



Rick Scott, Governor
Carlos Lopez-Cantera, Lt. Gov.

Environmental Regulation Commission

Marjory Stoneman Douglas Building
Conference Room A
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
Email: ERC@dep.state.fl.us

Cari Roth, Chair
Adam R. Gelber
Joe Joyce
Craig D. Varn
Sarah S. Walton

Hearing Minutes July 26, 2016

I. COMMISSION MEMBERS

Cari Roth, Chair	Present
Adam R. Gelber	Present
Joseph Joyce	Present
Craig D. Varn	Present
Sarah S. Walton	Present

II. DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Drew Bartlett, Deputy Secretary, Ecosystem Restoration
Tom Frick, Director, Division of Environmental Assessment & Restoration (DEAR)
David Whiting, Assistant Director, DEAR
Daryll Joyner, Program Administrator, DEAR, Water Quality Standards Program (WQSP)
Ken Weaver, Environmental Administrator, DEAR, WQSP
Eric Shaw, Environmental Manager, DEAR, WQSP
Robert Williams, Chief Deputy General Counsel, Office of General Counsel
Justin Wolfe, Deputy General Counsel, Office of General Counsel
Stacey Cowley, Senior Assistant General Counsel, Office of General Counsel
Shayna Acree, ERC Coordinator

III. CALL TO ORDER

Commission Chair Roth called the hearing of the Environmental Regulation Commission (ERC) to order at approximately 9:05 a.m., on July 26, 2016, at the Florida Department of Environmental Protection (department), Conference Room A, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Tallahassee, Florida. The hearing began with the Pledge of Allegiance.

IV. APPROVAL OF MINUTES FROM LAST HEARING

Minutes from the December 9, 2015, Commission hearing were unanimously approved.

V. RULE ADOPTION

Those people planning to testify or speak during the hearing were officially sworn in.

Amendments to Chapters 62-302 and 62-303, Florida Administrative Code (Revisions to Human Health-based Surface Water Quality Criteria, and Establishment of a New Surface Water Sub-classification (Class I-Treated) With Associated Reclassification of Six Waterbodies)

Mr. Tom Frick (Director of the Division of Environmental Assessment and Restoration (DEAR)) introduced staff and provided introductory remarks. **Mr. Justin Wolfe** (Deputy General Counsel with the department's Office of General Counsel) presented an overview of the rulemaking requirements under Florida's Administrative Procedure Act. **Mr. Frick** then provided an overview and history of the current human health-based criteria (HHC) rulemaking effort.

Mr. Daryll Joyner (Administrator of the department's Water Quality Standards Program) provided a PowerPoint presentation on the department's proposed changes to Chapter 62-302, F.A.C., pertaining to the establishment of the new Class I-Treated surface water sub-classification. **Mr. Joyner** noted that there are maps being incorporated by reference for the six waterbodies proposed for reclassification into the new sub-classification. **Mr. Joyner's** presentation also included the required findings that the Commission must make in order to reclassify surface waters.

Commission Chair Roth asked what triggers future reclassifications to Class I-Treated. **Mr. Joyner** responded that this situation would be triggered whenever the department issues a construction permit for a new drinking water facility that would use Class III waters as its source water.

Commissioner Joyce asked whether there is a drinking water facility on Taylor Creek Reservoir now. **Mr. Joyner** explained that there was an existing facility. The department is currently looking at an appropriate boundary for the Class I-Treated sub-classification for Taylor Creek Reservoir.

Mr. Joyner then provided another PowerPoint presentation on the department's proposed changes to Chapter 62-303, F.A.C., that were related to the new sub-classification.

Commissioner Gelber asked how long the department's web links would last. **Mr. Eric Shaw** (Environmental Manager with the department's Surface Water Quality Standards Program) stated that they do not expire.

Commissioner Joyce inquired whether the department had received any comments from local or regional governments or tribes, regarding the department's proposed new Class I-Treated sub-classification. **Mr. Joyner** noted that Tampa Bay Water had provided comments on the criteria for the sub-classification. He also noted that **Mr. David Whiting** (Deputy Director of

DEAR) had met with the Miccosukee Tribe, but that the discussion was primarily about the human health-based criteria.

