

May 20, 2021

Via email

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RE: Comments on Triennial Review Documents

We appreciate the opportunity to participate and comment on the draft changes to Chapters 62-302 and 62-303, FAC and related documents developed in the course of the triennial review.

Comments on Proposed Changes to 62-302, FAC

Turbidity Standard

We understand that the Department has decided not to change the existing freshwater turbidity standard of 29 NTUs above background. We support this decision, and request clarification in “62-302.530 Table: Surface Water Quality Criteria.” The language related to marine systems scrolls across the Class III freshwater columns and leaves it unclear that the current **29 NTU above background** is the only criteria that applies to freshwater systems. There is no apparent reason to change the existing language with regard to freshwater.

Implementation Document and References

Section 62-302.300 “Findings, Intent, and Antidegradation Policy for Surface Water Quality” is proposed to be changed as follows:

“(20)(19) The implementation of numeric nutrient standards under Rules 62-302.531 and 62-302.532, F.A.C., shall be implemented consistent with Sections 6.3 to 6.8 and Chapter 12 of the document titled “*Implementation of Florida’s Numeric Nutrient Standards*,” dated March 2021 (Link)April 2013-
(<http://www.flrules.org/Gateway/reference.asp?No=Ref-02905>), which are is incorporated by reference herein.”

The draft language references a new version of the implementation document and appears to restrict its application to interpretation of the NNC to only a few parts of the new document. It is inappropriate to limit the cross-referencing only part of the revised document as other sections clearly give guidance on how NNC should be interpreted.

We strongly object to removal of language that is related to how the NNC are implemented and interpreted. For example, the draft proposes removal of this text from the implementation document:

“Because of the complexity associated with nutrient enrichment effects, no single

assessment tool is adequate to evaluate all potential impacts, and instead, a weight-of-evidence evaluation must be conducted, as described in Section 2.7 of *Sampling and Use of the Stream Condition Index (SCI) for Assessing Flowing Waters: A Primer* (DEP-SAS-001/11), which was incorporated by reference in the rule.” (page 5. April 2013, Using Measures of Flora and Fauna and Regional Nutrient Thresholds in Streams)

None of the limitations or complexities have changed that made the “weight-of-evidence evaluation” appropriate, and in many cases, essential, to proper application of the standards. The Department has ably demonstrated in the past that “no single assessment tool is adequate” and has not presented any analysis to suggest that the statement is no longer true. The removal of this and similar text is simply not justified.

Use of Floral Metrics

The following section of the draft implementation document seems to indicate that if the floral metrics are exceeded at any station, regardless of its representativeness, the entire WBID would be considered as exceeding the criteria even if other stations showed it met the thresholds. We recommend adding a clarification to ensure that all the stations are representative of the WBID. Staff stated that even if the station were at a powerline crossing or some other non-representative location such as a bridge crossing, it would be considered as not meeting the threshold. This is inconsistent with other sections of the document that stress the need to make sure that sampling stations are representative of the WBID. We recommend clarifying this text as follows:

“10.1 303(d) Assessment of the Floral Metrics of the Numeric Nutrient Standard for Streams

If any representative station fails to attain the RPS or LVS evidentiary thresholds based on representative, conclusive results, the WBID will be assessed as failing the expectation for that floral evidentiary threshold, regardless of whether or not the failing station results are the most recent results available in the WBID.”

Comments on Proposed Changes to Chapter 62-303, FAC

Impermissibly Vague Language

The new language adding “other scientifically credible and compelling information meeting the requirements of Chapter 62-160, F.A.C., indicating a waterbody is imbalanced shall also be considered” and used to add waterbodies to the various lists adds unpredictability and subjectivity to the listing process.

“62-303.350 Assessments of Numeric Interpretations of Narrative Nutrient Criterion.

- (1) The numeric interpretations of the narrative nutrient criterion in sections 62-302.531 and 62-302.532, F.A.C., and the nutrient impairment thresholds identified in Rules 62-303.351 through 62-303.354, F.A.C., shall be the primary means for assessing whether a water should be assessed further for nutrient impairment. Other information indicating an imbalance in flora or fauna due to nutrient enrichment, such as algal blooms or mats, excessive nuisance macrophyte growth, decrease in the distribution (either in density or areal coverage) of seagrasses or other native submerged aquatic vegetation, adverse changes in algal species composition, ~~and~~ excessive diel oxygen swings, and other scientifically credible and compelling information meeting the requirements of Chapter 62-160, F.A.C.,

indicating a waterbody is imbalanced shall also be considered for placing waters on the Planning List.”

With no standards or criteria for what might constitute “other scientifically credible and compelling information”, it is impossible to submit meaningful comments on this proposed rule. This frustrates and effectively precludes the opportunity for public review and comment that is required in Florida’s ruling-making process.

IWR Review Cycle

The following section removes the current 5 year cycle for the IWR process and does not specify any new cycle period.

“62-303.700 Listing Cycle.

The Department shall, to the extent practical, develop basin-specific Verified Lists of impaired waters ~~for all surface waters as part of its watershed management approach, which rotates through the State’s surface water basins on~~ within an assessment ~~a five-year~~ cycle.”

The existing schedules and cycles provide predictability and stability for all users and also allows for coordination with BMAP review cycles for impaired waters. The availability of data systems to enable IWR reviews on different cycles is an insufficient justification for changing the current structure. The Department should either provide supporting analysis for making this change or allow the current structure to remain.

Inconsistent Data Periods

Changes intended to clarify the “seven-year” average, “long-term average” and “POR assessment” in 62-303.350 and 62-303.450, FAC are unclear and may not be consistent.

This language appears to allow as few as 10 data points over at least 3 years to represent a long-term or seven year trends, with inadequate requirement for distribution of the data points over the period of the trend assessment. Additional work is necessary to ensure that the statistical approaches to these various assessments are consistent.

Delisting Criteria

The inclusion of the underlined text in the following draft section appears to change the delisting criteria for a single three-year period to three consecutive three-year periods, effectively changing the data analysis period for delisting from 3 years to a minimum of 9 years. A waterbody would be disqualified from delisting for issues occurring in one out of 9 years. We recognize that the Department has provided verbal explanations with a differing interpretation, but the plain language of the proposed rule clearly references “three consecutive 3-year periods”. No justification has been provided for the change.

62-303.720 Delisting Procedure.

2. It was listed based on exceedances of a numeric nutrient criterion expressed as an annual geometric mean or annual mean, and the water attains the magnitude of the criterion for the three most recent consecutive years, which ensures that there will be at least three consecutive 3-year periods that attain the criterion;

The current language should be retained. If the criteria in 62-302, FAC are met during the assessment cycle, the waterbody should be delisted. In any case, delisting processes should be

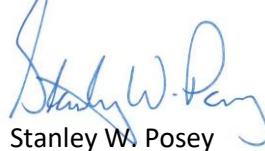
based on the same standards as used for listing.

Additional Public Workshop

Before the triennial review is concluded and these changes are finalized, the Department should conduct at least one additional workshop to discuss any changes that have been made since the initial publication to the proposed rules and the new implementation document. That discussion should include the Department's responses to public comment on both the rules and the implementation document.

Please let us know if you have any questions or would like more information related to our comments.

Sincerely,



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