

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

**In re: VERIFIED LIST OF IMPAIRED WATERS
FOR THE GROUP 2 BASINS, 2008, AND
DELIST LIST FOR THE GROUP 2 BASINS, 2009**

**OGC Nos.: 09-1389 – 1392
09-1560 – 1587
09-1588 – 1616
09-1617 – 1696
09-1697 – 1739
09-1740 – 1798
09-2102 – 2121
09-2123 – 2138
09-2141 – 2171
09-2172 – 2194
09-2196 – 2277
09-2278 – 2333
09-2336 – 2347
09-2349 – 2355
09-2357 – 2360
09-2513 – 2524
09-2529 – 2559
09-2560 – 2590
09-2951 – 2664
09-2720 – 2737
09-2741 – 2761**

**ORDER ADOPTING VERIFIED LIST OF IMPAIRED WATERS
AND DELISTING OF WATERS**

Pursuant to Section 403.067(4), Fla. Stat., and Chapter 62-303, Florida Administrative Code (F.A.C.), the Department of Environmental Protection (Department) is adopting the verified list of impaired waters for the Group 2 Cycle 2 basins for which Total Maximum Daily Loads (TMDLs) shall be established. Group 2 basins include the following hydrologic units: Apalachicola-Chipola, Charlotte Harbor, Lower St. Johns, Middle St. Johns, St. Lucie-Loxahatchee, and Tampa Bay Tributaries.

These lists will be submitted to the United States Environmental Protection Agency (EPA) as the Department's 2009 submission, pursuant to Section 303(d) of the federal Clean Water Act, and shall serve to amend the 1998 Section 303(d) statewide list of Florida waters (the "1998 List") maintained by EPA. The 1998 List was developed and submitted to the EPA prior to the adoption

of Section 403.067, Fla. Stat., which authorized the Department to develop its TMDL program, and prior to the Department having adopted a rule methodology for the identification of impaired waters.

The Department's revised Group 2 Cycle 2 Verified List shall serve to amend the 1998 List for those Group 2 basin waters for which sufficient data exist to be assessed using the methodology within Chapter 62-303, F.A.C. Pursuant to Section 403.067(2), Fla. Stat., the 1998 List may not be used for the administration or implementation of any regulatory program.

The Department's TMDL program is authorized as part of the Florida Watershed Restoration Act codified in Section 403.067, Fla. Stat. The Department implements the act applying a watershed management approach. Applying this approach, the State's surface waters have been organized into 52 basins, which have been organized into 29 groups.

The 29 groups have been further divided into five groups of six sets for the purpose of applying the Department's five-year rotating basin cycle. Each group of six basins is given a number that corresponds to the year in a five-year basin rotation cycle during which assessment of waters will begin in those basins for each group. The first five-year cycle assessment of Group 1 basins began in July 2000; assessment of Group 2 basins began in July 2001; assessment of Group 3 basins began in July 2002; assessment of Group 4 basins began in July 2003; and assessment of Group 5 basins began in July 2004. The second five-year assessment cycle began with the Group 1 waters in July 2006.

Each year of each five-year cycle represents a different phase of the basin rotation cycle: Initial Basin Assessment; Strategic Monitoring; Data Analysis and Final Basin Assessment, TMDL Development; Basin Management Action Plan Development; and, Basin Management Action Plan Implementation. As part of the second cycle of review, a verified list of impaired waters shall be established at the end of Phase 2 for each of the five groups. The Group 1 Cycle 2 Verified List was adopted on June 3, 2008 and the Group 2 Cycle 2 list is being adopted by this Order. The

other Cycle 2 verified lists of impaired waters will be adopted as follows: Group 3—2009; Group 4—2010, and Group 5—2011. These lists, once finalized, shall serve as the Department's lists for submission to the EPA as required under Section 303(d) of the federal Clean Water Act.

During the development of the Department's group specific verified lists, the Department shall assess all waters included on the 1998 List. Waters on the 1998 List shall remain on the EPA statewide impaired waters list for Florida until that list is ultimately replaced by the Department's basin-specific verified lists of impaired waters as described above.

