



Phosphorus Water Quality Standards for the Florida Everglades

Summary

EPA has promulgated a Federal rule that identifies provisions of Florida's Water Quality Standards for Phosphorus in the Everglades that EPA had disapproved and that, therefore, are not applicable water quality standards for purposes of the Clean Water Act. The Federal rule identifies portions of the phosphorus water quality standards that extended the compliance schedule for, and variances of water quality standards from, the phosphorus water quality standards in the Everglades.

Background

In 2009, EPA disapproved portions of Florida's water quality standards for phosphorus in the Everglades. This rule formalizes these disapprovals in accordance with an order from the U.S. District Court for the Southern District of Florida following lawsuits by the Miccosukee Tribe of Indians and the Friends of the Everglades. Consistent with the Court's order, EPA directed Florida to correct deficiencies in its Phosphorus Rule by January 1, 2011 and the amended Everglades Forever Act (EFA) by July 1, 2011. Because the State did not complete its rulemaking on the Phosphorus Rule or make statutory changes to the EFA, EPA is now promulgating a rule identifying the disapproved provisions consistent with the Court's 2010 Order.

Florida's Everglades Forever Act

The Florida Legislature enacted the EFA in 1994 to maintain and restore the ecosystem of the Everglades. EPA subsequently reviewed and approved one section of the EFA (section 4(f)) as a new or revised water quality standard in 1999. That provision provided for attainment of the phosphorus standards by December 31, 2006. The Legislature subsequently amended the EFA in 2003 to extend the December 2006

deadline for a decade. After litigation over whether and how EPA should act on the 2003 legislation, EPA disapproved the deadline extension in 2009.

Florida's Phosphorus Rule

In 2005, the Florida Department of Environmental Protection submitted to EPA for review "Water Quality Standards for Phosphorus Within the Everglades Protection Area" (Phosphorus Rule). The Phosphorus Rule established a numeric water quality criterion for phosphorus as well as implementing provisions for the numeric criterion within the Everglades Protection Area. In 2005 and 2006, EPA issued a series of decisions approving certain provisions of the Phosphorus Rule and concluding that other provisions were not new or revised water quality standards and did not require EPA approval/disapproval under Clean Water Act section 303(c). After litigation over whether and how EPA should act on the various provisions of the Phosphorus Rule, EPA disapproved the remaining provisions upon which it had not yet acted.

Litigation and Subsequent EPA Actions

In consolidated litigation, plaintiffs challenged EPA's decision that the EFA amendments were not water quality standards, and EPA's 2005 and 2006 decisions regarding the Phosphorus Rule. In a July 29, 2008 decision, the U.S. District Court for the Southern District of Florida upheld some portions of EPA's actions and remanded others. The Court upheld EPA's 2005 approval of the Phosphorus Rule's numeric phosphorus criterion and the four-part test for determining attainment of the criterion. The Court overturned (1) EPA's decision that certain implementing provisions of the Phosphorus Rule were not new or revised water quality standards, and (2) EPA's approval of other provisions of the Phosphorus Rule finding EPA's approval to be arbitrary and capricious. The Court also rejected

EPA's determination that the legislative amendments to the EFA did not constitute new or revised water quality standards subject to EPA review. The Court instructed EPA to take further action consistent with the Court's decision.

EPA's December 2009 Determination

On December 3, 2009, EPA issued a new Clean Water Act determination to respond to the Court's remand. EPA disapproved the EFA amendments that the Court found to have been revised water quality standards. EPA also disapproved the provisions of the Phosphorus Rule remanded by the Court. The provisions of the EFA amendments and Phosphorus Rule that EPA disapproved in December 2009 are the subject of this rule.

Court's April 14, 2010 Order

The plaintiffs challenged EPA's December 2009 determination, alleging that EPA failed to specify the changes that Florida must make to the Phosphorus Rule and EFA to bring them into compliance with the Clean Water Act and commit to promulgate if the State fails to act. On April 14, 2010, the Court ordered EPA to issue an Amended Determination by September 3, 2010, in which EPA would, among other things, direct the State to correct deficiencies in the EFA amendments and Phosphorus Rule. The Court ordered that "in the event the State of Florida fails to timely act, EPA shall provide timely notice, and the EPA Administrator shall promulgate such standard[s] pursuant to 33 U.S.C. 1313(c)."

EPA's September 2010 Amended Determination

In the Amended Determination, EPA provided directions to the State of Florida for correcting deficiencies in the Phosphorus Rule and Amended EFA. Attached to the Amended Determination were copies of the Phosphorus Rule and EFA with strikeout markings indicating the invalidated revised water quality standards that continued to be published in State law. EPA explained in the Amended Determination that if Florida Department of Environmental Protection did not finalize revisions by January 1, 2011 and the legislature did not enact amendments to the EFA by July 1, 2011, EPA would initiate rulemaking to

promulgate standards consistent with the Court order. The Florida Environmental Regulation Commission did initiate rulemaking to adopt the necessary revisions to the Phosphorus Rule, but did not complete that process by January 1, 2011, or since. The Florida legislature did not introduce or enact any amendments to the EFA to repeal the disapproved revisions to the previously approved water quality standards by July 1, 2011, or since. Therefore, EPA promulgated federal regulations to identify the disapproved provisions of the Phosphorus Rule and EFA that remain in State law.

Regulatory Impacts

This final rule implements a federal court order. The scope is limited: identifying provisions of Florida's Phosphorus Rule and EFA that EPA has previously disapproved and that therefore are not applicable water quality standards for purposes of the Clean Water Act. Hence, this rule is not a new regulation. This final rule does not involve technical standards, or impose any economic impact burden on any small entity.

For More Information

Contact Mario Sengco at sengco.mario@epa.gov or (202) 566-2676 for more information on this rule.