



**RULEMAKING OVERSIGHT
&
REPEAL
SUBCOMMITTEE
MEETING**

**Monday, April 1, 2013
4:00 p.m. – 6:00 p.m.**

306 House Office Building

MEETING PACKET

Will Weatherford
Speaker

John Tobia
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Rulemaking Oversight & Repeal Subcommittee

Start Date and Time: Monday, April 01, 2013 04:00 pm

End Date and Time: Monday, April 01, 2013 06:00 pm

Location: 306 HOB

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 7113 Total Maximum Daily Loads by Agriculture & Natural Resources Subcommittee, Caldwell

HB 7115 Numeric Nutrient Criteria by State Affairs Committee, Raburn

Consideration of the following proposed committee bill(s):

PCB RORS 13-02 -- Ratification of Rules

Please note: PCB RORS 13-02 addresses DEP Total Maximum Daily Load Rules

NOTICE FINALIZED on 03/28/2013 16:10 by Powell.Sonja



FLORIDA HOUSE OF REPRESENTATIVES
Rules & Calendar Committee
Rulemaking Oversight & Repeal Subcommittee

Will Weatherford
Speaker

John Tobia
Chair

AGENDA

Monday, April 1, 2013

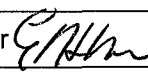
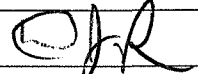
4:00 p.m. – 6:00 p.m.

Room 306 House Office Building

- **Opening Remarks by Vice Chair Nunez**
- **Roll Call by Sonja Powell, CAA**
- **Announcements**
- **Consideration of the following bill(s):**
 - **HB 7113 Total Maximum Daily Loads by Agriculture & Natural Resources Subcommittee, Caldwell**
 - **HB 7115 Numeric Nutrient Criteria by State Affairs Committee, Raburn**
- **Consideration of the following proposed committee bill(s):**
 - **PCB RORS 13-02 -- Ratification of Rules**
- **Closing Remarks**
- **Meeting Adjourned**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7113 PCB ANRS 13-03 Total Maximum Daily Loads
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Caldwell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1806

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Rosenthal	Blalock
1) Rulemaking Oversight & Repeal Subcommittee		Miller 	Rubottom 

SUMMARY ANALYSIS

Under the federal Clean Water Act (CWA), states are required to adopt water quality standards (WQS) for their navigable waters, and to review and update those standards at least every three years. These standards must include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, or navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative form, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.

When a waterbody is unable to maintain its WQS, it is designated as impaired. In such a situation, the Environmental Protection Agency (EPA) or the state must set a total maximum daily load (TMDL) establishing the maximum amount of a given pollutant the waterbody can accept while still meeting WQS associated with its designated use. In Florida, the Department of Environmental Protection (DEP) is granted the authority to establish TMDLs via the Watershed Restoration Act of 1999.

The Florida Administrative Procedure Act (APA) requires state agencies to assess whether a Statement of Estimated Regulatory Cost (SERC) must be prepared in conjunction with the promulgation of an administrative rule, such as the establishment of a TMDL for an impaired waterbody. The preparation of a SERC is required if a proposed rule will have an adverse impact on small business, or if it is likely to directly or indirectly increase regulatory costs by more than \$200,000 within one year of implementation. If the SERC analysis indicates the rule is likely to have a specific economic impact exceeding \$1 million aggregated in the first five years from implementation, then the rule must be ratified by the Legislature before going into effect. The APA requires that the rule be submitted to the President of the Senate and the Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

The bill amends current law to exempt rules establishing TMDLs from the legislative ratification requirement in the APA.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Federal Clean Water Act (CWA)

The federal Clean Water Act (CWA)¹ was enacted in 1972 in order to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”² Under the CWA states are required to adopt water quality standards (WQS) for waterbodies within their respective jurisdictions and to review and update those standards at least every three years. These standards must include:

- Designation of a waterbody’s beneficial uses, such as water supply, recreation, fish propagation, or navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative form, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.³

Under the CWA states have primary authority to set WQS for waterbodies in their respective jurisdictions that are reviewable by the Environmental Protection Agency (EPA).⁴ If at any time EPA determines a revised or new standard is necessary to meet the requirements of the CWA, the EPA Administrator is authorized to adopt a revised WQS.⁵ Moreover, the CWA requires EPA to set WQS for any waterbody where a state fails to do so.⁶

The CWA focuses primarily on point sources of water pollution.⁷ Point source pollution can be defined generally as any human-controlled “discernible, confined, and discrete” conveyance of a pollutant into waters subject to the CWA.⁸ The CWA directly regulates point source pollution via the National Pollution Discharge Elimination System (NPDES) permitting process.⁹ The NPDES program prohibits the discharge of pollutants from a point source into navigable waters¹⁰ except as provided for in an NPDES permit.¹¹ In practice, the NPDES method of regulation can be best visualized as “end-of-the-pipe” controls that clean up waste water before it is discharged into a waterbody. The primary focus of the NPDES permitting program is municipal (Publicly Owned Treatment Works) and non-municipal (industrial) direct dischargers, and the primary mechanism for controlling discharges of pollutants to receiving waters is establishing effluent limitations.¹² NPDES permits require a point source to meet

¹ 33 U.S.C. s. 1251, et seq.

² 33 U.S.C. s. 1251.

³ 33 U.S.C. ss. 1251(b), 1313(c)(2)(A).

⁴ 33 U.S.C. s. 1313(a).

⁵ 33 U.S.C. s. 1313(c)(4)(B).

⁶ 33 U.S.C. s. 1313(b)(1)(A).

⁷ The CWA defines “pollution” as “the manmade or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.” 33 U.S.C. ss. 1362(19).

⁸ 33 U.S.C. s. 1362(14). “The term ‘point source’ means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.” Courts have held that human beings themselves are not point sources under the CWA. *See U.S. v. Plaza Health Labs*, 3 F.3d 643 (2d. Cir. 1993). As shown, the CWA also established exceptions whereby certain agricultural activities are not considered point sources.

⁹ 33 U.S.C. s. 1342.

¹⁰ For purposes of the CWA, “The term ‘navigable waters’ means the waters of the United States, including the territorial seas.” 33 U.S.C. s. 1362(7). See also *Rapanos v. United States*, 547 U.S. 715, 126 S. Ct. 2008, 165 L. Ed. 2d 159 (2006); 40 C.F.R. s. 230.3(s).

¹¹ 33 U.S.C. s. 1342.

¹² “(E)ffluent limitation’ means any restriction established by a State or the Administrator on quantities, rates, and concentrations

established effluent limits, which are based on applicable technology-based and water quality-based standards. The intent of technology-based effluent limits in NPDES permits is to require a minimum level of treatment of pollutants for point source discharges based on the best available control technologies, while allowing the discharger to use any available control technique to meet the limits.

On the other hand, non-point source pollution encompasses all forms of water pollution not classified as point source, such as stormwater runoff. Regulation of nonpoint source pollution typically relies on controls -- such as best management practices -- that directly impact how the land itself is used. Except in limited situations, nonpoint sources are not regulated by the CWA, but states do require nonpoint sources to reduce their pollution, especially when a waterbody is impaired. For example, Florida requires nonpoint sources to implement best management practices in order for an impaired waterbody to achieve the requisite WQS pursuant to a Basin Management Action Plan.¹³

When the NPDES system is inadequate for a waterbody to maintain its WQS, the waterbody is designated as "impaired."¹⁴ A particular segment of a waterbody may be designated as impaired as well. For a waterbody or segment designated as impaired, the CWA requires that EPA or the state set a total maximum daily load (TMDL), which establishes the maximum amount of a given pollutant the waterbody can accept while still meeting water quality standards associated with its designated use.¹⁵ The purpose of a TMDL "is to provide a basis for allocating acceptable loads among all of the known pollutant sources in a watershed so that appropriate control measures can be implemented and water quality standards achieved."¹⁶ A TMDL thus takes into account both point source and non-point source pollution. Once established, a TMDL can affect the NPDES permit limitations for point sources discharging into the waterbody or segment. Moreover, a TMDL must account for "seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality."¹⁷

TMDL RULEMAKING IN FLORIDA

The Florida Watershed Restoration Act¹⁸ created the process for establishing TMDLs in Florida.¹⁹ The Florida Department of Environmental Protection (DEP) periodically must submit to EPA a list of waterbodies or segments for which TMDL assessments will be conducted.²⁰ Pursuant to a methodology adopted by rule, DEP conducts separate TMDL assessments on each listed waterbody.²¹ If the assessments show that a particular waterbody is not meeting its WQS, DEP must then add that waterbody to an updated list of those waterbodies requiring calculation of a TMDL.²²

Each TMDL is calculated through a process detailed in statute. Before calculating a TMDL DEP must confer with all entities that will be affected by the proposed TMDL, including local governments, to determine all information, data collection methodologies, and quality controls necessary for proper calculation.²³ Separate TMDL calculations are developed for each waterbody on the updated list and

of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance." 33 U.S.C. s. 1362(11).

¹³ Section 403.067(7), F.S.

¹⁴ 33 U.S.C. s. 1313(d)(1)(A). Rule 62-303.200(7), F.A.R., states: "'Impaired water' shall mean a waterbody or waterbody segment that does not meet its applicable water quality standards as set forth in Chapters 62-302 and 62-4, F.A.C., as determined by the methodology in Part IV of this chapter, due in whole or in part to discharges of pollutants from point or nonpoint sources."

¹⁵ 33 U.S.C. s. 1313(d)(1)(C).

¹⁶ Florida Dept. of Environmental Protection, "Total Maximum Daily Load for Iron for Hatchet Creek, Alachua County, Florida," Pg. 7, under "Final TMDL Documents/Group 1 Basins/Oklawaha River Basin" at http://www.dep.state.fl.us/water/tmdl/final_tmdl.htm, accessed 3/28/2013.

¹⁷ 33 U.S.C. s. 1313(d)(1)(C).

¹⁸ Ch. 99-223, Laws of Florida.

¹⁹ Section 403.067, F.S.

²⁰ Section 403.067(2), F.S.

²¹ Section 403.067(3), F.S.

²² Section 403.067(4), F.S.

²³ Section 403.067(6)(a)1., F.S.

must set the amount of a pollutant that a waterbody “may receive from all sources without exceeding water quality standards.”²⁴ The TMDL calculation must also establish “reasonable and equitable allocations of the (TMDL)” among all point and nonpoint sources in order to attain reductions in the pollutant necessary to meet the WQS for that particular pollutant.²⁵ The resulting TMDL calculations and allocations (together with supporting information) are published as a report accessible on the DEP website,²⁶ are adopted through the rulemaking process of the APA,²⁷ and are promulgated under one chapter of DEP’s rules.²⁸

Florida Wildlife Federation, Inc. v. Browner

In 1998 several environmental groups sued to compel EPA to establish TMDLs for Florida’s impaired waterbodies, alleging Florida had made inadequate progress in implementing TMDLs and the EPA was compelled to act.²⁹ As discussed above, although states have the primary responsibility for implementing the CWA, the Act requires EPA to take action where states fail to do so. The litigation culminated in a consent decree requiring EPA to establish TMDLs for 710 waterbody segments identified as impaired if Florida did not.³⁰ The consent decree also established a timetable for EPA’s compliance. The EPA was to propose TMDLs proposed according to an annual reporting schedule over the course of a 13 year period. As a result, the EPA separately required Florida to establish TMDLs by September 30th of each year for specifically identified waterbodies. If the state failed to do so, the EPA was required to set any remaining TMDLs within a “reasonable time.” 2013 is the last year for which the timing requirements described above remain in effect under the consent decree.³¹

Legislative Rule Ratification Requirement

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.³² Rulemaking authority is delegated by the Legislature³³ through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”³⁴ a rule. Agencies do not have discretion whether to engage in rulemaking.³⁵ To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.³⁶ The grant of rulemaking authority itself need not be detailed.³⁷ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.³⁸

An agency begins the formal rulemaking process by filing a notice of the proposed rule.³⁹ The notice is published by the Department of State in the Florida Administrative Register⁴⁰ and must provide certain

²⁴ Section 403.067(a)2., F.S. No TMDL is required if the waterbody is determined to be impaired solely from factors other than point or nonpoint sources.

²⁵ Section 403.067(6)(b), F.S., which provides a detailed direction of the factors to be considered in this allocation.

²⁶ <http://www.dep.state.fl.us/water/tmdl/index.htm>, accessed 3/28/2013.

²⁷ Section 403.067(6)(c), F.S. The APA is codified as Ch. 120, F.S.

²⁸ Chapter 62-304, F.A.C.

²⁹ *Florida Wildlife Federation, Inc. v. Browner*, Case No. 98-356 (N.D. Fla.). Similar suits were brought in 38 other states.

³⁰ Consent Decree, *Florida Wildlife Federation, Inc. v. Browner*, Case No. 98-356 (N.D. Fla. July 1999).

³¹ *Id. at Exhibit A.*

³² Section 120.52(16); *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

³³ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

³⁴ Section 120.52(17).

³⁵ Section 120.54(1)(a), F.S.

³⁶ Section 120.52(8) & s. 120.536(1), F.S.

³⁷ *Save the Manatee Club, Inc.*, supra at 599.

³⁸ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

³⁹ Section 120.54(3)(a)1, F.S..