This order addresses those waters within the Group 2 basins that have been assessed according to the 2007 adopted version of Chapter 62-303, F.A.C., and verified as impaired and listed pursuant to Section 403.067(4), Fla. Stat. Additionally, as certain waterbodies and water segments have been assessed and found to meet water quality standards or to have been listed in error, these waters are included as ones the Department will request that EPA remove from the 1998 List. Finally, this order removes those Group 2 waters that were previously identified as not meeting the total coliform standard from the 1998 Florida 303(d) list. On September 28, 2006, the total coliform criterion was removed from Florida's water quality standards by the Environmental Regulatory Commission; that removal was approved by EPA on May 4, 2007. As the 1998 Florida 303(d) List contained many waterbodies listed for "coliforms," to the extent that any waterbody decisions were based on an exceedance of the total coliform criteria, those waters are hereby delisted.

Waters within the Group 2 basins verified as impaired waters, by applying Chapter 62-303, F.A.C., as authorized under Section 403.067, Fla. Stat., are set forth in Exhibit 1, attached hereto and incorporated herein, and entitled, 2009 REVISED VERIFIED LIST OF IMPAIRED WATERS, GROUP 2 CYCLE 2 BASINS. Waters that the Department will request EPA to remove from the 1998 List for the Group 2 Basins are also listed on Exhibit 1 as waters subject to delisting.

Requests For Hearings

Persons whose substantial interests are affected by this order have a right to petition for an administrative hearing to contest this order pursuant to Sections 120.569 and 120.57, Fla. Stat. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000, within 21 days of the date of receipt of this order. Failure to file a petition within 21 days of the date of receipt of this order constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat.

Extensions of Time

The Department may, for good cause shown, grant a request for an extension of time for filing a petition. Requests for extension of time must be filed with the Department prior to the applicable deadline. Such requests for extensions of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and whether any other parties agree to the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Contesting A Water Body Or Water Segment Not Listed

A person whose substantial interest have been affected by the Department choosing not to include a water segment on the Group 2 basins verified lists must file a petition as directed herein.

Contesting The Listing Of A Water Segment

A person whose substantial interest has been affected by the Department's listing of a water segment on the Group 2 basins revised verified list must file a petition as directed herein using the OGC number listed for that particular water segment. To contest the failure to properly list a water segment on either the verified or delist lists, use OGC number 09-1104.

Contents of Petition for Hearing

The petition shall contain the following information: (a) the name, address, and telephone number of each petitioner; the Department's identification number (OGC number) for the water

segment and the county in which the subject matter or activity is located; (b) a statement of how and when each petitioner received notice of this order; (c) a statement of how each petitioner's substantial interests are affected by this order; (d) a statement of all disputed issues of material fact; (e) a concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; (f) a statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and (g) a statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to this order.

Intervention As Party to Proceedings

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this order in the Department's Office of General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Fla. Stat., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, F.A.C.

Mediation

In addition to petitioning for an administrative hearing, any person who has previously filed a petition for an administrative hearing may pursue mediation. If a written mediation agreement with all parties to the proceeding (i.e., the petitioner, the Department, and any person who has filed

a timely and sufficient petition for a hearing) is filed with the Department within 10 days after the deadline for filing a petition for an administrative hearing, the time limitations imposed by sections 120.569 and 120.57, Fla. Stat., shall be tolled to allow mediation to proceed. The agreement must be received by the clerk in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the deadline noted above. Pursuing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement.

Agreement to Mediate

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching an agreement to mediate with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by this order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

Contents of Agreement to Mediate

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;

(e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;

(f) The name of each party's representative who shall have authority to settle or recommend settlement; and

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.

(h) The signatures of all parties or their authorized representatives.

Mediation Is Not A Waiver of Hearing

As provided in Section 120.573, Fla. Stat., the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of the date of this order. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing procedures under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

Judicial Review

This order is final agency action unless a person who is substantially affected by the Department's proposed agency action timely requests a hearing under Sections 120.569 and 120.57, Fla. Stat. A party who is adversely affected by this order has the right to seek judicial review under Section 120.68, Fla. Stat., by filing a notice of appeal under Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of the General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this order is filed with the clerk of the Department.

DONE AND ORDERED this 19th day of May, 2009, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Michael W. Sole
Secretary
Department of Environmental Protection
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.


CLERK
DATE