

Agriculture and Federal Regulation A Florida Perspective

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EPA Proposed Numeric Nutrient Criteria for Florida

EPA Proposed Numeric Nutrient Criteria (only) for Florida

- July 2008 – Citizen Groups sue EPA alleging failure to comply with CWA
- January 2009 – EPA “Determines” that Florida must develop NNC by January 2010
- August 2009 – EPA settles lawsuit by agreeing to impose federally developed NNC only for Florida
- November 2010 – EPA finalizes NNC for Florida

EPA proposed Numeric Nutrient Criteria for Florida

- EPA NNC methodology not peer reviewed and was criticized by their own Science Advisory Panel
- “Determination” letter was ploy to settle lawsuit rather than scientific assessment of need
- NNC are not site-specific resulting in many biologically healthy waters being designated as impaired
- Georgia and Alabama waters flowing into Florida will have to comply at state line (Surprise!)

EPA Proposed Numeric Nutrient Criteria for Florida

- EPA's economic impact analysis grossly underestimates cost of compliance
- EPA's assertion that agriculture is not affected by NNC is naive in light of other recent developments (water transfer ruling)
- Unfair impact on Florida as well as economic impacts prompted Florida to sue EPA

WATER TRANSFERS

Are They Subject to NPDES Permitting?

Water Transfers and NPDES Permitting

- NPDES -- National Pollutant Discharge Elimination System – Permitting program for “pollutant discharges” from a “point source.”
- A water transfer moves water from one water body to another without adding anything to the water.
- If it goes through a pipe, pump or ditch, it is a “point source.”
- But does a Water Transfer require a NPDES Permit?

Is a Water Transfer a Discharge of a “Pollutant”?

- A water transfer does not add anything to the water, but one water may be of different quality.
- EPA Rule developed under last administration held that no permit is required.
- Courts have held both ways, but US Supreme Court has yet to weigh in.
- EPA has signaled their intent to reconsider their rule.

Significance to Agriculture

- Florida, as do most states, has many agricultural systems that move water for flood control or irrigation.
- Water management through these systems is essential for agricultural production.
- If EPA changes its rule and the courts agree, every pipe, pump or ditch that conveys water off of a farm will need a NPDES permit.
- This would be a dramatic change to agricultural water management.
- Florida agriculture cannot economically comply with the EPA Numeric Nutrient Criteria.

Significance to Agriculture

- Cost to agriculture of trying to comply could reach \$1.6 B annually and cost the state 14,500 jobs.
- Rather than allowing Florida to develop water body specific criteria, EPA has chosen a regional one size fits all approach which creates an unacceptable burden for Florida citizens and businesses.
- If agricultural operations must meet numeric criteria at the point of discharge, all farms will need an edge-of-farm chemical treatment facility.