Commissioner Gelber asked whether the department was meeting all regulatory requirements. **Mr. Joyner** affirmed that this was the case.

Mr. Joyner also presented several amendments to the rule to update the references to the maps for the waters in the new Class I-Treated sub-classification and to remove Taylor Creek Reservoir from the waters being reclassified. **Commission Chair Roth** asked if there was any timetable for the reclassification of Taylor Creek Reservoir. **Mr. Joyner** indicated that the department needed to reclassify the reservoir by April 1, 2017, in order to meet statutory requirements.

Commissioner Gelber inquired about the four water quality criteria that are different for Class I-Treated versus Class I waters. **Mr. Joyner** responded that the department was proposing the existing Class III criterion for fluoride, noting that the fluoride criteria are not derived in the same way as other human health-based criteria. **Mr. Ken Weaver** (Environmental Administrator with the department's Surface Water Quality Standards Program) added that fluoride criteria development used a different approach than is used for human health-based criteria.

Commission Chair Roth noted that fluoride is added to drinking water to protect dental health, and asked if that's what the department was talking about or if there were natural sources of fluoride. **Mr. Joyner** stated that this is a surface water criterion and that there are both natural sources of fluoride and fluoride discharged from wastewater facilities. He added that, if fluoride gets too high, it can cause problems.

Commissioner Gelber followed up with an additional question about how much fluoride is added at drinking water facilities. **Mr. Joyner** said that it varied and that he did not know how much was added, but that it was certainly less than 10 mg/L and probably less than 2 mg/L. **Mr. Drew Bartlett** (Deputy Secretary for Ecosystem Restoration) reiterated what was in paragraph 403.061(29)(b) and paragraphs 403.861(21)(a) and (b), Florida Statutes, recently enacted under Chapter 2016-01, Laws of Florida, noting that the legislation recognized that drinking water facilities have the responsibility to provide treatment to ensure they meet Safe Drinking Water Act requirements. He added that the law requires that criteria for the new class protect aquatic life and that any degradation in water quality does not cause a burden to the drinking water treatment facility. By combination, both aquatic life and human health are protected. **Commissioner Gelber** followed up by asking which agency regulated the level of fluoride in drinking water. **Mr. Bartlett** replied that this was done by the department under the delegated Safe Drinking Water Act.

Commission Chair Roth opened the floor for public comments on the proposed establishment of a new surface water sub-classification (Class I-Treated). No public comments

were specifically made regarding the department's proposed revisions to Chapters 62-302 and 62-303, F.A.C., that address the new Class I-Treated surface water sub-classification.

Following the department's presentation on the proposed Class I-treated waters sub-classification, **Mr. Weaver** provided a PowerPoint presentation on the department's proposed revisions to human health-based surface water quality criteria in Rule 62-302.530, F.A.C.

During the presentation, **Commissioner Gelber** asked if there was a slide that dealt with benzene. **Mr. Weaver** replied that there was a slide coming up that addressed **Commissioner Gelber's** question. **Commission Chair Roth** asked if the revised benzene criteria are more stringent. **Mr. Weaver** responded that the proposed benzene criteria are more stringent than the proposed criteria presented at the public workshops. **Commissioner Joyce** asked what are the existing benzene criteria. **Mr. Weaver** responded that the existing criteria for benzene are 1.18 micrograms/liter for Class I waters and 71 micrograms/liter for Class III waters.

Mr. Weaver then provided a PowerPoint presentation on the department's proposed revisions to Chapter 62-303, F.A.C., that address the proposed changes to human health-based surface water quality criteria.

Commissioner Joyce asked whether the department samples the water or fish for these criteria. **Mr. Weaver** replied that the department samples the water.

Commissioner Gelber asked if the regional fish consumption rate came from a Florida survey. **Mr. Weaver** replied that the rate came from a survey conducted by the National Health and Nutrition Examination Survey (NHANES), administered by the federal National Center for Health Statistics in the Centers for Disease Control and Prevention, but that it included participants in Florida. **Commission Chair Roth** followed by asking whether the department looked at regional consumption rates or national consumption rates. **Mr. Weaver** verified that the department looked at regional consumption rates.