⁴⁰ Section 120.55(1)(b)2, F.S.

information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared,⁴¹ and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.⁴²

The economic analysis mandated for each SERC must analyze a rule's potential impact over the 5 year period from when the rule goes into effect. First is the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.⁴³ Next is the likely adverse impact on business competitiveness,⁴⁴ productivity, or innovation.⁴⁵ Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.⁴⁶ If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."⁴⁷ A rule must be filed for adoption before it may go into effect⁴⁸ and cannot be filed for adoption until completion of the rulemaking process.⁴⁹ A rule projected to have a specific economic impact exceeding \$1 million in the aggregate over 5 years⁵⁰ must be ratified by the Legislature before going into effect.⁵¹ As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

As part of the administrative rulemaking process, DEP's Division of Environmental Assessment and Restoration (DEAR) conducts an assessment of whether a SERC must be prepared in conjunction with the promulgation of an administrative rule, such as establishing a TMDL for an impaired waterbody. If a SERC is required, the Bureau of Watershed Restoration then conducts a multi-step economic analysis of the regulatory costs anticipated to be incurred were the rule to be adopted.⁵²

In all cases where DEAR prepares a SERC, the economic analysis is designed to determine whether the impact of the rule will result in regulatory costs exceeding one million dollars over the first five years of implementation.⁵³ DEAR also includes the following information in SERC estimates for a proposed rule: the number of individuals and entities likely required to comply with the proposed rule; the enforcement cost to the agency; the effect on local revenues; and associated transactional costs.⁵⁴

⁴¹ Preparation of a SERC is required if the proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 within one year of implementation of the rule. Alternatively, preparation of a SERC is triggered when a substantially affected person submits a good faith written proposal for a lower cost regulatory alternative which substantially accomplishes the objectives of the law being implemented. Section 120.541(1)(a), (b), F.S.

⁴² Section 120.541(2)(a), F.S.

⁴³ Section 120.541(2)(a)1., F.S.

⁴⁴ Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

⁴⁵ Section 120.541(2)(a) 2., F.S.

⁴⁶ Section 120.541(2)(a) 3., F.S.

⁴⁷ Section 120.54(3)(e)6. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State .

⁴⁸ Section 120.54(3)(e)6, F.S.

⁴⁹ Section 120.54(3)(e), F.S.

⁵⁰ Section 120.541(2)(a), F.S.

⁵¹ Section 120.541(3), F.S.

⁵² If there are no NPDES municipal separate storm sewer system permit holders and no NPDES industrial or domestic wastewater facilities within the area affected by the rule, there is no expectation that small businesses will be adversely affected or that regulatory costs will be increased by \$200,000 in the first year of TMDL implementation and a SERC is not prepared (absent the submission of a lower cost regulatory alternative by a substantially affected person). However, the SERC development checklist provided by the Governor's Office of Fiscal Accountability and Regulatory Reform (OFARR) still will be completed and must be approved (signed/dated) by the Secretary of DEP, indicating that no SERC was necessary for that rule. If a SERC is prepared, the SERC checklist will acknowledge that a SERC is needed and the Secretary of DEP will approve (sign/date) the checklist to indicate such.

⁵³ Sec. 120.541(2), F.S.

⁵⁴ Sec. 120.541(2)(a)(1)-(3), Fla. Stat.

In summary, before a proposed TMDL goes into effect, DEP follows a detailed process:

- Identify specific Florida waterbodies for water quality assessment in a list provided to EPA;
- Following the methodology adopted by rule, assess the water quality of each separate water body on the list;
- Determine whether the WQS for a specific water body is being attained and, if not, whether a TMDL is necessary to reduce the identified pollutant and restore the water quality of the waterbody;
- Update the list of waterbodies for which TMDLs will be calculated;
- Prior to developing the TMDL calculation for a specific water body, confer with all affected stakeholders to determine the best methodologies for obtaining data and developing the TMDL calculation;
- Develop the calculation and establish the TMDL for the particular pollutant;
- Allocate the TMDLs for a waterbody between and among all point and nonpoint sources, accounting for other factors such as restoration activities, applying detailed criteria specified in statute;
- Preparing and making publicly available a report detailing the research, contributing factors, methodology, calculations, and allocations for each TMDL;
- Adopting each TMDL through the rulemaking process of the APA, which provides for public notice of rule development, the proposed rule, preparation of a SERC, hearing rights, and judicial review;⁵⁵
- Ratification of those TMDLs meeting the economic impacts of one million dollars in the first five years of implementation.

Finally, the resulting TMDLs are subject to review and approval by the EPA under the extensive requirements of the CWA.

Effect of Proposed Changes

The bill amends s. 403.067(6)(c), F.S., to include a provision exempting DEP's promulgation of rules establishing TMDLs from the legislative ratification requirement of s. 120.541(3), F.S. As a result, TMDLs promulgated by DEP in the future would not require legislative ratification before taking effect, even if the associated regulatory costs exceed the one million dollar threshold.

B. SECTION DIRECTORY:

Section 1: Amending s. 403.067, F.S., providing that administrative rules adopted by the Department of Environmental Protection to establish total maximum daily loads calculations and allocations are not subject to the legislative ratification requirement.

Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁵⁵ Sections 120.54, 120.541, 120.56, 120.569, 120.57, 120.68, F.S.
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B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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1 A bill to be entitled
 2 An act relating to total maximum daily loads; amending
 3 s. 403.067, F.S.; exempting specified rules adopted by
 4 the Department of Environmental Protection from
 5 ratification by the Legislature under s. 120.541(3),
 6 F.S.; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (c) of subsection (6) of section
 11 403.067, Florida Statutes, is amended to read:

12 403.067 Establishment and implementation of total maximum
 13 daily loads.—

14 (6) CALCULATION AND ALLOCATION.—

15 (c) Adoption of rules. The total maximum daily load
 16 calculations and allocations established under this subsection
 17 for each water body or water body segment shall be adopted by
 18 rule by the secretary pursuant to ss. 120.536(1), 120.54, and
 19 403.805. Where additional data collection and analysis are
 20 needed to increase the scientific precision and accuracy of the
 21 total maximum daily load, the department is authorized to adopt
 22 phased total maximum daily loads that are subject to change as
 23 additional data becomes available. Where phased total maximum
 24 daily loads are proposed, the department shall, in the detailed
 25 statement of facts and circumstances justifying the rule,
 26 explain why the data are inadequate so as to justify a phased
 27 total maximum daily load. The rules adopted pursuant to this
 28 paragraph are ~~shall~~ not be subject to approval by the

HB 7113

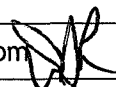
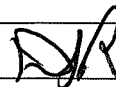
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29 | Environmental Regulation Commission and are exempt from
 30 | ratification under s. 120.541(3). As part of the rule
 31 | development process, the department shall hold at least one
 32 | public workshop in the vicinity of the water body or water body
 33 | segment for which the total maximum daily load is being
 34 | developed. Notice of the public workshop shall be published not
 35 | less than 5 days nor more than 15 days before the public
 36 | workshop in a newspaper of general circulation in the county or
 37 | counties containing the water bodies or water body segments for
 38 | which the total maximum daily load calculation and allocation
 39 | are being developed.

40 | Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7115 **PCB SAC** 13-02 **Numeric Nutrient Criteria**
SPONSOR(S): State Affairs Committee, Raburn
TIED BILLS: **IDEN./SIM. BILLS:** SB 1808

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	18 Y, 0 N	Blalock	Camechis
1) Rulemaking Oversight & Repeal Subcommittee		Rubottom 	Rubottom 
2) Agriculture & Natural Resources Appropriations Subcommittee			

SUMMARY ANALYSIS

Nutrient pollution (excessive nitrogen and phosphorous) causes harmful algae blooms that produce toxins harmful to humans, deplete oxygen needed for fish and shellfish survival, smother vegetation, and discolor water. The Clean Water Act (CWA) employs a cooperative federalism approach to regulating nutrient pollution. Specifically, the CWA requires states to set water quality standards (WQS) for each waterbody within their jurisdiction. These WQS must include the following three parts:

- The designation of a waterbody’s beneficial uses, such as water supply, recreation, fish propagation, or navigation;
- The water quality criteria that defines the amounts of pollutants, in either numeric or narrative form, that the waterbody can contain without impairment of the designated beneficial uses; and
- The anti-degradation requirements.

Under the CWA, a WQS can include either a narrative or numeric criteria for any pollutant regulated under the act. For any state that refuses to set appropriate WQS, the CWA requires the Environmental Protection Agency (EPA) to set their own federal standards. In addition, where EPA has adopted a federal standard for a specific state, that state can then adopt its own rule, and, if approved by EPA, the state rule will replace EPA’s federal rule.

In August 2009, in response to a lawsuit brought by several environmental groups, EPA entered into a consent decree requiring it to adopt federal numeric nutrient criteria for Florida’s lakes, flowing waters, estuaries, and coastal waters. In December 2010, EPA adopted a final numeric nutrient criteria rule for all lakes and springs in the state and flowing waters outside of the southern Florida region in accordance with the consent decree and subsequent revisions. As a result, the Florida Department of Environmental Protection (DEP) entered into rulemaking and adopted its own numeric nutrient criteria, and submitted the rule to EPA for approval. On November 30, 2012, EPA approved DEP’s numeric nutrient criteria for streams, rivers, lakes, and south Florida estuaries. On the same day EPA proposed criteria for coastal waters and the remaining estuaries, and re-proposed criteria for certain rivers and streams that could potentially be exempt from Florida’s numeric nutrient criteria rule. As a result of EPA’s continuing rulemaking, the DEP rule has not been implemented because a specific provision in DEP’s rule¹ postpones effectiveness until EPA concludes rulemaking.

The bill amends current law to direct DEP to establish numeric nutrient criteria for remaining waterbodies in the state that were not covered under the rules approved by EPA on November 30, 2012. The bill also grants DEP the authority to implement its own nutrient standards for streams, springs, lakes, and estuaries consistent with the document entitled “Implementation of Florida’s Numeric Nutrient Standards,” which was submitted to EPA in support of the DEP’s adopted nutrient standards and has been filed as a proposed rule under Florida’s Administrative Procedure Act². In addition, the bill specifies that once EPA removes federal numeric nutrient criteria and ceases future numeric nutrient criteria rulemaking in the state, Rule 62-302.531(9), F.A.C.,³ will be removed from the Florida Administrative Code. The bill also exempts from legislative ratification any additional estuary criteria adopted by DEP during 2013. Lastly, the bill directs DEP to establish specific numeric nutrient criteria for unimpaired waters (including DEP’s calculation of the current conditions of those waters) and for those estuaries and non-estuarine coastal waters without numeric nutrient criteria

¹ Rule 62-302.531(9), F.A.C. See fn. 22 for the effectiveness language in the rule.

² Chapter 120, F.S.

³ See fn. 1.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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established by rule or final order as of the date of the report, and directs DEP to send a report to the Legislature and Governor conveying the status of establishing numeric nutrient criteria.

The bill appears to have an insignificant fiscal impact on state government by requiring DEP to submit a report to the Legislature and the Governor conveying the status of establishing numeric nutrient criteria. The bill has an indeterminate fiscal impact on local governments (See Fiscal Comments).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Nutrient Pollution Generally

Nitrogen and phosphorus ("nutrients") are natural components of aquatic ecosystems. However, what is considered a healthy and safe level of nutrients varies greatly throughout the state depending on the site-specific characteristics of a given water body. The problems associated with excess nutrients arise when nutrients occur over large areas of a water body for extended periods of time at levels that exceed what is "natural" for the particular system.

Excessive amounts of nitrogen and phosphorus (also known as "nutrient pollution") is a significant contributor to water quality problems. Nutrient pollution originates from stormwater runoff, wastewater treatment, industrial discharges, fertilization of crops, and livestock manure. Nitrogen also forms from the burning of fossil fuels, like gasoline.

Nutrient pollution causes harmful algae blooms that produce toxins harmful to humans, deplete oxygen needed for fish and shellfish survival, smother vegetation, and discolor water.

Federal Law – The Clean Water Act

Under the federal structure established in the U.S. Constitution, states may not be compelled by the Federal Government to enact legislation or take executive action to implement federal regulatory programs.⁴ Thus, where Congress has the authority to regulate private activity under the Commerce Clause, the Federal Government may regulate that activity directly, but it may not require the states to do so. However, Congress can *encourage* a state to regulate in a particular way by offering "incentives" -- often in the form of federal funds. Congress may also create a "potential preemption" structure in which states must regulate the activity under state law according to federally approved standards or have state regulation pre-empted by federal regulation. The federal Clean Water Act (CWA)⁵ utilizes both of these constitutional means.

Water Quality Standards

The CWA was enacted in 1972 in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."⁶ One of the pillars of the CWA is section 303, which requires states to adopt water quality standards (WQS) for their navigable waters, and to review and update those standards at least every three years. These standards must include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, or navigation;
- Water quality criteria that defines the amounts of pollutants, in either numeric or narrative form, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.⁷

⁴ *Printz v. United States*, 521 U.S. 898, 925 (1997); *New York v. United States*, 505 U.S. 144, 188 (1992).

⁵ Codified at 33 U.S.C. Sec. 1251 et. seq.

⁶ CWA s. 101(a).

⁷ CWA s. 303(c)(2)(A).

Although the CWA gives states the primary authority to set WQS, they are reviewable by the Environmental Protection Agency (EPA).⁸ If at any time EPA determines that a revised or new standard is necessary to meet the requirements of the CWA, the EPA Administrator is authorized to adopt revised WQS.⁹ Moreover, the CWA requires EPA to set WQS for any waterbody where a state fails to do so.¹⁰ The CWA also provides that water quality criteria can be established as either narrative or numeric criteria for any pollutant regulated under the act. Currently, Florida employs narrative criteria for nutrient pollution.

Point Source Pollution

The CWA is focused primarily on point sources of water pollution. Point source pollution can be defined generally as any human-controlled "discernible, confined, and discrete" conveyance into jurisdictional waters.¹¹ The CWA directly regulates point source pollution via the National Pollution Discharge Elimination System (NPDES) permitting process.¹² The NPDES process prohibits the discharge of pollutants from a point source into navigable waters except as provided for in an NPDES permit.¹³ In practice, the NPDES method of regulation can be best visualized as "end-of-the-pipe" controls that clean up waste water before it is discharged into a waterbody. The primary focus of the NPDES permitting program is municipal (Publicly Owned Treatment Works) and non-municipal (industrial) direct dischargers, and the primary mechanism for controlling discharges of pollutants to receiving waters is establishing effluent¹⁴ limitations. NPDES permits require a point source to meet established effluent limits, which are based on applicable technology-based and water quality-based standards. The intent of technology-based effluent limits in NPDES permits is to require a minimum level of treatment of pollutants for point source discharges based on the best available control technologies while allowing the discharger to use any available control technique to meet the limits.

