

FLORIDA ELECTRIC POWER COORDINATING GROUP, INC. (FCG)

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May 18, 2021

Avril Wood-McGrath
Division of Environmental Assessment and Restoration
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 6511 Tallahassee, FL, 32399

Re: Comments Submitted by Florida Electric Power Coordinating Group
Environmental Committee, Water Subcommittee
Triennial Review—Proposed Revisions

Dear Ms. Wood-McGrath:

The following correspondence is provided by the Water Subcommittee of the Florida Electric Power Coordinating Group (FCG) Environmental Committee (EC) in response to the Department's request for public comments following the rule development workshop held May 5, 2021. As requested, these comments have been submitted on or before May 19, 2021. These comments supplement or amend comments submitted by the FCG EC by letter dated November 21, 2019, submitted after the November 2019 workshops.

Assessment of Numeric Interpretations of Narrative Nutrient Criterion—Expanded Scope

The FCG EC remains concerned and does not support the proposed insertion of the subjective “other scientifically credible and compelling” provision into various sections of the Impaired Waters Rule. The purpose of the Impaired Waters Rule is to serve as an objective assessment tool for determining attainment or nonattainment of applicable surface water quality standards. The proposed language inserts unnecessary subjectivity into an otherwise objective assessment process.

DEP has proposed to add language to 62-303.350(1), F.A.C., that would significantly broaden the Department's discretion to place waters on the planning list for suspected nutrient impairment. The proposed amendment reads:

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.

The proposed provision is an exception that swallows the rule. What is “scientifically credible” or “compelling” information is not subject to objective measure. Regulatory certainty is important to the regulated community. The FCG EC has consistently supported DEP rulemaking initiatives that are grounded in sound policy, legislative authority and provide a level of objectivity ensuring that all regulated industries and utilities are treated equally and all parties understand how the rule works and what objective measures trigger regulatory obligations. The proposed language is a step backward is ensuring the objectivity of the assessment process.

Consequently, the FCG EC objects to the addition of this language throughout Chapter 62-303 and opposes the addition of the phrase “or other information is available pursuant to rule 62-303.350, F.A.C., indicating an imbalance in flora or fauna due to nutrient enrichment,” as it is proposed in sections 62-303.351, *Nutrients in Freshwater Streams*; 62-303.352, *Nutrients in Freshwater Lakes*; 62-303.353 *Nutrients in Estuaries and Open Coastal Waters*; and, 62-303.354, *Nitrate-Nitrite in Freshwater Spring Vents*.

Relocation of Trends Analysis from Study List to Planning List and Verified List

The FCG EC submitted detailed comments in its letter of November 21, 2019, stating that the EC could not support the elimination of the trends analysis concept from the Part III of the impaired water rule, *Study List*, and the addition of a trends analysis to Part IV of the rule addressing the *Verified List*. The FCG EC remains opposed to any such changes, as stated in its November 2019 comment letter. However, EC representatives were encouraged to hear Department staff discuss, during the May 5, 2021 workshop, that the study list may be the more appropriate rule section for the updated trends analysis.

Placing the substantive elements of the trends analysis in Part IV of the Impaired Waters Rule raises a number of fundamental issues. First and foremost, listing a waterbody as impaired based on a trends analysis—although there are no exceedances of the applicable water quality standards adopted by rule—creates ambiguity as to the appropriate target once a TMDL is established. The WBID is not exceeding the applicable criteria so a TMDL that would require meeting the existing criteria would not be needed. If the target is some other endpoint that is not the applicable criterion for a particular pollutant, then that endpoint becomes a new criterion. The new criterion must be adopted by rule amendment or as a SSAC to avoid a challenge as non-rule policy. If adopted as a SSAC, the Department will have to overcome the fact that the existing criterion still supports designated uses.

In sum, these types of questions are better addressed within the scope of the study list as part of a collaborative approach involving stakeholders who may be able to provide data and local insight as to the basis of the observed trend.

Accordingly, the FCG EC encourages the Department to include any rule amendments addressing the trends analysis within those portions of the rule establishing the study list.

FCG-EC Submission of Comments

As stated in the letter of November 21, 2019, the FCG has a long history of working proactively with DEP to address unforeseen or unintended consequences resulting from Department initiatives

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and maintaining an open dialogue with Department staff to address FCG member utility concerns. The FCG EC appreciates the opportunity to provide these comments and looks forward to working with the Department as staff moves forward with the triennial review process.

Respectfully Submitted,



Winston K. Borkowski
Hopping Green & Sams
On behalf of:

Florida Electric Power Coordinating Group
Environmental Committee

Copy to:

Tanya Portillo, Executive Director
Florida Electric Power Coordinating Group

Environmental Committee
Florida Electric Power Coordinating Group