Commissioner Gelber noted that some criteria were excluded from the analysis and wondered whether these criteria were derived using the same methodology as the proposed criteria. **Mr. Weaver** responded that the excluded criteria were for aquatic life use support and are derived using different methodologies, which is why they were excluded from this rulemaking.

Commissioner Gelber requested more discussion on Particulate Organic Carbon (POC) and Dissolved Organic Carbon (DOC) that were used to develop Florida-specific Bioaccumulation Factors (BAFs). **Mr. Weaver** noted that many of the chemicals proposed for revisions bind onto particles in the water, and that Florida waters are naturally high in POC and DOC. **Commissioner Gelber** wanted to know how these particles are incorporated into fish. **Mr. Weaver** explained that they are not taken in by fish, which means the chemicals are not incorporated into fish tissue.

Commissioner Joyce noted that a lot of fish eaten by Floridians comes from outside Florida. He wanted to know how the department was reconciling this fact with the proposed criteria. **Mr. Weaver** responded that the proposed revisions are designed to protect those consumers who decide to eat a high proportion of Florida fish. **Commission Chair Roth** asked if the proposed rule revisions assume that all the fish come from Florida. **Mr. Weaver** replied that this was the case.

Commissioner Gelber asked what is the impact on the criteria of Florida having more POC and DOC than other states. **Mr. Weaver** explained that the higher DOC and POC results in lower BAFs, which increases the criteria.

Commission Chair Roth opened up the floor for public comment.

Ms. Mary Lee Kiracofe (U.S. Representative Gwen Graham's office) asked that the Commission defer action on the proposed revisions. She then read Rep. Graham's previous letter to Secretary Steverson into the record.

Mr. Roger Baltz (Martin County) noted that Martin County is currently suffering from algae blooms. He read from a letter sent by Martin County to Secretary Steverson and thanked the department for working with Martin County. **Commission Chair Roth** asked whether any of the proposed criteria revisions were related to algae blooms. **Mr. Frick** responded that they are not related since the proposed criteria are limited to human health-based criteria.

Ms. Linda Young (Clean Water Network of Florida) stated that her organization has a petition before the U.S. Environmental Protection Agency (EPA) to promulgate human health-based criteria, including for parameters that are not currently listed. She said that she wants the department to adopt human health-based criteria, but they need to protect human health. She noted that she has tried to understand the differences between the probabilistic model and the deterministic model, and she believes that the probabilistic approach is less protective because it leads to less stringent criteria. She said that the department made a policy decision to change the risk target from 1 in a million to 2 in a million at the 90th percentile. She said that the department's fish consumption distribution only goes up to 21 grams/day, while EPA's goes up to 27 grams/day, and then provided a summary of the fish consumption rates proposed by the department over the last 13 years, noting that the department keeps reducing the fish consumption rate. She concluded by saying that the department has deliberately eliminated conservatism from the criteria to help polluters.

Dr. Jennifer Jurado (Broward County) stated that the proposed criteria are not protective and that the department rejected the deterministic approach because it was overprotective. She was concerned about the "inconsistent use" of local data and would like a review of the fish consumption numbers used in the department's model as well as BAFs. She added that she was glad that the department was adding new criteria.

Dr. Ron Saff (Physicians for Social Responsibility) stated that 40% of Americans will die from cancer and that any increase in allowable pollutants will allow more harm. He noted that male breast cancer is due to exposure to PCE and that the department's proposed revisions weaken PCE criteria. He is opposed to any increase in the criteria and opposed to the use of the probabilistic approach.

Dr. Paul Anderson (Arcadis, representing the Florida Pulp and Paper Association) commended the department for using the probabilistic approach and leading the nation on this issue. However, he noted that the department could refine its methodology, particularly with regard to EPA's food chain multipliers that were developed for the Great Lakes, which are very different than Florida waters. He recommended that the department use Bioconcentration Factors (BCFs) instead of EPA's food chain multiplier.

Dr. Paul Wiegand (NCASI) also commended the department for its scientific approach; however, he noted there is room for improvement. For example, he noted that the department uses the assumption that all waters will be at the maximum contaminant level. He said this is overly conservative and unnecessary, because department rules do not allow Florida waters to exceed the criteria and the vast majority of fish are caught in estuarine or marine waters where fish are not exposed to these parameters. He noted that, based on their calculations, the department's proposed criteria are two times more stringent than necessary.