However, for some waterbodies, the technology-based effluent limits may not be sufficient to ensure that established water quality standards will be attained in the receiving water. These waterbodies are designated as "impaired." For a waterbody or segment designated as impaired, the CWA requires that EPA or the state set a total maximum daily load (TMDL),¹⁵ which establishes the maximum amount of a given pollutant the waterbody can accept while still meeting water quality standards associated with its designated use.¹⁶ The purpose of a TMDL "is to provide a basis for allocating acceptable loads among all of the known pollutant sources in a watershed so that appropriate control measures can be implemented and water quality standards achieved."¹⁷ A TMDL thus takes into account both point source and nonpoint source pollution. Once a TMDL is established, it can affect the NPDES permit limitations for point sources discharging into the waterbody or segment. In such cases, the CWA requires that more stringent, water quality-based effluent limits be established in an NPDES permit to ensure that water quality standards are met.

Nonpoint source pollution encompasses all forms of water pollution not classified as point source, such as stormwater runoff. Regulation of nonpoint source pollution typically relies on controls -- such as best management practices -- that directly impact how the land itself is used. Except in limitation situations,

⁸ CWA s. 303(a).

⁹ CWA s. 1313(c)(4)(B).

¹⁰ CWA s. 303(c).

¹¹ CWA s. 502(14). Courts have held that human beings themselves are not point sources under the CWA. *See U.S. v. Plaza Health Labs*, 3 F.3d 643 (2d. Cir. 1993). The CWA also established exceptions whereby certain agricultural activities are not considered point source.

¹² CWA s. 402.

¹³ *Id.*

¹⁴ For purposes of this analysis, effluent may be defined as: "Wastewater, treated or untreated, that flows out of a treatment plant, sewer, or industrial point source, such as a pipe. Generally refers to wastes discharged into surface waters." Glossary of terms from Watershed Analysis and Management Guide for States and Communities (EPA 841-B-03-007)(2003).

¹⁵ CWA s. 402. Section 403.067, F.S., authorizes DEP to establish TMDLs in Florida.

¹⁶ *Id.*

¹⁷ Florida Dept. of Environmental Protection, *Total Maximum Daily Load for Iron for Hatchet Creek, Alachua County, Florida*, Pg. 7.

nonpoint sources are not regulated by the CWA, but states do require nonpoint sources to reduce their pollution, especially when a waterbody is impaired. For example, Florida requires nonpoint sources to implement best management practices in order for an impaired waterbody to achieve the requisite WQS pursuant to a Basin Management Action Plan.

Status of Nutrient Regulation in Florida

United States Environmental Protection Agency Numeric Nutrient Criteria Rulemaking

In July 2008, the Florida Wildlife Federation and other environmental groups sued EPA in an attempt to compel EPA to adopt numeric nutrient criteria for Florida's waterbodies. In January 2009, EPA determined that numeric nutrient water quality criteria for Florida's waterbodies are necessary to meet the requirements of the CWA. EPA determined that Florida's narrative nutrient criteria alone was insufficient to ensure protection of applicable designated uses, but also recognized the ongoing efforts by DEP in developing a numeric nutrient criteria for Florida's waterbodies. EPA noted that, "in the event that Florida adopts and EPA approves new or revised water quality standards that sufficiently address this determination before EPA promulgates federal water quality standards, EPA would no longer be obligated to promulgate federal water quality standards."

In August 2009, EPA settled the lawsuit and entered into a consent decree that required EPA to adopt numeric nutrient criteria for Florida's lakes, flowing waters, estuaries, and coastal waters. DEP suspended its rulemaking proceedings while EPA developed its rules to impose numeric nutrient criteria in Florida. In December 2010, EPA adopted final numeric nutrient criteria rules for all lakes and springs in the state and flowing waters outside of the southern Florida region in accordance with the consent decree and subsequent revisions.

Also in December 2010, the State of Florida filed a lawsuit in federal district court against EPA over the agency's intrusion into Florida's previously approved clean water program.¹⁸ The lawsuit alleged that EPA's action was inconsistent with the intent of Congress when it based the CWA on the idea of cooperative federalism whereby the states would be responsible for the control of water quality with oversight by EPA. Control of nutrient loading from predominantly nonpoint sources involves traditional states' rights and responsibilities for water and land resource management which Congress expressly intended to preserve in the Clean Water Act. The lawsuit specifically alleged that the EPA rules and EPA's January 2009 necessity determination for promulgating numeric nutrient criteria for Florida's waters are arbitrary, capricious, and an abuse of discretion, and requested the court to enjoin EPA Administrator from implementing its numeric nutrient criteria rules in Florida.

On February 18, 2012, the United States District Court for the Northern District of Florida found against the state, holding that EPA's determination that Florida's narrative nutrient criteria are inadequate and that numeric criteria are necessary was not arbitrary and capricious.¹⁹ The court also held, however, that EPA's rule setting numeric nutrient criteria for Florida was not arbitrary and capricious save for two exceptions: EPA's stream criteria were found to be arbitrary and capricious (at least without further explanation, according to the court), as were the default downstream protection values for unimpaired lakes. In accordance with the court's ruling, the 2009 consent decree was to remain in effect, with the modification that EPA was required to remedy the numeric nutrient criteria for streams and downstream protection values by May 21, 2012.

DEP Numeric Nutrient Criteria Rulemaking

In response to EPA promulgating rules to establish federal numeric nutrient criteria for Florida's waterways, DEP began rulemaking and adopted state numeric nutrient criteria for streams, rivers, lakes, and south Florida estuaries, which it then submitted to EPA for approval pursuant to the CWA.

¹⁸ *State of Florida v. Jackson*, Case 3:10-cv-00503-RV-MD (N.D. Fla. 2010).

¹⁹ *State of Florida v. Jackson*, 853 F.Supp.2d 1138 (N.D. Fla 2012).

In December of 2011, several environmental groups filed a petition with the Division of Administrative Hearings challenging DEP's rules. An Administrative Law Judge upheld the rules in June of 2012, finding that DEP acted within its authority in promulgating numeric nutrient criteria for the state. The decision was affirmed by the First District Court of Appeal in February of 2013.²⁰

The DOAH proceeding was ongoing during the 60-day 2012 legislative session, preventing ratification of the 2011 NNC rule during that session. Consequently, DEP sought and the Legislature enacted a bill exempting the NNC rule from ratification.²¹ That legislation also required that any amendment to rule 62-302.531(9)²² (added to the NNC rule by the Environmental Resources Commission), will not be effective unless the amendment is ratified by the Legislature.²³

On November 30, 2012, EPA approved DEP's numeric nutrient criteria applicable to all of Florida's rivers, streams, and lakes, and to estuaries from Tampa Bay to Biscayne Bay, including the Florida Keys.²⁴ Simultaneously, EPA proposed draft federal numeric nutrient criteria for waters not yet covered by state rules which included:

- Remaining estuaries;
- Open ocean waters;
- The location where South Florida canals enter estuaries; and
- Scientifically challenging areas like tidal creeks, headwaters that are dry for portions of the year (excluding drought conditions), and managed water conveyances.

As part of the November 30 action, EPA also amended its previous January 2009 determination and concluded that DEP's rules provided sufficient quantitative procedures upstream to ensure the protection of water quality standards in downstream waters as required by the Clean Water Act. As a result, the DEP rule has not been implemented because a specific provision in DEP's rule (Rule 62-302.531(9), F.A.C.) expressly states that "these rules shall be effective only if EPA approves these rules in their entirety, concludes rulemaking that removes federal numeric nutrient criteria in response to the approval, and determines that these rules sufficiently address EPA's January 14, 2009 determination."²⁵

EPA wishes to assemble a package that can be presented to the federal court in a motion for dismissal from the 2009 consent decree that requires EPA to set additional numeric nutrient criteria in September 2013. In effect, this will begin the process of turning over the task of promulgating numeric nutrient criteria entirely to DEP. EPA desires the package to be completed by August 1, 2013, in order to provide sufficient time to prepare a motion to the court prior to a September deadline.

To accomplish EPA's goals, DEP and EPA officials have entered into an informal agreement²⁶ for DEP to complete adoption of numeric nutrient criteria to EPA's satisfaction in time to enable EPA to resolve its 2009 determination, satisfy the consent decree, obtain dismissal of the federal litigation and withdraw from rulemaking on water quality in Florida. The arrangement is further described in a

²⁰ *Florida Wildlife Federation, et. al. v. Department of Environmental Protection*, Case No. ID12-320 (Feb. 2013).

²¹ Chapter 2012-3, L.O.F.

²² Rule 62-302.531(9), F.A.C., provides in part: "these rules shall be effective only if EPA approves these rules in their entirety, concludes rulemaking that removes federal numeric nutrient criteria in response to the approval, and determines that these rules sufficiently address EPA's January 14, 2009 determination."

²³ Section 403.805(3), F.S.

²⁴ EPA Factsheet, *Multiple EPA Actions Related to Nutrient Pollution in Florida Waterways* (Nov. 2012), available at http://water.epa.gov/lawsregs/rulesregs/florida_index.cfm.

²⁵ Section 403.805(3), F.S.

²⁶ A document entitled, "Agreement in Principle", dated March 15, 2013, available at:

http://www.dep.state.fl.us/secretary/news/2013/03/NNC_Agreement_in_Principle_Final.pdf (attached hereto), represents the framework of this arrangement. It does not appear to constitute a binding contract but does state its objective to be "...Florida having numeric nutrient criteria for lakes, springs, estuaries and coastal waters, and the vast majority of flowing waters in the State."

document entitled "Florida Numeric Nutrient Criteria – a Path Forward"²⁷ (Path Forward), which specifies the DEP's intentions respecting NNC for Marine Waters, including submission of marine NNC to EPA by August 1, 2013, and the implementation of NNC for Fresh Waters including DEP's intent to presumptively apply Florida's stream NNC to ditches, canals and other man-made conveyances presently excluded from the definition of "stream".²⁸ To bind itself to its commitments to EPA, the DEP has undertaken the responsibility to secure passage of the legislation encompassed in HB 7115.

The Path Forward document makes the following representation:

Based on this extensive coverage of Florida waters by State numeric nutrient criteria (fresh and marine), EPA is prepared to take actions that would make it unnecessary for EPA to finalize federal criteria for these waters. Upon FDEP's incorporating by reference into rule the Implementation Document as modified on March 11, 2013, and EPA's review of that document under Clean Water Act section 303(c), EPA is prepared to amend the 2009 Determination to clarify that numeric nutrient criteria are unnecessary for flowing waters not covered by the stream definition. EPA would then not finalize its rulemaking for inland waters. Upon enactment of [legislation proposed as HB 7115] and FDEP's submittal to EPA of the numeric values that FDEP is directed to develop in the legislation and those numeric nutrient criteria FDEP adopts by rule, EPA, following review under Clean Water Act section 303(c), is prepared to cease corresponding federal rulemaking for estuaries and coastal waters.

Legislative Rule Ratification Requirement

As part of the administrative rulemaking process, s. 120.541, F.S., requires that the Division of Environmental Assessment and Restoration (DEAR) conduct an assessment of whether a Statement of Estimated Regulatory Cost (SERC) must be prepared in conjunction with the promulgation of an administrative rule, such as the establishment of numeric nutrient criteria for Florida waterbodies.²⁹ If a SERC is required, staff within the Bureau of Watershed Restoration then conducts a multi-step economic analysis of the regulatory costs that are anticipated to be incurred were the rule to be adopted.

Section 120.541(1)(b), F.S., requires the preparation of a SERC if the proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 within one year of implementation of the rule. Alternatively, preparation of a SERC is triggered when a substantially affected person submits a good faith written proposal for a lower cost regulatory alternative which substantially accomplishes the objectives of the law being implemented.³⁰ In the event that the estimated regulatory cost exceeds the one million dollar threshold, s. 120.541(3), F.S. requires that the rule be ratified by the Florida Legislature before taking effect. The rule must be submitted to the President of the Senate and the Speaker of the House of Representatives no less than 30 days prior to the beginning of the next regular legislative session.³¹ The proposed rule will not become effective until it is ratified by the legislature.³²

Effect of Proposed Changes

HB 7115 amends s. 403.061, F.S., to direct DEP to establish numeric nutrient criteria for remaining waterbodies in the State that were not covered under the rules approved by EPA on November 30, 2012. Specifically, the bill directs DEP to implement permitting and other pollution control measures consistent with the attainment of:

²⁷ Florida Numeric Nutrient Criteria – Path Forward, found at http://www.dep.state.fl.us/secretary/news/2013/03/Florida_Numeric_Nutrient_Criteria_EPA_FDEP_PathForward_31413.pdf, a copy of which is attached.

²⁸ Rule 62-302.200(36), F.A.C. The ""Path Forward" document incorrectly cites this definition as rule 62-302.300(36).

²⁹ Section 120.541, F.S.

³⁰ Section 120.541(1)(a), F.S.

³¹ Section 120.541(2)(g)(3), F.S.

³² *Id.*

- Narrative criteria for nutrients and in-stream numeric interpretation of the narrative water criteria for nutrients in streams, canals, and other conveyances; and
- Nutrient water quality standards applicable to downstream waters.

The bill also declares that the loading of nutrients to downstream waters from a stream, canal, or other conveyance must be limited to provide for the attainment and maintenance of nutrient water quality standards in downstream waters. In the event that the downstream water does not have a TMDL adopted under s. 403.067, F.S., and has not been verified as impaired by nutrient loadings,³³ DEP must implement its authority in a manner that prevents impairment of the downstream water due to loadings from the upstream water. Where the downstream water does not have a TMDL, but has been verified as impaired by nutrient loadings, DEP must adopt a TMDL for that waterbody under s. 403.067, F.S. If the downstream water does have a TMDL that interprets narrative water quality criteria for nutrients, then allocations must be set for upstream waterbodies.

