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November 20, 2019

Kaitlyn Sutton
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 6511
Tallahassee, FL 32399-2400
Via E-mail: Kaitlyn.sutton@FloridaDEP.gov

Dear Ms. Sutton:

On behalf of White Springs Agricultural Chemicals, Inc. (an indirect subsidiary of Nutrien, Ltd.) ("Nutrien") and its phosphate operations near White Springs, Florida, thank you for the opportunity to submit comments related to the November 4, 2019 workshop, which presented an overview of potential updates to state water quality standards as part of the Triennial Review. 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 appear benign, we write to express serious reservations about the potential narrative standard for turbidity, and the removal of the weight of the evidence assessment from the NNC Implementation Document.

Nutrien produces and distributes over 27 million tons of potash, nitrogen, and phosphates products for use in agriculture, feed, and industry around the world. Nutrien is committed to an overall reduction in our environmental footprint by creating and implementing stewardship systems across our sites, operations and communities. The White Springs facility directly employs approximately 600 people throughout North Central Florida. Nutrien is committed to environmental stewardship through sound science, and this outlook frames our comments regarding Triennial Review.

First, we want 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 in rule 62-302.530(70(a), Fla. Admin. Code:

> "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 scientific support 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. The Department's movement towards a narrative standard seems especially problematic for such a vague standard as proposed, and a standard that lacks any standard operating procedures 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 proposes to remove all references to the "weight-of-evidence" approach in *Implementation of Florida's Numeric Nutrient Standards* (April 2013), adopted by reference into 62-302.300, Fla. Admin. Code ("Implementation Document"). The Department originally determined a weight-of-evidence approach was necessary in streams because of the complexity associated with assessing nutrient enrichment effects. *See* Implementation Document at 1 ("Finally, because of the complexity associated with assessing nutrient enrichment effects in streams, a summary of the weight-of-evidence evaluation involving flora,

fauna, and Nutrient Thresholds is provided.") It now proposes to retract this approach. The Department asserts that this change will not alter implementation of numeric nutrient criteria, and that EPA requires each weight-of-evidence metric, such as the stream condition index ("SCI"), to applied independently.

The Department's inclusion of a weight-of-evidence approach was significant to regulated entities tracking Florida's development of NNC regulations and it was significant to DEP at that time. At the time DEP submitted and EPA approved the Implementation Document, DEP believed that "no single assessment tool is adequate to evaluate all potential impacts" of nutrient enrichment, and consequently included the weight-of-evidence approach in the Implementation Document. Implementation Document at 5.

We are not aware of any scientific reason why a single assessment has subsequently become adequate to assess nutrient impacts, notwithstanding EPA's apparent opinion otherwise. The original scientific rationale for a weight-of-evidence approach remains unchanged. Specifically, the lack of any identifiable relationship between the SCI for a stream and the nutrient levels remains unclear and, if anything, more complicated than at the time DEP adopted the weight-of-evidence approach.

EPA approved the Implementation Document that included the weight-of-evidence approach. Its approval of Florida's NNC rules included detailed examination of "which flowing waters in the state will not be subject to the state's NNC" as would occur using a weight-of-evidence approach. A more holistic approach allowing a "site-specific analysis to properly classify a water body based on the actual effects on flora and fauna" as done through a weight-of-evidence approach was deemed an "improvement" by the court approving EPA's modification of the consent decree to accommodate Florida's rules. *See Florida Wildlife Federation, Inc., et al., v. McCarthy*, Order Modifying the Consent Decree at 20 (Case No. 4:08cv324RH/CAS, January 7, 2014). In any event, if the weight-of-evidence approach is little used, then little harm can come from leaving the rule unchanged but available.

For all these reasons, Nutrien believes the Department should leave the weight-of-evidence approach in the Implementation Document and in chapter 62-302, Fla. Admin. Code.

The scientific uncertainty that led to the inclusion of the weight of evidence language also underlies the existing language in rule 62-302.533(5), Fla. Admin. Code, that requires the Department to account for "confounding variables" when evaluating ambient dissolved oxygen levels. The proposed deletion of that language implies a degree of certainty about the causes of variability in dissolved oxygen that has not been demonstrated. The consideration of

"confounding factors" should likewise remain in the Implementation Document. See Implementation Document at 20, 21, 30, 38, and 39.

If the Department decides to pursue the narrative turbidity standard or eliminate the weight-of-evidence approach contrary to our recommendations, then Nutrien suggests another round of public workshops to address these and similar comments is necessary. Thank you for your attention to our comments. If you have any questions, please feel free to contact me at (386)397-8301 or Stan Posey at (386)397-8265.

Sincerely,

William Ponton
General Manager

cc: Greg Munson, Gunster Law
Stan Posey, Nutrien