a party to the lawsuit and is opposing the consent decree.

Pending Utility Council Activity

- **Early November 2009.** Utility Council will file its lawsuit against EPA challenging EPA for its failure to comply with the Clean Water Act, when EPA decided that Florida needed numeric nutrient water quality standards. FWEA UC members will be provided with a copy of that complaint.
- **November 4, 2009.** Florida House Committee to convene a hearing regarding the numeric nutrient criteria issue. Utility Council's legal counsel has provided briefing papers to Committee members explaining the issues and the Utility Council's concerns, and Utility Council representatives will address the committee.
- **November 13, 2009.** FWEA Utility Council members and legal counsel to meet with key EPA staff in Washington DC to discuss the Utility Council's concerns.
- **November 16, 2009.** Court hearing regarding the consent decree. FWEA Utility Council will attend and argue against judicial ratification of the consent decree.
- **December 9, 2009.** Second Florida House Committee hearing regarding the numeric nutrient criteria issue.