Mr. Ron Stewart (Florida Pulp and Paper Association) stated that the U.S. National Marine Fisheries Service (NMFS) provides landings data for the fish caught in the U.S. and the amount imported. He said that fish landing rates have not increased over the last three decades, based on the NMFS data, and that most fish consumed in Florida are imported. He added that, of those fish caught in the U.S., most are caught over 3 miles offshore. He recommended that the department not rely on dietary surveys.

Mr. Greg Munson (Florida Pulp and Paper Association and Associated Industries of Florida) thanked the department for its scientific acumen and hard work. He then noted that the department's 2014 Technical Support Document on proposed human health-based criteria was supportable, but that EPA required changes such that the new criteria are no longer supportable. He specifically noted the decisions to follow EPA guidance related to the data requirements and method for calculating Relative Source Contribution (RSC) values. He believes that, because of EPA, the proposed revisions are now arbitrary and capricious.

Ms. Stephanie Kunkel (Conservancy of Southwest Florida) stated her opposition to the proposed criteria, saying that 23 criteria were weakened. She was concerned that the department did not cover all of the criteria and that the expression of the non-carcinogens was changed to annual average. She wants the department to use the deterministic approach with a Florida-specific fish consumption rate.

Ms. Cara Fleischer (Mom's Clean Air Force) stated her opposition to the proposed criteria. She believes that the proposed revisions are being done to support industry.

Mr. Philip Smith said that he is deeply concerned about the quality of Florida's waters, and asked that the Commissioners exercise great care in making their decision.

Mr. William Wallace noted that it is harder to clean-up ground water contamination, and he wants the proposed criteria to be more stringent than the federal criteria.

Dr. Howard Kessler noted that water is the life blood of Florida. He recommended that the most conservative numbers be adopted.

Mr. Thaddeus Hamilton stated his opposition to putting more chemicals into the environment. He is opposed to the proposed revisions.

Ms. Anne Holbrook (Save the Manatee Club) noted that the Commission was missing two members that had not been appointed yet and requested a delay in approval until there was a full Commission. She said she is opposed to the proposed revisions and that she is concerned about subsistence fisherman and synergistic effects.

Mr. Tom Larson (Sierra Club Florida) stated his opposition to the proposed revisions. He said that exposure is bad, and he wants more stringent standards.

Ms. Karen Chadwick (Putnam County Environmental Council) stated her opposition to the proposed revisions.

Mr. Jim Tatum (Our Santa Fe River) said he was concerned that the Commission was missing two members, and he urged the Commission to reject the proposed revisions.

Mr. Eugene Watkins stated his opposition to the proposed revisions.

Ms. Jan Bordelon said that, given the many water quality problems in Florida, why not strengthen the criteria. She added she wanted better department enforcement.

Mr. Lonnie Mann stated his opposition to the proposed revisions.

Ms. Amy Datz stated that she was a former state government employee. She requested that all speakers put their comments in writing for the record. She wanted to know whether this was an "all or nothing" package to adopt. **Commission Chair Roth** explained that the proposal could be adopted as is, adopted as amended, or not adopted at all. **Ms. Datz** asked the Commission to amend the proposed revisions to approve some of the criteria.

Ms. Debbie Lightsey stated her belief that there were legitimate concerns about the methodology and urged the Commission to move with great caution.

Mr. Ben Fusaro noted that the department's proposed revisions to several criteria, including trichlorobenzene, carbon tetrachloride, and chlordane, are much less stringent than EPA's criteria for these parameters. He wondered whether the Monte Carlo method was legitimate.

Mr. Herb Shelton stated his opposition to the proposed revisions.

The Commission then took a break for lunch and public comments resumed thereafter.

Mr. Grant Gelhardt (Big Bend Sierra Club) thanked the department for re-evaluating the criteria and adding criteria, but said he was concerned about the increase in some criteria. He stated his belief that the Monte Carlo method allows more pollution into the environment. He requested that the proposed criteria be revised to meet or be more stringent than EPA's criteria.

Mr. Curtis Osceola (Miccosukee Tribe) requested that the Commission be protective and said that EPA usually sets the minimum level of protection. He stated that the department did not engage in government-to-government consultation with the Tribe and that the department did not take the tribe's water quality standards into account, noting that Florida must ensure the criteria are protective of tribal waters.