In addition, the bill states that compliance with an allocation calculated under s. 403.067(6), F.S., (providing for the calculation and allocation of TMDLs) or if applicable, the basin management action plan established under s. 403.067(7), F.S., for the downstream water constitutes reasonable assurance that a discharge does not cause or contribute to the violation of downstream nutrient WQS.

The bill also grants DEP the authority to implement its own nutrient standards for streams, springs, lakes, and estuaries consistent with the document entitled "Implementation of Florida's Numeric Nutrient Standards," which was submitted to EPA in support of the DEP's adopted nutrient standards. The document was also filed as a proposed rule on March 19, 2013.³⁴ EPA relied upon this document when it issued its approval of Florida's numeric nutrient criteria on November 30, 2012. The bill states that the document, which explicitly states how DEP will apply nutrient standards to water management conveyances, is subject to the provisions of R. 62-302.531(9), F.A.C., (providing that the numeric nutrient rules shall be effective only if EPA approves these rules in their entirety, concludes rulemaking that removes federal numeric nutrient criteria in response to the approval, and determines, in accordance with 33 U.S.C. § 1313(c)(3), that these rules sufficiently address EPA's January 14, 2009, determination) and is also exempt from the legislative ratification requirement of s. 120.541(3), F.S. However, the express authority to implement the document appears to narrow the effect of R. 62-302.531(9) which currently postpones effectiveness of the NNC rule being implemented by the document.

Furthermore, the bill provides that once EPA approves DEP's remaining numeric nutrient criteria, subsequently withdraws all of its own numeric nutrient criteria rules from the state, and otherwise ceases all federal nutrient rulemaking in Florida, Rule 62-302.531(9), F.A.C., must be removed from the Florida Administrative Code, thus allowing DEP to fully implement state numeric nutrient criteria. This constitutes an implied limitation or nullification of the 2012 legislation endorsing and protecting the rule by requiring ratification of any changes to the cited rule.³⁵ In effect, this bill intends the repeal the rule as a matter of law, upon the conditions subsequent provided in this bill, which differ from those in the rule. Thereafter, should DEP choose to promulgate a new numeric nutrient WQS – such as for lakes, streams, estuaries, etc. – it must be submitted to EPA in accordance with the CWA.³⁶ As a result of the revised conditions on effectiveness, if EPA invalidates the newly proposed standard, the remainder of DEP's numeric nutrient standards already established for other waterbodies will remain in effect.

The bill additionally provides that any nutrient criteria rules for estuaries adopted by DEP in 2013 are subject to the EPA approval requirements found in Rule 62-302.531(9), F.A.C., which also delays

³³ Rule Ch. 62-303, F.A.C., governs identification of impaired surface waters. Rule 62-303.200(7), defines impairment.

³⁴ Volume 39, No. 54, F.A.R. (The issue may be found at: https://www.flrules.org/BigDoc/View_Faw.asp?IID=1317.)

³⁵ Section 403.805(3).

³⁶ CWA Sec. 303(2)(A).

effectiveness until EPA so approves and ceases rulemaking. NNC rules adopted under the bill in 2013 are also exempted from the legislative ratification requirement of s. 120.541(3), F.S.

The bill also directs DEP to adopt numeric nutrient criteria for total nitrogen, total phosphorous, and chlorophyll *a* for any remaining estuaries not already subject to DEP numeric nutrient criteria. DEP is also directed to establish chlorophyll *a* interpretations of the narrative nutrient criteria for non-estuarine, coastal waters by December 1, 2014. In the meantime, the bill establishes that the criteria for those waterbodies are the current unimpaired condition of those waters.³⁷

Finally, the bill directs DEP to send a report to the Governor and Legislature by August 1, 2013, conveying the status of the legislatively established numeric nutrient criteria for unimpaired waters (including DEP's calculation of the current conditions of those waters) and for those estuaries and non-estuarine coastal waters without numeric nutrient criteria established by rule or final order³⁸ as of the date of the report.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.061, F.S., related DEP's duty to control and prohibit nutrient pollution.

Section 2. Authorizes DEP to implement its adopted nutrient standards for streams, springs, lakes, and estuaries consistent with the document entitled "Implementation of Florida's Numeric Nutrient Standards."

Section 3. Provides that a specific DEP rule will expire when EPA withdraws all federal numeric nutrient criteria rules in the State of Florida.

Section 4. Provides that any nutrient criteria rules for estuaries adopted by DEP in 2013 are subject to the EPA approval requirements found in s. 62-302.531(9), F.A.C., and also exempt from the legislative ratification requirement.

Section 5. Directs DEP to adopt numeric nutrient criteria for remaining estuaries and coastal waters by December 1, 2014, and directs DEP to submit a report.

Section 6. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires DEP to submit a report to the Governor and Legislature containing the current calculations of unimpaired conditions for nutrients for certain estuaries and coastal waters.

According to DEP, the department will also incur certain costs associated with rulemaking to

³⁷ Respecting the calculation of the "current conditions", the "Path Forward" document provides:

The interim numeric values, reflecting the current unimpaired conditions, will be values that EPA and FDEP mutually determine are based on the best monitoring and modeling data available at the time and protective of the designated uses.

Any disagreement over the interim numeric interpretation for any estuary or coastal segment will be immediately elevated to the Secretary of FDEP and the Regional Administrator of the EPA Region 4 Office for resolution.

³⁸ DEP represents that the following rules authorize some such criteria to be established directly or indirectly by final order: 62-302.531(2), 62-302.532(3), 62-302.800(3), 62-303.600, and 62-650.500(4) and (9).

implement the provisions in the bill. However, DEP has also stated that they will be able to absorb these costs within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

DEP provided the following fiscal comments:

While there are costs associated with implementing Florida's comprehensive NNC—the need to restore polluted waters inevitably comes at a cost—the Legislature acknowledged in chapter 2012-3, Laws of Florida (House Bill 7051 from the 2012 legislative session) that the costs to implement DEP's adopted and proposed NNC are significantly less than the costs to implement NNC rules adopted by the EPA. This is largely because DEP's NNC account for unique site-specific conditions and the critical underlying biology of these disparate ecosystems. And implementing comprehensive NNC will serve to protect currently unimpaired waters from becoming polluted, saving local governments millions if not billions of dollars in restoration costs in the future.

Furthermore, the NNC for remaining estuaries and coastal waters that are the immediate subject of this legislation are set in the interim at the current conditions of unimpaired waters. Those unimpaired conditions suggest, on the whole, that significant pollution reduction investments will not be necessary for these remaining waters. Conditions are generally similar to those present in the Panhandle estuaries, for which the ERC approved NNC in November 2012 and for which it was determined that implementation costs overall would be less than any of the thresholds established by the Legislature for a Statement of Estimated Regulatory Costs pursuant to chapter 120, F.S.

It is essential to recognize that if DEP does not set comprehensive NNC for Florida, EPA will do so. If that occurs, the significant additional costs the Legislature acknowledged in chapter 2012-3, Laws of Florida, will come to pass.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill exempts certain DEP rules from the legislative ratification requirement in chapter 120, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill as filed raises a few drafting concerns, although none should be insurmountable in the application of the law. Section 3 provides that when the EPA takes particular actions, then a particular rule "shall expire and the department shall remove it from the Florida Administrative Code pursuant to Chapter 120, F.S." The intent appears to be to effect an immediate nullification of the rule upon the occurrence of the conditions stated. However, the only way an agency can remove a rule from the F.A.C. pursuant to ch. 120 would be to go through a rulemaking procedure repealing the rule. A better way to draft would be to state that the rule "shall stand repealed" and direct the Department of State to remove it from the F.A.C upon proper notice of the law having taken effect.

With respect to particular pollutants identified therein, Section 5 establishes, as a matter of law, "the current conditions of those unimpaired waters, accounting for climactic and hydrologic cycles" to constitute the water quality standard pursuant to s. 403.061(11), F.S., until changed through rulemaking. The DEP is impliedly directed to calculate "the numeric values that represent the current conditions..." and to report status, including such calculation, to the Governor, Speaker and Senate President. Given that the clear intent is to establish standards as a matter of law, it would be more practical to make a more reliable record of the DEP calculation, such as by publication of notice thereof in the Florida Administrative Register, even though the calculation may be subject to question in the light of improved monitoring and modeling data.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

AGREEMENT IN PRINCIPLE
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND
THE U.S. ENVIRONMENTAL PROTECTION AGENCY

March 15, 2013

The Florida Department of Environmental Protection (FDEP) and the U.S. Environmental Protection Agency have reached an agreement to protect Florida's waterways from excess nitrogen and phosphorus pollution. These pollutants cause algal blooms and are among the largest contributors to water quality problems in Florida. This agreement marks a significant step forward in protecting and restoring water quality across the state.

Measurable nutrient criteria will result in cleaner, safer water for all Floridians. Clean water is vital to Florida's future. The health and growth of Florida's economy -- and the jobs that go with it -- depend on high quality and sustainable sources of water. Tourism -- Florida's economic lifeblood -- employs more than 900,000 Floridians and generates nearly \$60 billion annually for Florida's economy.

The EPA and FDEP have worked diligently and collaboratively to use the best science available, to carefully consider the extensive public comments submitted to EPA and FDEP, and to exercise flexibility consistent with the leadership responsibility of the State of Florida under the Clean Water Act.

This agreement, once implemented and completed, coupled with EPA's prior (November 30, 2012) approval of FDEP's newly adopted water quality standards, will result in Florida having numeric nutrient criteria for lakes, springs, estuaries and coastal waters, and the vast majority of flowing waters in the State.

This agreement is contingent upon passage of the language included in the attached version of draft legislation by the Florida Legislature and adoption by reference into Florida rule the document entitled "Implementation of Florida's Numeric Nutrient Standards" as modified on March 11, 2013. The agreement is based on the premise that the attached version of the legislation and the Implementation Document are consistent with the Clean Water Act. The attached document "Path Forward" details the actions FDEP and EPA will take to satisfy the Determination and Consent Decree.

We expect this agreement will provide a strong, effective framework for protecting and restoring waters that are vital to the economic and environmental health of Florida.

Florida Numeric Nutrient Criteria – Path Forward

On November 30, 2012, the Environmental Protection Agency (EPA) approved State criteria for, streams, lakes, springs and south Florida estuaries and coastal waters. On the same day, the EPA proposed criteria for the remaining estuaries, coastal waters, and south Florida inland flowing waters, and also re-proposed criteria for flowing waters outside of south Florida (applicable to waterways that may meet the definition at 62-302.200(36)(a) or (b) F.A.C.). The following is a joint path forward that, if executed as outlined below, will establish numeric nutrient criteria for the vast majority of Florida waterbodies. Once completed as intended by the parties, EPA anticipates that the combination of these actions and future modification to EPA's 2009 determination should enable the Agency to conclude that finalization of the federal numeric nutrient criteria contained in its November 30, 2012, proposal is unnecessary.

The Florida Department of Environmental Protection (FDEP or Department) will pursue passage of the attached version of the draft legislation and adoption by rule of the attached document, entitled "Implementation of Florida's Numeric Nutrient Standards" dated March 11, 2013. The legislation makes it clear that the effectiveness provisions of 62-302.531(9) F.A.C. will expire once the EPA withdraws federal numeric nutrient criteria and ceases numeric nutrient criteria rulemaking, thus allowing FDEP to fully implement State numeric nutrient criteria.

Marine Waters: FDEP will by rule establish numeric nutrient criteria for 22 estuary and coastal segments by July 1, 2013, or as soon thereafter as possible. The attached draft legislation directs FDEP to complete its rulemaking to establish numeric nutrient criteria for the remaining estuary and coastal segments by December 1, 2014. Until such nutrient criteria are established for the remaining estuary and coastal segments, the draft legislation states that applicable water quality standards are the current unimpaired conditions of those waters and directs the Department to calculate interim numeric values representing those unimpaired conditions and submit them to the Governor and Legislature by August 1, 2013. The interim numeric values, reflecting the current unimpaired conditions, will be values that EPA and FDEP mutually determine are based on the best monitoring and modeling data available at the time and protective of the designated uses. Any disagreement over the interim numeric interpretation for any estuary or coastal segment will be immediately elevated to the Secretary of FDEP and the Regional Administrator of the EPA Region 4 Office for resolution. The EPA will review under Clean Water Act 303(c) the numeric nutrient criteria adopted by the Department for the 22 estuary and coastal segments and the legislatively established narrative standard regarding the current unimpaired conditions of the remaining estuary and coastal segments (taking into account the Department's calculation of the numeric values for total nitrogen, total phosphorus, and chlorophyll *a* conditions for those estuary segments and chlorophyll *a* for coastal segments), all of which will have been submitted to EPA before August 1, 2013. EPA will make final decisions whether to approve those actions and the narrative standard prior to the September 30, 2013, consent decree deadline. The Department's calculated interim numeric values would be used as starting points for implementing appropriate regulatory actions on a site-specific basis, unless final Hierarchy 1 or 2 numeric criteria have been adopted for the waterbody and have become applicable criteria for Clean Water Act purposes by December 1, 2014.

