



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8960

SEP - 6 2011

Herschel T. Vinyard, Jr.
Secretary
Florida Department of Environmental Protection
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000

Dear Mr. Vinyard:

The purpose of this letter is to notify you that the U.S. Environmental Protection Agency is approving the new and revised water quality standards in Rules 62-302.400 [*Classification of Surface Waters, Usage, Reclassification, Classified Waters*] and 62-302.530 [*Table: Surface Water Quality Criteria*], of the Florida Administrative Code (F.A.C.). These revisions to Florida water quality standards were approved for State adoption by the Environmental Regulation Commission at a public hearing on May 20, 2010. These standards were submitted to the EPA in a letter dated September 16, 2010, from Thomas M. Beason, General Counsel for the Florida Department of Environmental Protection (FDEP), to Gwendolyn Keyes Fleming, Regional Administrator of the EPA's Region 4 Office.

The EPA is also approving the provisions of the document referenced in Rule 62-302.400, entitled *Process for Reclassifying the Designated Uses of Florida Surface Waters*, DEP-SAS-001/10, June 2010 (the Process Document), that the EPA has determined to be new and revised water quality standards pursuant to Clean Water Act (CWA) § 303(c), with the exception of Section 2.3 of that document. The EPA is reserving action under CWA § 303(c) on Section 2.3 of the Process Document, entitled *Shellfish Harvesting*, and will request additional information on the provisions of that section under separate cover.

The new and revised water quality standards establish a new designated use, the Class III-Limited use, as a subcategory of the Class III designated use. The Process Document describes the process and requirements for entities to petition the FDEP to change the designated use of a waterbody. The EPA reviewed the Process Document to determine whether any of its provisions constitute new or revised water quality standards which require the EPA's action under CWA § 303(c) authorities. A list of specific provisions of the Process Document that the EPA has determined are new and revised water quality standards is enclosed.

The State's Reclassification Rule includes several safeguards that will protect Florida's waters and ensure that actions to revise designated uses of State's waters will be taken under circumstances that are consistent with federal regulatory requirements in 40 CFR Part 131. The Rule requires completion of a Use Attainability Analysis prior to removing any designated use and limits the factors that can be used to justify assignment of the Class III-Limited use or removal of other designated uses to the six demonstrations in 40 CFR § 131.10(g). In cases involving the consideration of the Class III-Limited use for created and hydrologically modified waters, the Rule requires an evaluation of whether it is feasible

to (1) restore the waterbody to its original condition, (2) operate a hydrological modification in a way that would result in the attainment of Class III uses or (3) remedy human caused conditions, unless the remedial action would cause more environmental damage to correct than to leave in place. The Rule allows reclassification of a waterbody only in cases where a petitioner demonstrates that the revised standards will result in protection of all existing uses, as well as the standards of downstream waters.

In addition, the Rule establishes a “floor” for Site Specific Alternative Criteria (SSAC) developed for a waterbody designated for the Class III-Limited use at the levels of ambient water quality conditions that occur at the time of the reclassification petition, and prevents any reclassification action that would lower water quality in an Outstanding Florida Water or Outstanding National Resource Water. Class III-Limited SSAC are limited to nine parameters, which represent the water quality conditions and/or habitat differences that potentially limit the attainment of Class III aquatic life and recreation uses in waters that are candidates for the Class III-Limited use. All other water quality criteria that apply to a Class III-Limited waterbody must fully protect all Class III uses.

The Rule also requires that each standards action that involves reclassification of a waterbody be appropriately noticed to ensure that the public has an opportunity to provide information, data, and perspective on a reclassification proposal, and also requires that a public hearing be held on each proposed standards revision. The public notice process requires a specific notification to affected local and regional governments and sovereign Native American Tribes. Any future reclassification action taken subsequent to the requirements of the Rule must be submitted to the EPA for review under CWA § 303(c) authorities, and the EPA’s approval of any reclassification action is required before the revised standards are effective for any purpose of the CWA.

Establishment of the Class III-Limited use as a subcategory of the Class III use is consistent with the EPA’s efforts to encourage all states to adopt, as the fundamental principles of a designated use framework, the highest uses that are demonstrated to be attainable for all state waters, and to establish water quality criteria for designated uses that are logically linked to designated uses. In August 2003, the EPA’s Office of Science and Technology published a *Strategy for Water Quality Standards and Criteria: Setting Priorities to Strengthen the Foundation for Protecting and Restoring the Nation's Waters*. In that document, the EPA described the vision of the strategy in relation to state establishment of designated uses and criteria in support of those uses, as follows:

All waters of the United States will have water quality standards that include the highest attainable uses, combined with water quality criteria that reflect the current and evolving body of scientific information to protect those uses. Further, standards will have well-defined means for implementation through Clean Water Act programs.

Also, in a memorandum dated March 13, 2006, from Ephraim King, Director of the EPA’s Office of Science and Technology to all EPA Regional Office Water Division Directors, the EPA reiterated support for state efforts to make the Use Attainability Analysis (UAA) process more effective. In that memo, the EPA stated that the UAA process is essential for achieving the CWA goals of maintaining and restoring water quality. The revisions adopted by the State embody several of the key benefits of a refined use classification system, as described in the EPA’s March 13, 2006, memo:

Getting the uses right requires both a useful set of designated uses and an effective process for conducting credible and defensible UAAs. EPA realizes that deciding what uses are attainable is critical, and views the UAA process, properly applied and implemented, as a vital tool in making those decisions. ...

There is nothing wrong with changing designated uses after completion of a credible UAA. It is an expected part of the process. If a credible and defensible UAA indicates a need for a WQS change, then a change to WQS is appropriate to effectively implementing the WQS program. Sometimes these changes are on the critical path to making real environmental progress. ...

Improved public communication leads to improved public acceptance. It is critical for EPA, states and tribes to engage the public in meaningful discussions regarding the importance and value of getting uses right in maintaining and restoring water quality. WQS that reflect the best available data and information should be used to direct the process of managing water quality. They are essential to informed decision making. Just as important, public understanding and acceptance of WQS is central to broader community support for addressing potentially difficult pollution control management decisions.

The revisions to Florida water quality standards were compared to the requirements of the CWA § 303(c) and 40 CFR Part 131. With the exception of Section 2.3 of the Process Document, the EPA has determined that these new and revised standards comply with the requirements of CWA § 303(c) and 40 CFR Part 131. A summary of the EPA's review of all new and revised standards, as well as the rationale for the EPA's CWA § 303(c) actions on each of these provisions, entitled, *United States Environmental Protection Agency Determination Under § 303(c) of the Clean Water Act: Review of Amendments to Florida's Surface Water Classification System* (EPA's Decision Document), is enclosed.

We would like to commend you and your staff for your continued efforts to protect Florida's waters. If you have any questions regarding the EPA's action, please contact me at (404) 562-9345 or have a member of your staff contact Fritz Wagener of my staff at (404) 562-9267.

Sincerely,



James D. Giattina
Director
Water Protection Division

Enclosures

cc: Mr. Thomas M. Beason, Florida Department of Environmental Protection
Mr. Drew Bartlett, Florida Department of Environmental Protection