Ms. Kathryn Wilder asked whether age was taken into account when deriving the criteria and expressed her concern that the proposed criteria won't protect children. She was also concerned about other harmful effects, such as neurological, and about Florida's unique characteristics. She stated her opposition to the proposed revisions.

Ms. Holly Parker (Surfrider Foundation) noted that surfers are exposed to these chemicals at a much higher rate than average. She asked that the ERC postpone their decision until the empty seats are filled.

Mr. John Quarterman (WWALS, member of Waterkeeper Alliance) noted that he was representing other riverkeepers that could not attend the hearing. He said that the assumptions used in the department's model are important for model reliability. He noted that some of these substances exhibit synergistic toxicity and that there are interactions between ground water and surface water. He wanted a delayed decision until there was a full Commission as well as additional public workshops.

Mr. Bart Bibler stated that he believes the proposed rule revisions are a weakening of standards and that the revisions threaten private drinking water wells given the interconnections between ground and surface waters. He requested that the decision be deferred until the ERC seats are filled.

Ms. Jelani Harvey said the ERC should strengthen the criteria given the water quality problems in the State. She asked that the Commission delay its vote until there is a full Commission. She also requested additional public workshops in south Florida.

Mr. Jack Rudloe noted problems with the blue crab industry in Florida and the high incidence of tumors in sea turtles. He stated that he does not trust the department and that he is opposed to the proposed revisions.

Ms. Jackie Host (Florida Federation of Garden Clubs) asked that the Commission not adopt the proposed revisions.

Ms. Linda Bystrak (Oklawaha Valley Audubon Society) noted that there were five muck farms in the Lake Harris area and that pesticides from the farms killed alligators, turtles and white pelicans during restoration actions.

Ms. Gail Dyckert noted that people used to fish on the Fenholloway River and urged the ERC not to raise any criteria.

Mr. John Dyckert remarked that he was concerned about benzene and fracking. He believes that the proposed revisions are linked to fracking.

Mr. Steve Johnson said that several documents (safety data sheets for a product called "Easy Base") by Dr. Chris Teaf (member of the department's Human Health-based Criteria Peer Review Committee) included false conclusions, and he said the issue should be investigated before the ERC votes on the criteria.

Mr. Bradley Marshall (Earthjustice, representing Miami Riverkeeper) expressed his concern that there was not a full Commission and that there were no public workshops in south Florida. He was concerned that 25 criteria were less protective and noted that some of these compounds exhibit synergistic toxicity. He mentioned his concern over the use of annual averages. He stated his opposition to the proposed revisions.

Mr. Marty Baum (Indian River Riverkeeper) stated EPA provides minimum recommendations, rather than a gold standard. He said the Commission has a choice to be heroes or villains, depending on what they did today. He noted that autism rates are an explosive epidemic and that 10% of Floridians will get cancer. He compared the probabilistic approach to gambling and asked who does it benefit.

Ms. Nicole Williams (Save Our Creeks and Seminole Tribe) noted that no one spoke to them about the proposed criteria. She said that many family members have died due to cancer and that tribal members live off the land. She expressed her concern that plants and animals are affected by lower water quality. She stated her opposition to the proposed revisions.

Mr. Marc Freeman stated that EPA and the department focused on cancer and that we also need to address the fact that these chemicals are also endocrine disruptors. He noted that benzene can affect fetuses. He stated his opposition to the proposed revisions.

Mr. Rich Johnson stated his opposition to the proposed revisions.

Ms. Lynn Nichols stated her opposition to the proposed revisions and her belief that the proposed revisions double the cancer risk. She wants a full Commission and additional public workshops and hearings. She asked that the vote be postponed.

This concluded the public comments portion of the hearing. **Commission Chair Roth** asked **Mr. Joel Hansel** (U.S. Environmental Protection Agency) to approach the microphone to answer any questions from the Commission.

Commission Chair Roth asked whether EPA's national criteria are guidelines or standards. **Mr. Hansel** responded that these are guidance values. He further explained that EPA guidelines are set at a risk level of 10^{-6} , but that EPA guidance allows states to set criteria at risk levels from 10^{-5} to 10^{-6} .