Fresh Waters: Once adopted in rule, FDEP will submit the document, entitled "Implementation of Florida's Numeric Nutrient Standards" dated March 11, 2013, to EPA for review under Section 303(c) of the Clean Water Act. This document clarifies how the numeric nutrient criteria for fresh waterbodies will be applied and implemented, including a new chapter related to the implementation of the definition of stream at 62-302.300(36) F.A.C. The definition excludes conveyances that are man-made or physically altered streams, primarily used for water management, and have marginal or poor habitat

components. The implementation document clarifies FDEP's intent to presumptively apply Florida's stream numeric nutrient criteria to these waterbodies unless the Department has publicly distinguished it as such a conveyance.¹ If available information provided by the public, in response to public notice and request for information, or otherwise known by the Department, demonstrates that the segment is commonly used for navigation, boat access, or other frequent recreational activities such as swimming or boating, then the primary purpose is not water management and the department will apply the nutrient standards in Rule 62-302.531(2) F.A.C. There are also three additional categories of waters that are not subject to numeric nutrient criteria. Other Class III waters not subject to numeric nutrient criteria are: 1) waters influenced by tide (i.e., tidal creeks and tidal segments at river mouths); 2) marine lakes; and 3) South Florida flowing waters. Because of the limited extent of the waters that would not be subject to Florida's numeric nutrient criteria, EPA believes that FDEP should be able to implement their narrative criterion for these waters in an effective and efficient manner.

The Department will also codify, through the legislation noted above, requirements for FDEP to ensure nutrient loads from all managed conveyances and canals, as well as the other waters described above, are controlled so that downstream waterbodies are protected. These actions once implemented and completed, coupled with EPA's prior (November 30, 2012) approval of FDEP's newly adopted Water Quality Standards for lakes and flowing waters, will result in Florida having numeric nutrient standards for all fresh water lakes, springs, estuaries and coastal waters, and the majority of fresh flowing waters in the State.

Based on this extensive coverage of Florida waters by State numeric nutrient criteria (fresh and marine), EPA is prepared to take actions that would make it unnecessary for EPA to finalize federal criteria for these waters. Upon FDEP's incorporating by reference into rule the Implementation Document as modified on March 11, 2013, and EPA's review of that document under Clean Water Act section 303(c), EPA is prepared to amend the 2009 Determination to clarify that numeric nutrient criteria are unnecessary for flowing waters not covered by the stream definition. EPA would then not finalize its rulemaking for inland waters. Upon enactment of the attached version of the legislation and FDEP's submittal to EPA of the numeric values that FDEP is directed to develop in the legislation and those numeric nutrient criteria FDEP adopts by rule, EPA, following review under Clean Water Act section 303(c), is prepared to cease corresponding federal rulemaking for estuaries and coastal waters.

¹ It is important to note that while the limited waters excluded from the stream definition will not be subject to the States NNC, these waters are still Class III waters protected by Florida's existing narrative nutrient standard in accordance with State rules, including 62-303 F.A.C.

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1 A bill to be entitled
 2 An act relating to numeric nutrient criteria; amending
 3 s. 403.061, F.S.; authorizing the Department of
 4 Environmental Protection to implement specified
 5 provisions to control nutrient load in state waters;
 6 authorizing the department to implement specified
 7 nutrient standards; providing for removal of a
 8 specified rule from the Florida Administrative Code;
 9 providing that specified nutrient criteria rules are
 10 subject to specified provisions of the Florida
 11 Administrative Code; exempting such nutrient criteria
 12 rules from ratification by Legislature under s.
 13 120.541(3), F.S.; directing the department to
 14 establish numeric interpretations of the narrative
 15 nutrient criterion for certain estuaries and waters,
 16 subject to specified provisions and standards;
 17 directing the department to submit a specified report
 18 to the Governor and Legislature; providing an
 19 effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Subsection (43) is added to section 403.061,
 24 Florida Statutes, to read:

25 403.061 Department; powers and duties.—The department
 26 shall have the power and the duty to control and prohibit
 27 pollution of air and water in accordance with the law and rules
 28 adopted and promulgated by it and, for this purpose, to:

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29 (43) (a) Implement ss. 403.067 and 403.088 in flowing
 30 waters consistent with the attainment and maintenance of:

31 1. The narrative criterion for nutrients and any in-stream
 32 numeric interpretation of the narrative water quality criterion
 33 for nutrients adopted by the department in streams, canals, and
 34 other conveyances; and

35 2. Nutrient water quality standards applicable to
 36 downstream waters.

37 (b) The loading of nutrients to downstream waters from a
 38 stream, canal, or other conveyance shall be limited to provide
 39 for the attainment and maintenance of nutrient water quality
 40 standards in the downstream waters.

41 1. If the downstream water does not have a total maximum
 42 daily load adopted under s. 403.067 and has not been verified as
 43 impaired by nutrient loadings, then the department shall
 44 implement its authority in a manner that prevents impairment of
 45 the downstream water due to loadings from the upstream water.

46 2. If the downstream water does not have a total maximum
 47 daily load adopted under s. 403.067 but has been verified as
 48 impaired by nutrient loadings, then the department shall adopt a
 49 total maximum daily load under s. 403.067.

50 3. If the downstream water has a total maximum daily load
 51 adopted under s. 403.067 that interprets the narrative water
 52 quality criterion for nutrients, then allocations shall be set
 53 for upstream water bodies in accordance with s. 403.067(6), and
 54 if applicable, the basin management action plan established
 55 under s. 403.067(7).

56 (c) Compliance with an allocation calculated under s.

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57 403.067(6) or, if applicable, the basin management action plan
 58 established under s. 403.067(7) for the downstream water shall
 59 constitute reasonable assurance that a discharge does not cause
 60 or contribute to the violation of the downstream nutrient water
 61 quality standards.

62
 63 The department shall implement such programs in conjunction with
 64 its other powers and duties and shall place special emphasis on
 65 reducing and eliminating contamination that presents a threat to
 66 humans, animals or plants, or to the environment.

67 Section 2. The Department of Environmental Protection may
 68 implement its adopted nutrient standards for streams, springs,
 69 lakes, and estuaries consistent with the document entitled
 70 "Implementation of Florida's Numeric Nutrient Standards," which
 71 was proposed for adoption by the department in the Florida
 72 Administrative Register, Vol. 39, No. 54, pages 1397-1398. This
 73 document shall be subject to the provisions of rule 62-
 74 302.531(9), Florida Administrative Code, and exempt from
 75 ratification under s. 120.541(3), Florida Statutes.

76 Section 3. When the United States Environmental Protection
 77 Agency withdraws all federal numeric nutrient criteria rules in
 78 the State of Florida, and otherwise ceases all federal nutrient
 79 rulemaking in the State of Florida, then rule 62-302.531(9),
 80 Florida Administrative Code, shall expire and the Department of
 81 Environmental Protection shall remove it from the Florida
 82 Administrative Code pursuant to the provisions of chapter 120,
 83 Florida Statutes.

84 Section 4. Any nutrient criteria rules for estuaries

85 adopted by the Department of Environmental Protection in 2013
 86 are subject to the provisions of rule 62-302.531(9), Florida
 87 Administrative Code, and exempt from ratification under s.
 88 120.541(3), Florida Statutes.

89 Section 5. The Department of Environmental Protection
 90 shall establish by rule or final order the estuary specific
 91 numeric interpretations of the narrative nutrient criterion for
 92 total nitrogen, total phosphorus, and chlorophyll a for any
 93 estuaries not already subject to the department's numeric
 94 nutrient criteria, and establish chlorophyll a interpretations
 95 of the narrative nutrient criterion for non-estuarine coastal
 96 waters by December 1, 2014, subject to the provisions of chapter
 97 120, Florida Statutes. The water quality standard pursuant to s.
 98 403.061(11), Florida Statutes, for total nitrogen, total
 99 phosphorus, and chlorophyll a in estuaries, and chlorophyll a in
 100 non-estuarine coastal waters, shall be the current conditions of
 101 those unimpaired waters, accounting for climactic and hydrologic
 102 cycles, until such time as a numeric interpretation of the
 103 narrative water quality criterion for nutrients is established
 104 by rule or final order. The Department of Environmental
 105 Protection shall submit a report to the Governor, the President
 106 of the Senate, and the Speaker of the House of Representatives
 107 by August 1, 2013, conveying the status of establishing numeric
 108 interpretations of the narrative nutrient criterion pursuant to
 109 this section and including the department's calculation of the
 110 numeric values that represent the current conditions of those
 111 unimpaired waters as stated in this section for those estuaries
 112 and non-estuarine coastal waters without numeric interpretations

HB7115

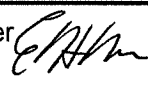

2013

113 | of the narrative nutrient criterion established by rule or final
114 | order as of the date of the report.

115 | Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RORS 13-02 Ratification of Rules
SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee		Miller 	Rubottom 

SUMMARY ANALYSIS

Exercising its authority under the Watershed Restoration Act of 1999, the Department of Environmental Protection (DEP) adopted a series of rules setting total maximum daily loads (TMDLs) for specific waterbodies and waterbody segments designated as impaired, together with a statewide TMDL for mercury. A TMDL is the maximum amount of a specified pollutant that may enter a particular waterbody without impairing the water quality standard adopted for that waterbody under the federal Clean Water Act (CWA). For many waterbodies, DEP adopts separate rule subsections to establish TMDLs for different pollutants. Other rule subsections may include TMDLs for multiple pollutants and/or some combination waterbody segments.

Except for the statewide TMDL, each rule identified in PCB RORS 13-02 was adopted as a subsection added to or amended in a broader Florida Administrative Code section for the water basin encompassing the water segment covered by the TMDL. TMDLs ratified by the bill were adopted together in six separate rulemaking proceedings. For each proceeding DEP prepared a Statement of Estimated Regulatory Costs (SERC) showing the rules implementing the specific TMDLs would have a specific, adverse economic effect, or would increase regulatory costs, exceeding \$1 million over the first 5 years the rule was in effect. Accordingly, each rule must be ratified by the Legislature before it may go into effect.

The rules were adopted on various dates and some were still in the rulemaking process as of 30 days prior to the start of the 2013 Session of the Legislature. By letter to the Speaker and the President of the Senate received on December 21, 2012, DEP advised of the TMDL rules the Department expected to be submitted for ratification during the 2013 Session once rulemaking was complete.

The proposed bill authorizes the rules to go into effect. The scope of the bill is limited to this rulemaking condition and does not adopt the substance of any rule into the statutes.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Establishment of TMDLs by DEP¹

Under the federal CWA² states are required to adopt water quality standards (WQS) for their navigable waters and to review and update those standards at least every three years. These standards must include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, or navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative form, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.

When a waterbody is unable to maintain its WQS, it is designated as impaired. In such a situation, the Environmental Protection Agency (EPA) or the state must set a TMDL establishing the maximum amount of a given pollutant the waterbody can accept while still meeting WQS associated with its designated use. In Florida, DEP is granted the authority to establish TMDLs by the Watershed Restoration Act of 1999.³ DEP periodically submits to EPA a list of waterbodies or segments for which TMDL assessments will be conducted. If the assessments show that a particular waterbody is not meeting its WQS, DEP is then required to set a TMDL, which is done through rulemaking.⁴

Adoption of TMDL Rules Submitted for Ratification

DEP develops a TMDL by assessing the quality of a particular waterbody, determining if that waterbody falls short of the applicable water quality standard (and is thus "impaired"), discerning which pollutant(s) may cause the impairment, establish the TMDL necessary to resolve that impairment, and adopts that TMDL by rule.⁵ DEP also prepares and makes available online a complete report supporting the determination of one or more TMDLs, depending on the affected waterbodies included in the report.⁶

DEP organizes all TMDLs under a single chapter of rules.⁷ The chapter is divided into sections representing the different water basins identified in the state, with one exception: Rule section 62-304.900 is a new TMDL for mercury that applies statewide to all waterbodies. A TMDL for a particular waterbody is adopted as a subsection of the rule section representing the water basin encompassing the particular water segment to which the TMDL applies. For each of the six rule section titles below DEP used a single rulemaking proceeding to adopt the listed subsections. As part of each proceeding DEP prepared a single SERC showing the specified subsections would require legislative ratification:

¹ This summary is drawn from the analysis prepared by staff of the Agriculture & Natural Resources Subcommittee for PCB ANR 13-03. Please consult that analysis for a detailed description of DEP's role in controlling water pollution by setting TMDLs.

² 33 U.S.C. s. 1251, et seq.

³ Section 403.067, F.S.

⁴ Section 403.067(2), F.S.

⁵ General description of process at <http://www.dep.state.fl.us/water/tmdl/index.htm>, accessed 3/28/2013.

⁶ Reports for TMDLs are found under either "Final TMDL Documents" at http://www.dep.state.fl.us/water/tmdl/final_tmdl.htm, or "Draft TMDLs" at http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm, both accessed 3/28/2013.

⁷ Chapter 62-304, F.A.C., "Total Maximum Daily Loads."

- Rule 62-304.300, “St. Marks River Basin TMDLs:” subsections (3), (4), (5), (6), and (7) were adopted on March 2, 2012.⁸
- Rule 62-304.330, “Pensacola Bay Basin TMDLs:” subsections (10) and (11) were adopted on February 7, 2013.⁹
- Rule 62-304.520, “Indian River Lagoon Basin TMDLs:” subsections (14),¹⁰ (15), (16), (17), (18), (19), and (20) were adopted on March 20, 2013.¹¹
- Rule 62-304.610, “Hillsborough River Basin TMDLs:” subsection (12), “Channelized Stream,” adopted on August 20, 2012.¹²
- Rule 62-304.645, “Springs Coast Basin TMDLs:” subsections (13) and (14), adopted on March 8, 2013.¹³
- Rule 62-304.900, “Statewide TMDLs:” the mercury TMDL was adopted on November 21, 2012.¹⁴

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.¹⁵ Rulemaking authority is delegated by the Legislature¹⁶ through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”¹⁷ a rule. Agencies do not have discretion whether to engage in rulemaking.¹⁸ To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.¹⁹ The grant of rulemaking authority itself need not be detailed.²⁰ The specific statute being interpreted or implemented through rulemaking must provide

⁸ The TMDL report for these rules is under “Reposted TMDL Documents for Group 1 Basins: St. Marks/Wakulla River Basin” at http://www.dep.state.fl.us/water/tmdl/repost_tmdl.htm, accessed on 3/28/2013.

