

Notice of Proposed Rule

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO: RULE TITLE

62-302.800: Site Specific Alternative Criteria

PURPOSE AND EFFECT: On January 30, 2009, the Department received a petition from Buckeye Florida, L.P. (Buckeye) to establish Site Specific Alternative Criteria (SSAC) for transparency in the lower Fenholloway River and near-shore waters, pursuant to Rule 62-302.800(2) of the Florida Administrative Code. All of the waters covered in the petition are classified as Class III marine waters with a designated use of "recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife" (Rule 62-302.400, F.A.C.) The proposed SSAC for transparency establishes alternative transparency criteria to protect both phytoplankton and submerged aquatic vegetation and fully protect the designated use of the waters.

SUMMARY: The Department is amending Rule 62-302.800, F.A.C., to establish Site Specific Alternative Criteria for transparency in the lower Fenholloway River and near-shore waters. The SSAC fully protects the designated use of the waters and will replace the default transparency criteria in Rule 62-302.530, F.A.C., for these waters.

Chapter 62-302 or Rule 62-302.800, F.A.C., is referenced by a number of other rules. The proposed amendments will have no effect on the following referenced rules other than to allow a discharger to meet a less stringent criterion for transparency than the criterion listed in the Table in Rule 62-302.530, F.A.C.: Rules 62-4.246, 62-25.001, 62-25.025, 62-25.080, 62-29.050, 62-40.120, 62-40.210, 62-110.106, 62-113.200, 62-301.100, 62-302.300, 62-302.500, 62-302.800, 62-303.100, 62-303.200, 62-303.430, 62-304.310, 62-304.335, 62-304.500, 62-312.050, 62-312.340, 62-312.816, 62-330.100, 62-330.200, 62-341.486, 62-346.051, 62-346.301, 62-528.610, 62-528.630, 62-600.120, 62-600.200, 62-600.300, 62-600.400, 62-600.430, 62-600.440, 62-600.500, 62-600.520, 62-610.200, 62-610.300, 62-610.310, 62-610.650, 62-610.670, 62-610.850, 62-611.200, 62-611.450, 62-611.500, 62-611.600, 62-611.650, 62-611.700, 62-620.320, 62-620.400, 62-620.620, 62-620.800, 62-624.800, 62-625.300, 62-673.340, 62-673.610, 62-701.200, 62-701.300, 62-709.500, 62-711.540, 62-761.200, 62-762.201, 62-770.200, 62-771.100, 62-777.150, 62-777.170, 62-780.200, 62-782.200, 62-785.200, and 62B-49.012, F.A.C.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have an impact on small business. Thus, no Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: [403.061](#), [403.062](#), [403.087](#), [403.504](#), [403.704](#), [403.804](#), [403.805 FS](#).

LAW IMPLEMENTED: [403.021](#), [403.061](#), [403.087](#), [403.088](#), [403.141](#), [403.161](#), [403.502 FS](#).

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: Thursday, May 20, 2010, 9:00 a.m.

PLACE: Florida Department of Environmental Protection, 3900 Commonwealth Blvd., Conference Room A, Tallahassee, FL

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Eric Shaw at (850)245-8429. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Eric Shaw, Department of Environmental Protection, Bureau of Assessment and Restoration Support, MS 6511, 2600 Blair Stone Road, Tallahassee, FL 32399-2400, (850)245-8429 or e-mail: eric.shaw@dep.state.fl.us. Copies of the draft rule as well as further information also may be obtained from the Department's internet site at: <http://www.dep.state.fl.us/water/wqssp/surface.htm>

THE FULL TEXT OF THE PROPOSED RULE IS:

62-302.800 Site Specific Alternative Criteria.

(1) through (4) No change.

(5) Site specific alternative criteria apply to the water bodies, or portions of the water bodies, listed below. For

dissolved oxygen site specific alternative criteria, normal daily and seasonal fluctuations above the levels listed in the table below shall be maintained.

(a) through (b) No change.

Water Body and Class	Site Specific Alternative Criteria	County(s)
<u>(c) Fenholloway River from river mile -0.1 to river mile 3.5. Class III.</u>	<u>The annual average compensation depth for photosynthetic activity for phytoplankton shall not be decreased greater than 44.3 percent from background conditions as determined by an annual average compensation depth of at least 0.66 meters at river mile 0.53 (station F06). This value must be based on a minimum of 12 measurements during times when the average flow at Coeey Island Bridge at river mile 7.15 measures less than 200 cubic feet per second.</u>	<u>Taylor</u>
<u>(d) Fenholloway River coastal waters (Apalachee Bay) as spatially defined by the coordinates (83° 49' 29.95" W, 29° 59' 38.70" N), (83° 45' 3.61" W, 29° 57' 22.10" N), (83° 47' 23.50" W, 29° 54' 5.01" N), and (83° 51' 45.47" W, 29° 56' 25.71" N). Class III.</u>	<u>The annual average down-welling light at 1 m depth at stations F10 (83° 47' 6.60" W, 29° 57' 4.20" N) and F11 (83° 48' 27.00" W, 29° 57' 38.40" N) shall be 27 percent or more of surface values based on a minimum of 12 measurements using a 2 pi sensor during times when the average flow at Coeey Island Bridge at river mile 7.15 measures less than 200 cubic feet per second.</u>	<u>Taylor</u>

Rulemaking Specific Authority 403.061, 403.062, 403.087, 403.504, 403.704, 403.804, 403.805 FS. Law Implemented 403.021, 403.061, 403.087, 403.088, 403.141, 403.161, 403.502 FS History—Formerly 17-3.05(4), Amended 3-1-79, 10-2-80, 2-1-83, Formerly 17-3.031, Amended 6-17-92, Formerly 17-302.800, Amended 5-15-02, 1-9-06, 6-28-06, 12-7-06, 8-5-07,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jerry Brooks

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Michael W. Sole

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 5, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 23, 2009