Commission Chair Roth asked if EPA had reviewed the department's methodology. **Mr. Hansel** replied that EPA has been reviewing the department's efforts and methodology for years. He further explained that, while EPA's current guidelines were derived using the deterministic approach, EPA may use the probabilistic approach in the future for deriving criteria. He noted that other programs in EPA use the probabilistic approach. **Commission Chair Roth** asked if EPA had any concerns over the department's approach. **Mr. Hansel** replied that EPA has been reviewing the department's Technical Support Document and had no concerns at this time.

Mr. Bartlett stated that this rulemaking has been incredibly challenging and the department takes this very seriously. He noted that this is the time to update human health-based criteria and that it had been over 20 years since the criteria were updated. He added that, to ensure the criteria are protective, the department has researched each variable that is used in the probabilistic approach, and he is confident the model output protects Floridians.

Commissioner Joyce asked where public workshops had been held. **Mr. Bartlett** responded that the department has been working on this for a number of years. The latest public workshops were in Stuart, Orlando, and Tallahassee. There were additional workshops held before these workshops.

Commissioner Joyce asked whether there was any relationship between the proposed rule revisions and fracking. **Mr. Bartlett** responded that the department saw no connection between the two.

Commissioner Gelber asked how the proposed rule revisions address a situation in which someone consumes more than twenty grams of fish per day, perhaps even more than a pound per day. **Mr. Bartlett** responded that this is one of the strengths of the probabilistic approach, since the approach takes this into account, and allows us to determine the risk to high-end consumers.

Commission Chair Roth asked the practical impact of the proposed revisions on wastewater discharges if the revisions were approved. **Mr. Bartlett** replied that they would monitor for the additional parameters and would continue to monitor existing parameters to ensure compliance with the criteria. He explained that the facilities would need effluent limits if there was a reasonable potential that the discharge would exceed the criteria. **Commission Chair Roth** asked if there are any current permit holders that would not be in compliance if the revisions were approved. **Mr. Bartlett** answered that the department had looked into this for the cost estimate and had found no situations where additional permit holders would be in non-compliance. **Commission Chair Roth** asked if any there were any cases where facilities are non-compliant with existing criteria but would become compliant with new criteria, and **Mr. Bartlett** responded no.

Commissioner Joyce asked if the proposed criteria are fish tissue or water column numbers. **Mr. Bartlett** explained that they were water column numbers. **Mr. Bartlett** further explained that, for the calculations of the criteria, the department assumes that all of the fish people eat are from Florida waters, and that is why the department focused on fish consumption rates rather than landings data.

Commissioner Varn noted that whatever value is used has to be protective to be defensible, and that the key is whether the model is good or bad, and that will be the basis of his decision on the criteria.

Commission Chair Roth asked why the department chose to use the probabilistic approach. **Mr. Bartlett** responded that consideration of this approach began while working with the University of Florida on the risk assessment, which relied on models. He said the department then concluded that it was better to use the same method for derivation of the criteria as for the risk assessment, and that when the department convened a human health-based criteria Peer Review panel to discuss possible approaches to deriving criteria, the panel agreed that this was the appropriate approach.

Commission Chair Roth noted that it would have been easier to keep some parameters at their current criteria levels and asked why the department chose not to maintain those levels for those parameters becoming less stringent. **Mr. Bartlett** explained that the department considered keeping current levels, but that the department must implement state and federal law, which require the criteria be based on logic, facts, and science. By treating all human health-based criteria the same, the department avoids being arbitrary or capricious.

Commission Chair Roth asked if the probabilistic approach was chosen first or if there was an end goal in mind. **Mr. Bartlett** responded that the department looked at all the variables and that this is just the outcome of the model.

Commissioner Walton noted that it appeared there were seven carcinogens that would exceed the EPA range and wanted an explanation as to what this means. **Mr. Frick** recalled Mr. Hansel's description of EPA's criteria as a range and acknowledged that there are a few compounds that are on the edge of the allowable range. He noted that for some cases the differences are explained by rounding.