⁹ The TMDL report for these rules is under “Reposted TMDL Documents for Group 4 Basins: Pensacola Bay Basin” at http://www.dep.state.fl.us/water/tmdl/repost_tmdl.htm, accessed on 3/28/2013.

¹⁰ In the certification submitted to the Department of State when these rules were filed for adoption DEP stated (14) would no longer require ratification. As the filings throughout this particular rulemaking were supported apparently by a single SERC showing all the subsections would require ratification, and because (14) continued to be included with the remaining subsections being adopted, the better practice appears to be to include (14) in this ratification.

¹¹ The TMDL report for these rules is under “Draft TMDL Documents for Group 5 Basins: Indian River Lagoon Basin (Oxygen and Dissolved Nutrient TMDLs for Eleven Tributary Segments of the Indian River Lagoon – Report & Appendices)” at http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm, accessed 3/28/2013.

¹² The subsection was filed for adoption on August 20, 2012 but mislabeled as subsection (10). In a letter to the Department of State dated February 13, 2013, DEP clarified the mistake and that the adopted rule properly should be labeled as subsection (12). The TMDL report for this rule is under “Reposted TMDL Documents for Group 2 Basins: Hillsborough River Basin” at http://www.dep.state.fl.us/water/tmdl/repost_tmdl.htm, accessed on 3/28/2013.

¹³ The TMDL report for these rules is under “Draft TMDL Documents for Group 5 Basins: Springs Coast Basin” at http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm, accessed 3/28/2013.

¹⁴ The TMDL report for this rule is under “Draft Statewide TMDL Documents: Revised Draft Mercury TMDL for the State of Florida” at http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm, accessed 3/28/2013.

¹⁵ Section 120.52(16); *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

¹⁶ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

¹⁷ Section 120.52(17).

¹⁸ Section 120.54(1)(a), F.S.

¹⁹ Section 120.52(8) & s. 120.536(1), F.S.

²⁰ *Save the Manatee Club, Inc.*, supra at 599.

specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.²¹

An agency begins the formal rulemaking process by filing a notice of the proposed rule.²² The notice is published by the Department of State in the Florida Administrative Register²³ and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.²⁴

The economic analysis mandated for each SERC must analyze a rule's potential impact over the 5 year period from when the rule goes into effect. First is the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.²⁵ Next is the likely adverse impact on business competitiveness,²⁶ productivity, or innovation.²⁷ Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.²⁸ If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."²⁹ A rule must be filed for adoption before it may go into effect³⁰ and cannot be filed for adoption until completion of the rulemaking process.³¹ A rule projected to have a specific economic impact exceeding \$1 million in the aggregate over 5 years³² must be ratified by the Legislature before going into effect.³³ As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

Impact of Rules

With one exception, each rule creates the TMDL for one or more specific pollutants for a particular waterbody. Rule 62-304.900, F.A.C., creates a specific TMDL for mercury in all Florida waters. While the implementation of each of these separate TMDLs is projected to increase regulatory costs by over \$1 million in the first five years of operation, the adoption of TMDLs by DEP using a thorough scientific process maintains Florida's overall compliance with the Clean Water Act and precludes the federal EPA from setting these necessary levels.

Effect of Proposed Change

The bill ratifies Rules 62-304.300(3), (4), (5), (6), and (7); 62-304.330(10) and (11); 62-304.520(14), (15), (16), (17), (18), (19), and (20); 62-304.610(12); 62-304.645(13) and (14); and 62-304.900, F.A.C., allowing each rule to go into effect.

²¹ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

²² Section 120.54(3)(a)1, F.S..

²³ Section 120.55(1)(b)2, F.S.

²⁴ Section 120.541(2)(a), F.S.

²⁵ Section 120.541(2)(a)1., F.S.

²⁶ Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

²⁷ Section 120.541(2)(a) 2., F.S.

²⁸ Section 120.541(2)(a) 3., F.S.

²⁹ Section 120.54(3)(e)6. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State .

³⁰ Section 120.54(3)(e)6, F.S.

³¹ Section 120.54(3)(e), F.S.

³² Section 120.541(2)(a), F.S.

³³ Section 120.541(3), F.S.

B. SECTION DIRECTORY:

Section 1: Ratifies the following rules solely to meet the condition for effectiveness imposed by s. 120.541(3), F.S.:

- Rule 62-304.300, subsections (3), (4), (5), (6), and (7), F.A.C.
- Rule 62-304.330, subsections (10) and (11), F.A.C.
- Rule 62-304.520, subsections (14), (15), (16), (17), (18), (19), and (20), F.A.C.
- Rule 62-304.610, subsection (12), F.A.C.
- Rule 62-304.645, subsections (13) and (14), F.A.C.
- Rule 62-304.900, F.A.C. (the statewide mercury TMDL)

The bill expressly limits ratification to the effectiveness of the rules. The bill directs the act shall not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

Section 2: Provides the act goes into effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill creates no additional source of state revenues.
2. Expenditures: The bill itself requires no state expenditures. Any resulting expenditures are due to the substantive policy of the rule as addressed in the SERC for that rule.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill itself has no impact on local government revenues.
2. Expenditures: The bill itself does not impose additional expenditures on local governments. Any resulting expenditures are due to the substantive policy of the rule as addressed in the SERC for that rule.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill itself does not directly impact the private sector. Any resulting economic impacts are due to the substantive policy of the rule as addressed in the SERC for that rule.

D. FISCAL COMMENTS:

The economic impacts projected in the statements of estimated regulatory costs would result from the application and enforcement of the specific TMDL in the specified water body.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The legislation does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

No other constitutional issues are presented by the bill.

B. RULE-MAKING AUTHORITY:

The bill meets the final statutory requirement for DEP to exercise its rulemaking authority in setting TMDLs for the specified water bodies consistent with its duties under the CWA and the Watershed Restoration Act of 1999. No additional rulemaking authority is required.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to ratification of rules; ratifying
 3 specified rules for the sole and exclusive purpose of
 4 satisfying any condition on effectiveness pursuant to
 5 s. 120.541(3), F.S., which requires ratification of
 6 any rule meeting any of specified thresholds for
 7 likely adverse impact or increase in regulatory costs;
 8 providing an effective date.

9

10 Be It Enacted by the Legislature of the State of Florida:

11

12 Section 1. (1) The following rules are ratified for the
 13 sole and exclusive purpose of satisfying any condition on
 14 effectiveness imposed under s. 120.541(3), Florida Statutes:

15 (a) Rule 62-304.300, F.A.C., subsections (3), (4), (5),
 16 (6), and (7), as filed for adoption with the Department of State
 17 pursuant to that certification package dated March 2, 2012.

18 (b) Rule 62-304.330, F.A.C., subsections (10) and (11), as
 19 filed for adoption with the Department of State pursuant to that
 20 certification package dated February 7, 2013.

21 (c) Rule 62-304.520, F.A.C., subsections (14), (15), (16),
 22 (17), (18), (19), and (20), as filed for adoption with the
 23 Department of State pursuant to that certification package dated
 24 March 20, 2013.

25 (d) Rule 62-304.610, F.A.C., subsection (12), relating to
 26 Channelized Stream, as filed for adoption with the Department of
 27 State pursuant to that certification package dated August 20,
 28 2012, and as further corrected by that letter from the

29 Department of Environmental Protection to the Department of
 30 State dated February 13, 2013.

31 (e) Rule 62-304.645, F.A.C., subsections (13) and (14), as
 32 filed for adoption with the Department of State pursuant to that
 33 certification package dated March 8, 2013.

34 (f) Rule 62-304.900, F.A.C., as filed for adoption with the
 35 Department of State pursuant to that certification package dated
 36 November 21, 2012.

37 (2) This act serves no other purpose and shall not be
 38 codified in the Florida Statutes. After this act becomes law,
 39 its enactment and effective dates shall be noted in the Florida
 40 Administrative Code or the Florida Administrative Register or
 41 both, as appropriate. This act does not alter rulemaking
 42 authority delegated by prior law, does not constitute
 43 legislative preemption of or exception to any provision of law
 44 governing adoption or enforcement of the rules cited, and is
 45 intended to preserve the status of any cited rule as a rule
 46 under chapter 120, Florida Statutes. This act does not cure any
 47 rulemaking defect or preempt any challenge based on a lack of
 48 authority or a violation of the legal requirements governing the
 49 adoption of any rule cited.

50 Section 2. This act shall take effect upon becoming law.

A

Rule Certification
Package and SERC:
Rules
62-304.300(3)-(7)



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

March 2, 2012

Ms. Liz Cloud
Section Administrator
Administrative Code and Weekly Section
500 South Bronough Street, Room 101
Pepper Building, Room 680
Tallahassee, Florida 32399

FILED
2012 MAR -2 PM 2:25
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

Re: Certification package for Rule 62-304.300(3) - (7), F.A.C.

Dear Ms. Cloud:

Attached is the certification package for Rules 62-304.300(3) - (7), F.A.C. The Department concurrently published two separate notices of proposed rule for 62-304.300. The subsections included in this certification package relate to provisions that will require legislative ratification. The Department is sending under separate cover another certification package relating to those rule subsections that do not require legislative ratification.

I am the attorney handling this rulemaking. If you have any questions, please call me at (850) 245-2262 or email me at kenneth.hayman@dep.state.fl.us. My mailing address is noted on the letterhead above.

Sincerely,

Amanda G. Bush

for Kenneth Hayman
Senior Assistant General Counsel

Enclosures

cc: Jan Mandrup-Poulsen

CERTIFICATION OF DEPARTMENT OF ENVIRONMENTAL PROTECTION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

2012 MAR 22 PM 2:25
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DEPARTMENT OF STATE
TALLAHASSEE FLORIDA

I hereby certify:

- (1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and
- (2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and
- (3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S., and
 - (a) Are filed not more than 90 days after the notice; or
 - (b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or
 - (c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or
 - (d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or
 - (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or
 - (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or
 - (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or
 - (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or
 - (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No(s).

62-304.300

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____ (month) _____ (day) _____ (year)



Betsy Hewitt
Deputy General Counsel

4
Number of Pages Certified

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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

62-304.300 St. Marks River Basin TMDLs.

(1) No Change.

(2) No Change.

(3) Munson Slough Above Lake Munson. The dissolved oxygen TMDLs are 5-day biological oxygen demand (BOD₅) of 2.00 mg/L, total nitrogen (TN) of 0.72 mg/L, and total phosphorus (TP) of 0.15 mg/L and are allocated as follows:

(a) The WLA for wastewater point sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the dissolved oxygen criterion and TMDL concentrations, which, based on the median concentrations from the 1973-2007 period, will require a 50 percent reduction for BOD₅, an 8.35 percent reduction for TN, and a 17.53 percent reduction for TP at sources contributing to exceedances of the criterion and TMDLs.

(c) The LAs for nonpoint sources are to address anthropogenic sources in the basin such that in-stream concentrations meet the dissolved oxygen criterion and the TMDL concentrations, which, based on the median concentrations from the 1973-2007 period, will require a 50 percent reduction for BOD₅, an 8.35 percent reduction for TN, and a 17.53 percent reduction for TP at sources contributing to exceedances of the criterion and TMDLs.

(d) The Margin of Safety is implicit.

(e) While the WLA and LAs for BOD₅, TN, and TP have been expressed as the concentrations and percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream BOD₅, TN, and TP concentrations. However, it is not the intent of the TMDL to abate natural background conditions.

(4) Lake Munson. The turbidity TMDL is 31 Nephelometric turbidity units (NTUs) and is allocated as follows:

(a) The WLA for wastewater point sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-lake concentrations meet the TMDL concentration, which, based on the median concentrations from the 1986-2007 period, will require a 31.9 percent reduction at sources contributing to exceedances.

(c) The LAs for nonpoint sources are to address anthropogenic sources in the basin such that in-lake concentrations meet the TMDL concentration, which, based on the median concentrations from the 1986-2007 period, will require a 31.9 percent reduction at sources contributing to exceedances of the TMDL.

(d) The Margin of Safety is implicit.

(e) While the WLA and LAs for turbidity have been expressed as the concentration and percent reduction needed to attain the applicable Class III criterion, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-lake turbidity concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(5) Lake Munson. The dissolved oxygen and nutrient [Trophic State Index (TSI)] TMDLs are in-lake concentrations for BOD₅ of 2.00 mg/L, TN of 0.765 mg/L, and TP of 0.044 mg/L and are allocated as follows:

(a) The WLA for wastewater sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-lake concentrations meet the dissolved oxygen criterion and the nutrient TMDL concentrations, which, based on the mean concentrations from the 2004-2008 period, will require a 50 percent reduction for BOD₅, a 32.5 percent reduction for TN, and a 76.7 percent reduction for TP at sources contributing to exceedances.

(c) The LAs for nonpoint sources are to address anthropogenic sources in the basin such that in-lake concentrations meet the dissolved oxygen criterion and the TMDL concentrations, which, based on the mean concentrations from the 2004-2008 period, will require a 50 percent reduction for BOD₅, a 32.5 percent reduction for TN, and a 76.7 percent reduction for TP at sources contributing to exceedances of the dissolved oxygen criterion and BOD₅ and nutrients TMDL concentrations.

(d) The Margin of Safety is implicit.

(e) While the WLA and LAs for BOD₅, TN and TP have been expressed as the concentrations and percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-lake BOD₅, TN, and TP concentrations. However, it is not the intent of the TMDL to abate natural background conditions.

(6) Munson Slough Below Lake Munson. The dissolved oxygen TMDL is an in-stream concentration for BOD₅ of 2.00 mg/L and is allocated as follows:

(a) The WLA for wastewater point sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the dissolved oxygen criterion and BOD₅ TMDL concentration, which, based on the mean concentration from the period 1986-2007, will require a 52.9 percent reduction for BOD₅ at sources contributing to exceedances.

