



ASSOCIATED INDUSTRIES OF FLORIDA

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Florida Department of Environmental Protection
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Dear Ms. Sutton:

Thank you for the opportunity to submit comments related to the November 4, 2019 workshop conducted as part of the state's Triennial Review of state water quality standards. We appreciate the hard work and dedication of you and others at the Florida Department of Environmental Protection (the "Department") behind this comprehensive update. While many of the changes do not raise concerns, we write to express serious reservations about the potential narrative standard for turbidity, and the potential inclusion of cyanotoxin criteria/advisory thresholds.

We offer comments on behalf of two associations and their thousands of members. The H2O Coalition is a broad coalition of local government and business interests in Florida, large and small, including counties, farms, manufacturers, municipalities, and utilities. The members closely follow state and federal environmental regulations related to water that may affect them. The H2O Coalition works closely with Associated Industries of Florida ("AIF"). AIF is the voice of Florida business, and is the largest association of business, trade, commercial and professional organizations in Florida, representing the interests of over 7,500 corporations, professional associations, partnerships, and proprietorships. AIF and the H2O Coalition have regularly advocated for the use of sound science in regulatory settings, and extensively participated in the development of the Department's Numeric Nutrient Criteria ("NNC"), among other things.

First, we write to express concerns about the Department's apparent plan to apply a narrative turbidity standard in freshwater. According to the Department's presentation, it is considering adding the following narrative standard in addition to the existing numeric standard for turbidity:

"nor shall turbidity levels be increased to levels that negatively affect designated uses or result in increased sedimentation or reduced light transmission to the point that normal growth, function, reproduction, or recruitment of aquatic life is impaired."

As written, this language raises significant questions of interpretation. For example, this language would appear to open regulated entities to third-party challenges asserting that any increase, even if *de minimis*, will negatively affect a designated use or increase sedimentation. Similarly, it will not always or even usually be clear what constitutes "normal" growth, function,

reproduction, or recruitment. Normality would seem likely to vary by species and location. Some common understanding might ultimately be established about what constitutes “normal”, but likely only after years of costly third-party litigation. Moreover, the addition of a narrative standard essentially makes the current standard of 29 Nephelometric Turbidity Units, or NTUs, above natural background levels superfluous. Over time, if the narrative standard is implemented it seems entirely possible that the narrative standard would *effectively* replace the current numeric standard. We believe the Department should be particularly cautious about adopting a standard that would have such widespread application throughout the state.

Equally problematic is the lack of any clear reason to adopt this standard. While the Department explained that the current numeric standard may not sufficiently protect corals and other marine hard-bottom ecosystems, no reason has been given to extend this narrative criteria to freshwater or marine regions that lack coral and hard-bottom ecosystems. We appreciate that, at the workshop, the Department appropriately acknowledged that work remained to be done to justify the use of this proposed narrative standard in the Technical Support Document. We agree.

The use of a narrative standard is also inconsistent with the Department’s philosophy towards greater use of numeric criteria over the past several years such as NNC. The Department’s movement to a narrative standard seems especially problematic for such a vague standard as proposed, and a standard that lacks any standard operating procedures like NNC or history to guide its implementation.

We hope, for all these reasons, the Department will reconsider and abandon the use of a narrative criteria for turbidity in freshwater and marine regions without coral or hard-bottom ecosystems.

Second, the Department is apparently considering adoption of the United States Environmental Protection Agency (“USEPA”) recommended criteria for microcystin and cylindrospermopsin of 8 and 15 micrograms/liter, respectively. Human health is, of course, an absolute priority in water regulation. Practical considerations suggest cyanotoxin criteria will not be as effective as the Department’s current approach. Moreover, the scientific basis for establishing cyanotoxin criteria at this time appears questionable.

As the Department noted in the workshop, the Department has already adopted NNC designed to protect human health, and has a protocol for monitoring and responding to the algal blooms associated with cyanotoxins. Because that protocol begins with visual observation, it is quickly implemented and human health is promptly protected. By contrast, confirming exceedance of numeric criteria would require laboratory sampling consuming approximately two or three days. Given the high variability of cyanotoxins within the algal blooms, it is also possible that harmful algal blooms may not be initially identified as exceeding the threshold. Consequently, it seems that adoption of these criteria would not improve the protection of public health over the Department’s current approach.

Instead, the criteria seemed likely to spawn unnecessary third-party litigation. The specific relationship between nutrients and cyanotoxins is not well-established, and even the

Blue-Green Algae Task Force Consensus Document #1 states regarding algae blooms that “the science bearing on those concerns is quite limited and not well-developed.” Their recommendations include using “defensible” water quality criteria, but even the Task Force recognized that these criteria would need to be “updated as new information becomes available.” Given the potential for significant statewide regulatory impacts stemming from adoption of cyanotoxin criteria, however, we suggest that the Department would be well served to further develop the science correlating nutrients to the USEPA cyanotoxin recommendations before setting and enforcing criteria, or inviting third-party litigation over permits and enforcement related to the criteria.

If the Department ultimately pursues cyanotoxin criteria, it should use the latest science embodied in the USEPA 2019 guideline recommendations over the USEPA 2016 recommendations sought by some stakeholders. We also strongly request a vigorous Statement of Estimate Regulatory Costs (“SERC”) be developed so that the true costs of such criteria can be identified. We believe, given that cyanotoxin criteria would not appear to advance protection of human health, a SERC would reveal significant costs for an ephemeral benefit.

If the Department decides to pursue the narrative turbidity standard or adoption of cyanotoxin criteria, then we urge the Department to conduct another round of public workshops to address these and similar comments.

Thank you for your attention to our comments.

Sincerely,

Associated Industries of Florida

H2O Coalition

Florida Farm Bureau

Florida Cattlemen’s Association

Pulp and Paperworkers’ Resource Council

Turfgrass Producers of Florida

Florida Fertilizer & Agrichemical
Association

Gulf Citrus Growers Association

Florida Forestry Association

Florida Nursey, Growers & Landscape
Association

Florida Citrus Mutual

cc: Greg Munson, Gunster Law