Commissioner Varn asked if Silvex is a trade name. **Mr. Frick** affirmed that it was. **Commissioner Varn** followed up by asking why the department's proposed number for Silvex was different from EPA's. **Mr. Frick** explained that the department's proposed number uses Florida-specific inputs in the probabilistic approach. **Mr. Weaver** further explained that there are differences in the Bioconcentration Factor (BCF) between Florida's number and EPA's (national) number.

Commissioner Joyce asked whether the department had actual NHANES data sets for the regions used to derive the proposed criteria. **Mr. Weaver** replied that the department had such data sets. **Commissioner Joyce** followed up by asking whether that included raw data sets. **Mr. Frick** explained that the department did not have the raw data sets, since they could not be released by NHANES under federal Health Insurance Portability and Accountability Act (HIPAA) laws, but that the department has the summary information.

Commissioner Joyce inquired as to why the Commission cannot address Class I-Treated waters and human health-based criteria separately given that EPA's recommendations for human health criteria are guidelines. **Mr. Frick** responded that, absent approval of the department's proposed human health-based criteria, EPA could not approve the new Class I-Treated sub-classification if it had the same criteria as the current Class I criteria since the underlying data and science have changed since 1992. **Commissioner Joyce** added that, with the numeric nutrient criteria, our goal was to have one set of criteria. **Mr. Frick** noted that with the nutrient criteria, our goal was to be as Florida specific as possible, which is also the case for the human health-based criteria.

Commissioner Walton noted that there are some chemicals that the department is not proposing for revision at this time and reviewed three of the reasons the department provided for why it was not proposing criteria. **Mr. Frick** stated that there were a number of reasons why they are not included in the current proposal, including some are banned substances, some have recently updated criteria with a more sensitive aquatic life end-point, and some are currently under active EPA review and analysis for revisions. He added that these compounds will be addressed and updated when EPA revises their recommendations. **Commissioner Walton** noted that arsenic is not included in the current revisions. **Mr. Frick** responded that we have existing criteria for arsenic and that EPA is conducting a re-analysis of arsenic and may revise the

recommended criteria. The department will update the criteria for arsenic once EPA has issued revised guidance.

Commissioner Walton noted the Commissioners are not charged with picking ERC members and asked whether it was required to have a full Commission to vote on the department's proposed revisions. **Ms. Stacey Cowley** (Senior Assistant General Counsel with the department's Office of General Counsel) stated that there is no requirement for a full Commission, but that there must be a quorum of Commissioners (four) present.

Commission Chair Roth noted that there were no public comments on the department's amendments to the proposed rule revisions and asked the Commission members if there was a motion to approve the amendments. **Commissioner Varn** made a motion to approve that was seconded by **Commissioner Walton**. The motion passed unanimously.

Commission Chair Roth disclosed for the record that her law firm has a client (Tampa Bay Water) potentially affected by the Commission's decision related to reclassification of the Tampa Bypass Canal. She noted she was not contacted by her client about the issue, but she planned to file the proper disclosure paperwork.

Commission Chair Roth asked for discussion on the proposed rule.

Commissioner Joyce proposed a motion to separate out the proposed revisions regarding the new Class I-Treated sub-classification and the revisions to human health-based surface water criteria. **Mr. Frick** reiterated that the current human health-based water quality criteria would not be approved as the Class I-Treated criteria because the underlying science has changed. **Commissioner Walton** asked if that was due to the fact the current criteria were based on old EPA guidance. **Mr. Frick** said it was due to the new toxicological data, and recalled **Mr. Bartlett's** comments that all input values must be supported by current science.

Commission Chair Roth suggested that the ERC table the motion until the Commission votes on the entire package.

Commissioner Walton noted that we would never be able to adopt criteria that would please everyone.

Commissioner Joyce asked whether there is a deadline by which the proposed revisions must be resolved. **Mr. Frick** explained that the recent legislation required the establishment of the new Class I-Treated surface water sub-classification by next Spring and that the department may have up to three years to update the human health-based criteria after EPA's updated recommendations. He added that there is a petition filed with EPA requesting that EPA adopt human health criteria for Florida.

Commissioner Varn noted he was not clear what the pending motion was, and **Commissioner Joyce** said he proposed simply reclassifying the six waters into Class I-Treated.