(c) The LAs for nonpoint sources are to address anthropogenic sources in the basin such that in-stream concentrations meet the dissolved oxygen criterion and the BOD₅TMDL concentration, which, based on the mean concentrations from the 1986-2007 period, will require a 52.9 percent reduction for BOD₅ at sources contributing to exceedances of the criteria.

(d) The Margin of Safety is implicit.

(e) While the WLA and LAs for BOD₅ have been expressed as the concentration and percent reduction needed to attain the applicable Class III dissolved oxygen criterion, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream BOD₅ concentrations. However, it is not the intent of the TMDL to abate natural background conditions.

(7) Munson Slough Below Lake Munson. The un-ionized ammonia impairment is addressed by reductions in total ammonia. The total ammonia TMDL is an in-stream concentration of 0.32 mg/L and is allocated as follows:

(a) The WLA for wastewater sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream un-ionized ammonia concentrations meet the water quality criterion, which, based on the mean concentration from the period 1971-2007, will require a 33.3 percent reduction of total ammonia at sources contributing to exceedances.

(c) The LAs for nonpoint sources are to address anthropogenic sources in the basin such that in-stream un-ionized ammonia concentrations meet the water quality criterion, which, based on the mean concentrations from the 1971-2007 period, will require a 33.3 percent reduction of total ammonia at sources contributing to exceedances.

(d) The Margin of Safety is implicit.

(e) While the WLA and LAs for total ammonia have been expressed as the concentration and percent reduction needed to attain the applicable Class III un-ionized ammonia criterion, it is the combined reductions from both

anthropogenic point and nonpoint sources that will result in the required reduction of in-stream un-ionized ammonia concentrations. However, it is not the intent of the TMDL to abate natural background conditions.

Rulemaking Specific Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History--
New 10-21-08, Amended _____.

SUMMARY OF THE RULE

The Florida Watershed Restoration Act, codified at section 403.067, Florida Statutes, requires the Department to establish total maximum daily loads ("TMDLs") for surface waters that have been verified as not meeting applicable water quality standards. Utilizing the scientific methodologies set forth in Chapter 62-303, F.A.C., the Department previously identified the waters in the proposed rule as being impaired for various parameters. Proposed rules 62-304.300(3) – (7) set TMDLs for turbidity (addresses aquatic life impairment), total ammonia (addresses un-ionized ammonia impairment), 5-day biological oxygen demand (BOD₅), total nitrogen (TN), and total phosphorus (TP) that have caused low dissolved oxygen (DO) and nutrient impairments for Lake Munson and/or Munson Slough that, if met, will redress the identified impairment. A report detailing the derivation of these TMDLs can be found at: <http://www.dep.state.fl.us/water/tmdl/docs/tmdls/repost/munsonlakeslough-tmdl.pdf>

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2012 MAR -2 PM 2:26
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

SUMMARY OF THE HEARING

No timely request for a hearing was received by the agency, and no hearing was held.

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2012 MAR -2 PM 2:26

DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The Florida Watershed Restoration Act, codified at section 403.067, Florida Statutes, requires the Department to establish total maximum daily loads ("TMDLs") for surface waters that have been verified as not meeting applicable water quality standards. Utilizing the scientific methodologies set forth in Chapter 62-303, F.A.C., the Department previously identified the waters in the proposed rule as being impaired for various parameters. Proposed rules 62-304.300(3) – (7) set TMDLs for turbidity (addresses aquatic life impairment), total ammonia (addresses un-ionized ammonia impairment), 5-day biological oxygen demand (BOD₅), total nitrogen (TN), and total phosphorus (TP) that have caused low dissolved oxygen (DO) and nutrient impairments for Lake Munson and/or Munson Slough that, if met, will redress the identified impairment. A report detailing the derivation of these TMDLs can be found at: <http://www.dep.state.fl.us/water/tmdl/docs/tmdls/repost/munsonlakeslough-tmdl.pdf>

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TALLAHASSEE, FLORIDA

FEDERAL COMPARISON STATEMENT

Total maximum daily loads ("TMDLs") establish the maximum amount of a pollutant that a surface water body can assimilate without causing exceedances of water quality standards. 33 U.S.C. § 1313(d) of the federal Clean Water Act ("CWA") generally requires States to develop TMDLs for each surface water body that cannot meet water quality standards after point sources¹ are controlled to prescribed technology-based levels. In 1999, the Florida legislature enacted the Watershed Restoration Act, section 403.067, Florida Statutes, to specifically implement the federal TMDL program.

Utilizing the scientific methodologies set forth in Chapter 62-303, F.A.C., the Department previously identified the water(s) in the proposed rule as being impaired for the specified pollutant(s). The proposed rule sets TMDLs for the pollutant(s) for the specified water(s).

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TALLAHASSEE, FLORIDA

¹ "Point source" refers to any discernible, confined and discrete conveyance, such as a pipe or ditch, used to discharge pollutants into surface waters. 33 U.S.C. § 1362(14). The CWA implements a permit program, known as the National Pollutant Discharge Elimination System ("NPDES"), to regulate discharges of pollutants from point sources into waters of the U.S. Non-point sources refer to all other pollutant discharges into surface waters and are typically associated with diffuse stormwater such as agricultural runoff.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Division: Environmental Assessment and Restoration
Board:
Rule Number: 62-304.300
Rule Description: Incorporation of the State and federal requirements to define the nutrient Total Maximum Daily Loads (TMDLs) for three impaired waters in the Lake Munson/Munson Slough Watershed
Contact Person: Jan Mandrup-Poulsen

Please remember to analyze the impact of the rule, NOT the statute, when completing this form.

Section 120.541(1)(b), Florida Statutes, requires the preparation of a Statement of Estimated Regulatory Costs (SERC) in association with agency rulemaking when a proposed rule either will have an adverse impact on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule. Local stakeholders and the public at large often are interested in the cost of restoration. However, the total cost is unknown at the time of adoption of a TMDL rule because so much is dependent on implementation of restoration activities to achieve the TMDL. The Florida Department of Environmental Protection (Department) has determined that the most transparent and efficient action is to prepare a SERC for every proposed TMDL rule.

In preparing a SERC, the Department follows the requirements of 120.541(2), Florida Statutes, to evaluate whether a proposed TMDL rule is likely to (1) have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; (2) have an adverse impact on business competitiveness; and (3) increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. The Department has determined that implementation of the reductions imposed directly by these TMDL rules will be assigned to entities covered by the Department's regulatory programs (i.e., National Pollutant Discharge Elimination Systems (NPDES) Permits. As such, the SERC evaluation will focus on estimates of future costs to these regulated entities as a result of the adoption of these three rules. Additionally under Section H below, the Department will include a summary of the total cost estimate for restoration of the waterbody. Section H will include estimates of costs associated with projects that regulated entities have already implemented, either in anticipation of the adoption of the TMDL or as independent projects that reduce nutrient loadings.

A. Is the rule likely to, **directly or indirectly**, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to reduce personal income? Yes No
2. Is the rule likely to reduce total non-farm employment? Yes No

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

- | | | |
|---|------------------------------|--|
| 3. Is the rule likely to reduce private housing starts? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Is the rule likely to reduce visitors to Florida? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Is the rule likely to reduce wages or salaries? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 6. Is the rule likely to reduce property income? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Explanation

As required by the Federal Clean Water Act and Florida Watershed Restoration Act (403.067, F.S.) these three rules will define the TMDLs for nutrients in three impaired waters including Lake Munson and Munson Slough (above and below the lake). These rules are consistent with state and federal laws/regulations, policies, and guidance and will impose no requirements beyond or in addition to those already in statute. None of these three rules will directly or indirectly adversely impact personal income, non-farm employment, housing, tourism, wages, or property income in excess of 1 million dollars within 5 years of implementation.

As part of the process of adopting these TMDLs, the Department conducts a thorough analysis of discharge sources and establishes general allocations for these sources. The general allocations are broadly divided among three general categories of sources: 1) facilities permitted under the National Pollutant Discharge Elimination System (NPDES) program, which receive a Wasteload Allocation (WLA), 2) local governments requiring a Municipal Separate Storm Sewer System (MS4) permit, which receive a WLA separate from the WLA covered in category 1), and 3) all sources other than categories 1 and 2 receive a Load Allocation (LA).

In determining the SERC for the proposed TMDL rules, the Department examined the effect of these rules to entities within the three general allocation categories. Because there are no NPDES permitted wastewater facilities within the basin of these impaired waters that received a specific load reduction, the Department has not proposed any WLAs in these rules and, thus, no employment and personal income associated with any NPDES facilities is adversely affected by these rules.

For the second allocation category, there are a number of local governments in the basin that hold MS4 permits, and are covered by WLAs in the proposed TMDLs.

These rules are not likely to reduce total non-farm employment because the majority of the costs will be to reduce the nutrients in stormwater discharged by the regulated entities and improve septic tank performance. These rules are not likely to reduce private housing starts or visitors to Florida. These rules are not likely to reduce wages or salaries.

For the third allocation category, the proposed TMDLs contain LAs, and the Department has evaluated whether promulgation of these TMDLs will affect any entities as a result of the LA. Discharges captured in the LA are generally considered nonpoint sources and are not subject to Clean Water Act permitting. However, the restoration process outlined in Section 403.067, F.S.,

Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)

which includes the adoption of TMDLs, can impose certain obligations on nonpoint sources. A potentially important nonpoint source is the nutrient contribution from septic tanks (Florida State University 2010). The estimates in the SERC for the number of septic tanks that need improved performance are good faith estimates of likely costs that will be incurred to meet the TMDL rule requirements. At this time, there remains a moderate degree of uncertainty as to which specific combination of projects will be required to meet the nutrient reductions. For example, when the stakeholders develop the nutrient reduction plan, it may be found that additional areas on septic tanks need to be included or that other options are more cost effective.

The possible BMP costs for these agricultural activities are considered as part of the total costs to restore the impaired waters, and are evaluated in Section H of this SERC, but they are not included in the mandated costs required by the Department's regulatory programs.

In summary, while these proposed TMDLs will help facilitate effective implementation of existing laws and regulations, they are not expected to cause any adverse impact on personal income, non-farm employment, housing starts, and wages, and will help maintain property values and provide a safer environment that will benefit tourism of the State.

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to raise the price of goods or services provided by Florida business?

Yes No

2. Is the rule likely to add regulation that is not present in other states or markets?

Yes No

3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?

Yes No

4. Is the rule likely to cause Florida businesses to reduce workforces?

Yes No

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?

Yes No

6. Is the rule likely to make illegal any product or service that is currently legal?

Yes No

Explanation:

As required by the Federal Clean Water Act and Florida Watershed Restoration Act (403.067, F.S.) these three rules will define the TMDLs for nutrients in three impaired waters including Lake Munson and Munson Slough (above and below the lake). These rules are consistent with state and federal laws/regulations, policies, and guidance and will impose no requirements beyond or in addition to those already in statute.

The implementation of these rules is not likely to raise the price of goods or services provided by Florida business, as the total costs of implementing will be primarily assigned to entities covered by existing regulations and are designed to reduce the nutrients in stormwater discharged by the regulated entities and improve septic tank performance. These improvements should not add any additional costs to the price of goods or the services provided by businesses within the watershed. These rules are not likely to add regulation that is not present in other states or markets because the federal TMDL requirements are applied nationwide. These rules are not likely to reduce the quantity of goods or services Florida businesses are able to produce. These rules are not likely to cause Florida businesses to reduce workforces as the total costs of implementing will be primarily assigned to regulated entities and are designed to reduce the nutrients in stormwater discharged by these entities and to improve septic tank performance. These rules are not likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovations as the total costs of implementing will be primarily assigned to regulated entities and are designed to reduce the nutrients in stormwater discharged by these entities and to improve septic tank performance. These rules do not make illegal any product or service that is currently legal.

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule?

Low and high end costs (**Tables 2 and 3** respectively) were calculated using a template Excel spreadsheet. The assumptions, procedures, and results of the calculations are outlined under Section H. References are provided in Attachment 1. For this SERC,

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

due to the low percent reductions of 8% for TN and 17% for TP required for the area upstream of Lake Munson, the low end regulatory costs estimates from Section H were used in this SERC.

Costs to Regulated Entities

Capital costs without operation and maintenance costs.

Urban (total cap. cost annualized x 5 years)	\$1,206,760
Septic tanks (total cap. cost annualized x 5 years x 623 tanks)	\$467,250
MS4 Implementation Plan (\$40,000 x 3 impaired waters)	\$120,000
1. Total	\$1,794,010

Annual operation and maintenance costs

Urban	\$127,848
Septic (\$650 x 623 tanks)	\$404,950
2. Total	\$532,798

3. Number of times annual costs will recur in 5 years	5
4. Multiply Item 2 times Item 3	\$2,663,990
5. Add Item 1 to Item 4	\$4,458,000

If 5. is greater than \$1 million, there is likely an increase of regulatory costs in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule. *(Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).*

The total costs of implementing will be primarily assigned to regulated entities and are designed to reduce the nutrients in stormwater discharged by these entities and to improve septic tank performance. Within the Munson Slough/Lake Munson Watershed, the stormwater collection systems owned and operated by Leon County, City of Tallahassee (COT), and Florida Department of Transportation (FDOT) District Three, within Leon County, are covered by Phase I NPDES municipal separate storm sewer system (MS4) permits. Leon County and FDOT are co-permittees (FLS000033), while the COT (FLS000034) is the other major permit holder. Phase II permits are held by Florida State University (FLR04E051), Florida A&M University (FLR04E095), and the Federal Correctional Institution (FLR04E096). The total costs of implementing will be primarily

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

assigned to these entities and are designed to reduce the nutrients in stormwater discharged by these entities and to improve septic tank performance.

2. A general description of the types of individuals likely to be affected by the rule.

The regulated entities are county and city governments and large universities.

