

Notice of Proposed Rule

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO: RULE TITLE

62-304.800: Caloosahatchee River Basin TMDLS.

PURPOSE AND EFFECT: The purpose of the rule is to adopt Total Maximum Daily Loads (TMDL) and allocations for total nitrogen for Tidal Caloosahatchee River.

SUMMARY: This TMDL addresses nutrient impairments in the Tidal Caloosahatchee River. For these nutrient TMDLs, water quality targets were identified using the total nitrogen concentration that reduces algal growth such that there is an adequate percentage of light irradiance in the bottom layer to support a healthy seagrass meadow community in San Carlos Bay. Two computer models (EFDC and HSPF) simulated the Caloosahatchee load under various scenarios to determine the load reductions producing the nutrient reductions necessary to meet the critical light levels for submerged aquatic vegetation in the estuary.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Department has not prepared a Statement of Estimated Regulatory Cost (SERC) for this proposed Rule.

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, 403.067 FS.LAW IMPLEMENTED: 403.031, 403.061, 403.062, 403.067 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: July 16, 2009, 10:00 a.m.

PLACE: Florida Department of Environmental Protection, 2600 Blair Stone Road, Room 609, Bob Martinez Center, Tallahassee, Florida

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: Ms. Pat Waters at (850)245-8449. 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: Jan Mandrup-Poulsen, Division of Environmental Assessment and Restoration, Bureau of Watershed Restoration, Mail Station 3555, Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, telephone (850) 245-8448

THE FULL TEXT OF THE PROPOSED RULE IS:

62-304.800 Caloosahatchee River Basin TMDLS.

(1) Fecal Coliform ~~Total Maximum Daily Load~~ (TMDL) for Nine Mile Canal. The fecal coliform ~~TMDL Total Maximum Daily Load~~ for Nine Mile Canal is 400 counts/100 mL, and is allocated as follows:

- (a) The Wasteload Allocation (WLA) for wastewater point sources is not applicable,
- (b) The ~~WLA Wasteload Allocation~~ for discharges subject to the Department's National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin to result in a 36 percent reduction of in-stream fecal coliform concentrations, based on the measured concentrations from the 1997 to June 30, 2004 period.
- (c) The Load Allocation (LA) for nonpoint sources is a 36 percent reduction of in-stream fecal coliform concentrations, based on the measured concentrations from the 1997 to June 30, 2004 period, and
- (d) The Margin of Safety is implicit.
- (e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is with the understanding that the combined reductions from anthropogenic point and nonpoint sources should result in the required reduction of in-stream fecal coliform concentrations. However, it is not the intent of this TMDL to abate natural background conditions.

(2) The TMDL for the Tidal Caloosahatchee estuary downstream of the S-79 Franklin Lock is 9,086,094 pounds of Total Nitrogen (TN) per year, which represents, based on model simulated flows and concentrations from

2003 through 2005, a 22.8% reduction. This load reduction will be allocated as follows: Unless specifically stated, the point from which the reduction of "in-stream fecal coliform concentrations" shall be the average loading for the year the Secretary adopted the verified list that first listed the waterbody as impaired for the parameter of concern.

(a) The WLA for point sources discharging to the estuary will remain unchanged from the permits currently in effect as of the date of this rule,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program will have a 22.8% load reduction relative to its overall contribution to the anthropogenic load,

(c) The LA for nonpoint sources downstream of the S-77 lock will have a 22.8% load reduction relative to the contribution to the overall anthropogenic load,

(d) The Margin of Safety is both implicit and explicit (in the form of an added 3% reduction in total nitrogen). Rulemaking Specific Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History--New 8-3-06, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Drew Bartlett, Deputy Director, Division of Environmental Assessment and Restoration

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Michael Sole, Secretary, Department of Environmental Protection

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 09, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 17, 2008