Mr. Frick noted that there was no existing Class I-Treated classification and this rulemaking would create the classification and the criteria for the classification, which would be based on the new human health-based criteria for Class I with the exception of four parameters. He said he assumed that, under the motion, the existing Class I criteria would apply to the new Class I-Treated waters.

Commissioner Varn asked if this would be consistent with the legislation, given that it said the new class would have criteria in line with Class III. **Mr. Frick** agreed that would be an issue. **Mr. Bartlett** noted the four parameters that would be inconsistent with state law, and added that EPA could not approve the application of the old Class I criteria in Class I-Treated. He said he would not recommend this amendment.

Commissioner Walton asked whether the existing criteria were protective at 10^{-6} . **Mr. Bartlett** said it was calculated using that target but we cannot say they are currently at that target given the new information.

Commissioner Joyce repeated his motion to split the two issues for separate votes, which was seconded by **Commissioner Gelber**. **Commissioner Varn** noted that the ERC is being asked to vote on something that cannot be approved, and given that choice, he will vote against the motion. **Commissioner Gelber** asked how the legislation affects this vote. It was explained that the legislation requires the new Class-I Treated sub-classification have criteria protective of Class III, which would mean that adoption of the Class I criteria for fluorides, chlorides, TDS, and nitrate for Class I-Treated would not be consistent with the legislation. **Commission Chair Roth** noted that she did not think splitting the two issues was defensible, and then asked for a vote. **Commissioner Joyce** and **Commissioner Gelber** voted to split the issues. **Commission Chair Roth**, **Commissioner Varn**, and **Commissioner Walton** voted to consider them together.

Commission Chair Roth returned to the previous motion to approve the rules as amended, making the affirmative findings for reclassification, and asked for discussion.

Commissioner Varn noted that he had received numerous public comments, some of which were very helpful. He said his decision would be based on whether the department's approach is defensible or not. He noted that some criteria are going up and some are going down, and that there are many new criteria. He said he is erring on the side of human health and will vote in favor of the proposed rules.

Commissioner Gelber commended the department for doing a phenomenal job; however, he felt there was still not enough Florida-specific data. He wanted to see the raw data sets and wondered if the department had analyzed all of the criteria the same as had been done for benzene. He noted that the department relied on extensive Florida-specific data to develop

the numeric nutrient criteria. He also noted that further review of the benzene criteria resulted in significant reduction in the criteria and wondered if similar evaluations would result in reductions in other parameters. He closed by saying he will vote against the proposed rules.

Commissioner Walton asked what would it take to get more Florida-specific data. **Mr. Frick** noted that benzene was unique in that there was a range in the cancer slope factors, and that the department used the full range in the revised analysis. He then explained the difficulties involved in conducting toxicological studies, noting they are usually long-term studies with very robust data sets. He said he does not know how long it would take to conduct a Florida-specific fish consumption study but it would take a number of years and millions of dollars.

Commission Chair Roth asked if a previous commenter was correct in saying that the method assumed that all of the fish consumed were from Florida, and **Mr. Frick** said yes.

Commissioner Joyce noted that the ERC deferred voting on the human health criteria in 2013 because it wanted Florida-specific fish consumption data, and that he was going to vote against the proposed rules because the department still does not have Florida-specific data.

Commission Chair Roth thanked everyone for their participation and thanked the department for its effort and dedication. She said she will vote in favor of the proposed rule, noting that the criteria had not been updated since 1992. She said the new criteria will do more good than harm, and the criteria going up will not increase the amounts of toxins in Florida waters. She said it was far worse to delay a vote.

After a motion to approve the department's proposed revisions, followed by a second, the Commission voted 3-2 to approve the proposed revisions. **Commission Chair Roth**, **Commissioner Varn**, and **Commissioner Walton** voted to approve the proposed revisions, while **Commissioner Gelber** and **Commissioner Joyce** voted in opposition.

VI. ADJOURNMENT

Commission Chair Roth asked **Ms. Shayna Acree** (ERC Coordinator) whether there was a September ERC hearing. **Ms. Acree** verified that a hearing has been scheduled for September 21, 2016.

There being no further business to discuss, **Commission Chair Roth** requested a motion to adjourn. **Commissioner Joyce** so moved, which was seconded and passed.

Commission Chair Roth adjourned the hearing at approximately 4:22 p.m.