E. Good faith estimates (costs):

1. Cost to the department of implementing the proposed rule:

None. *The department intends to implement the proposed rule within its current workload, with existing staff.*

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

2. Cost to any other state and local government entities of implementing the proposed rule:

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

Costs are based on an economic analysis spreadsheet developed by the department to estimate costs. A description of the spreadsheet is provided Section H, with references in Attachment 1.

Cost to the department of enforcing the proposed rule:

None. *The department intends to enforce the proposed rule within its current workload with existing staff.*

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

4. Cost to any other state and local government of enforcing the proposed rule:

None.

Minimal. *(Provide a brief explanation).*

Costs of enforcement incurred by MS4 entities are already included as a normal cost of implementing the MS4 permit requirements.

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule. *(Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).*

None.

Transactional costs incurred by the regulated entities are already included as a normal cost of implementing permit requirements.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S. *(Includes:*

- *Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?];*
- *The type of small businesses that would be subject to the rule;*
- *The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?];*
- *The likely per-firm regulatory cost increase, if any).*

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

No explicit evaluation of costs to small business can be provided in this SERC. There will be no direct costs to small businesses. Additionally, no information is available to separate indirect costs to small business from the total costs of the rule incurred by MS4 permit holders.

A small county is defined in Section 120.52(19), F.S., as "any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census." And, a small city is defined in Section 120.52(18), F.S., as "any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census."

The estimated number of small businesses that would be subject to the rule:

- 1-99 100-499 500-999
 1,000-4,999 More than 5,000
 Unknown, please explain:

There is no information available to separate the indirect costs to small business from the total costs of the rule incurred by MS4 permit holders; therefore, the number of small business effected is unknown.

Analysis of the impact on small business:

There is no small county or small city that will be impacted by this proposed rule.

A small county or small city will be impacted. Analysis:

Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

H. Any additional information that the agency determines may be useful.

None.

Additional.

Lake Munson and Munson Slough Additional Information

Below, the department has included a summary of the procedures and assumptions used to estimate the SERC. In addition to the costs to regulated entities identified under the SERC evaluation, the department has provided below the cost estimate for all non-regulated entities and if available, the costs associated with projects that regulated entities may have implemented, either in anticipation of the adoption of the TMDL or as independent projects that reduce nutrient loadings.

Florida Department of Environmental Protection Statement Of Estimated Regulatory Costs (SERC)

The impairments covered by this SERC are in Munson Slough above Lake Munson, Lake Munson, and Munson Slough below Lake Munson (Figure 1).

The incremental costs that might be incurred when implementing the three proposed TMDLs were calculated using an Excel worksheet described below. The Excel worksheet will be made available upon request.

A summary of regulatory and non-regulatory component costs for restoration is provided in Table 2 for low end costs and Table 3 for high end costs.

Both low and high end regulatory costs were developed for the SERC and were based on the assumptions described below. As described previously, low end costs were used for the SERC, as the TMDL percent reductions are low.

Low-end cost/year of \$891,600, for a five-year total of \$4,458,000.

High-end cost/year of \$11,906,400 for a five-year total of \$59,532,000.

Component Costs

*In addition to the costs of developing the restoration plan known as the **Basin Management Action Plan** (BMAP, included in non-regulatory costs), the Unit costs are included in the worksheet for three nutrient source types that may incur costs:*

- *Costs to control nutrient loading from **septic systems** (included in regulatory costs)*
- *Costs to implement stormwater controls in **urban areas** (included in regulatory costs)*
- *Costs to implement **agricultural** best management practices (BMPs) (included in non-regulatory cost)*

The total costs of implementing the rule will be primarily assigned to regulated entities and are designed to reduce the nutrients in stormwater discharged by these entities and improve septic tank performance. As a result, the SERC has been developed to address costs to the regulated entities covered by components Urban (includes MS4 nutrient reduction plan costs) and Septic Tanks. The SERC evaluation for septic tanks focuses on those tanks that are within the jurisdiction of a regulated entity. However, the Department has provided information on the total costs of restoration in recognition of the potential for the total costs to include other non-regulated entities and septic tanks outside of MS4 areas that may become known during the development of the Basin Management Action Plan (BMAP) and costs that may have been incurred, either in anticipation of the adoption of the TMDL or as independent projects that reduce nutrient loadings.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Regulatory Costs:

Urban:

The template includes per unit costs that may be needed for stormwater controls on urban land. These costs were developed from a list of completed stormwater retrofit projects throughout Florida (FDEP, 2010a). The tool uses the median cost from the list of projects – approximately \$6,800 per acre for both low end and high end estimates (from a range of \$62 to \$60,300 per acre treated). FDEP (2010b) indicates that annual O&M costs would amount to approximately 5 percent of capital costs. The total unit cost (per acre) treated is therefore assumed to be the capital cost, \$6,800, annualized at 7 percent interest over a 20-year payment period, plus the annual O&M costs: approximately \$1,000.

Table 1 contains the acreage of watershed specific landuse information that was extracted from the 2004 landuse provided by the NFWFMD. For the purposes of calculating the incremental costs for urban land, only the non-agricultural anthropogenic land area was included, all natural land area was removed (e.g. forests, water, and wetlands).

The remaining urban land area is divided into three categories:

Urban Phase II MS4 (all cases) assumes 77.9% of land need controls and 40.7% is low density.

Urban Phase I MS4, Low end assumes all acres have controls already in place.

Urban Phase I MS4, High end assumes 77.9% of acres need controls and 24.3% is low density.

For this watershed, all of the area is covered by either a Phase I or Phase II MS4 permit.

The default assumption for low density residential is that these lands will meet the basic TMDL needs because of the turf fertilizer rule. Therefore, this acreage of land was removed from the total acreage used to calculate the incremental costs for both Phase I and II permitted area.

The low end cost estimate assumes 100% of acreage covered by the Phase I MS4 permit has sufficient controls to meet the TMDL reduction needs. The high end cost estimate assumes that only the land developed after 1984 meets the TMDL needs (22%).

Low-end costs/year \$369,200, five-year cost of \$1,846,000

High-end costs/year \$11,066,500, five-year cost of \$55,332,500

MS4 Nutrient Reduction Plan

Costs based on an evaluation of the costs incurred developing existing nutrient reduction plans.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Low end cost of \$40,000 per impaired waterbody.

High end cost of \$50,000 per impaired waterbody.

With three impaired waters, the total costs would range between \$120,000 to \$150,000

Septic Systems:

For this SERC, the option selected was to upgrade to Advanced systems (no hook up to wastewater treatment plant) because only an 8% reduction in TN and a 17% reduction in TP is needed and Advanced systems can achieve up to a 50%-60% reduction in nitrogen (Florida State University 2010). Normally functioning septic tanks are not expected to contribute to the TP impairments in this basin.

The 623 parcels containing septic tanks used in the analysis were identified by GIS as those within an MS4 boundary and within 200 meters of a stream or lake shoreline (Figure 1). The number of land parcels containing septic tanks was based on the information provided by the DOH as part a GIS geodatabase from the Statewide Inventory of Onsite Sewage Treatment and Disposal Systems in Florida (2009).

[http://www.doh.state.fl.us/environment/ostds/research/07-01-09Materials/Statewide Inventory OSTDS.pdf](http://www.doh.state.fl.us/environment/ostds/research/07-01-09Materials/Statewide%20Inventory%20OSTDS.pdf)

The two estimates of total capital cost per tank were annualized at 7 percent interest over a 20-year period, the average life of a septic tank. Septic tanks would only be upgraded when they failed and not all at one time. This, plus the fixed annual O&M costs is the total per unit cost for the low and high end estimates.

Low end capital costs per septic tank unit of \$2,000 (annual costs of \$150/yr for 20 years) is based on estimates provided by Wastewater Technologies 2010, plus the \$650 of annual O&M that was based on Chang et al 2010. Therefore, the total low end annual total cost is \$800 (\$150+\$650) times 623 tanks or \$498,400.

High end capital costs per septic tank unit of \$6,500 (annual costs of \$650/yr for 20 years) is based on estimates provided by McNeer 2009, plus the \$650 of annual O&M that was based on Chang et al 2010. Therefore, the total high end annual total cost is \$1,300 (\$650+\$650) times 623 tanks or \$809,900.

Low-end cost/year \$498,400, for five-year cost of \$2,492,000

High-end cost/year \$809,900, for five-year cost of \$4,049,500

Non-Regulatory Costs

Florida Department of Environmental Protection Statement Of Estimated Regulatory Costs (SERC)

Agriculture:

The potential incremental costs of additional agricultural BMPs that may be necessary to meet TMDL load reduction requirements are based on a study of BMP requirements and costs by Soil and Water Engineering Technology, Inc. (SWET, 2008). SWET develops three types of BMP programs: the set of BMPs that land owners would likely implement without incentives (owner program); the set of BMPs that would be implemented under a reasonably funded cost share program or modest regulatory approach (typical program); and more aggressive and costly controls that could be needed if additional nutrient reductions are required (alternative program). Costs are estimated by the template for agricultural land in the watershed for both low- and high-cost scenarios. In the low-cost scenario, only agricultural land not enrolled in BMPs under FDACS incurs compliance costs [farms not covered by a DACS Notice of Intent (NOI) to implement BMPs]. In the high-cost scenario, all agricultural land incurs compliance costs.

As costs differ for various agricultural land uses, the tool makes assumptions on the distribution of the agricultural land in the watershed by land use category. This distribution is based on whether agricultural acreage in the watershed is identified manually or by county.

If the user identifies agricultural sources by manually inputting acreage (as is the case here), the acres entered are distributed among agricultural land uses following the general distribution of agricultural land use in the state of Florida.

If the user instead identifies agricultural sources by county location, GIS estimates of the agricultural land uses in each county are combined with the proportion of each county selected by the user as part of the watershed to calculate agricultural land use in the watershed by FLUCCS code.

By default, total agricultural costs are calculated using unit costs for the most aggressive, alternative program controls. However, the user may opt to use unit costs for the typical program controls if incremental requirements are not expected to be sufficiently demanding to warrant the most aggressive agricultural controls. Total agricultural costs are calculated by multiplying the agricultural acres in the watershed in each land use category by the corresponding cost per acre for that land use category. The low cost estimate is calculated by multiplying estimated agricultural acres not enrolled in BMPs in the watershed by the corresponding unit costs for each land use category. The high estimate of agricultural costs is calculated by multiplying all estimated agricultural acreage in the watershed by the corresponding unit costs.

Using GIS software and NFWFMD 2004 Landuse, DEP Identified 335 acres of agriculture within the area covered by the three rules (Table 1).

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

If both TN and TP are included (as is the case here) the higher per acre cost of BMP implementation are used for both the low-end and high-end estimates.

Low-end costs/year \$15,465, five-year cost of \$77,325.

High-end costs/year \$21,921, five-year cost of \$109,605

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Table 1
Landuse and Acreage used in TMDL Model

FLUCC	Land Use Category	Lake Munson Basin (acre)
1100	Low density residential	3,790
1200	Medium density residential	3,675
1300	High density residential	4,020
1400	Commercial and Services	7,048
2100	Cropland and Pastureland	335
4000	Upland Forests/Rural Open	11,664
5000	Water	730
6000	Wetlands	2,780
8200	Transportation/Communication/Utility	755
Total		34,797
Total Anthropogenic		19,623
Phase I MS4		19,288
Phase II MS4		835

Permits:

Phase I NPDES MS4 permits

Leon County and FDOT District 3 are co-permittees permit FLS000033.
City of Tallahassee FLS000034.

Phase II NPDES MS4 permits

Florida State University (FLR04E051)
Florida A&M University (FLR04E095)

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Figure 1

GIS examination of septic tanks within 200 foot buffer of streams or lakes resulted in 623 septic tank parcels that have reasonable potential to impact surface waters.



**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

**Table 2
Low End Total Regulatory and Non-Regulatory Costs**

	CAP/year	O&M/yr	Total/yr	Total 5-yr
Regulatory				
Urban				
Phase I	\$0.00	\$0.00	\$0.00	
Phase II	\$241,352.00	\$127,848.00	\$369,200.00	\$1,846,000.00
MS4 reduction plan one-time cost (3 impairments)			\$40,000	\$120,000
Septic	\$150.00	\$650.00		
#tanks	623	623		
Cost	\$93,450.00	\$404,950.00	\$498,400.00	\$2,492,000.00
Total-Regulatory				\$4,458,000.00
Non-Regulatory				
Agriculture			\$15,465.00	\$77,325.00
Total-Non-Regulatory				\$77,325.00
Existing Known Projects				
Grand Total				\$4,535,325.00

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

**Table 3
High End Total Regulatory and Non-Regulatory Costs**

	CAP/year	O&M/yr	Total/yr	Total 5-yr
Regulatory				
Urban				
Phase I	\$6,993,081.00	\$3,704,219.00	\$10,697,300.00	\$53,486,500.00
Phase II	\$241,352.00	\$127,848.00	\$369,200.00	\$1,846,000.00
MS4 reduction plan one-time cost (3 impairments)			\$50,000	\$150,000
Septic	\$650.00	\$650.00		
#tanks	623	623		
Cost	\$404,950.00	\$404,950.00	\$809,900.00	\$4,049,500.00
Total-Regulatory				\$59,532,000.00
Non-Regulatory				
Agriculture			\$21,921.00	\$109,605.00
Total-Non-Regulatory				\$109,605.00
Existing Known Projects				
Grand Total				\$59,641,605.00

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

See attachment "A".

Adopted in entirety.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "B".
- Adopted in entirety.
- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "C".
- Adopted in entirety.
- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "D".
- Adopted in entirety.
- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "E".
- Adopted in entirety.
- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

#

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Attachment 1

Chang, N., M. Wanielista, A. Daranpob, F. Hossain, Z. Xuan, J. Miao, S. Liu, Z. Marimon, and S. Debusk. 2010. Onsite Sewage Treatment and Disposal Systems Evaluation for Nutrient Removal. Stormwater Management Academy, University of Central Florida.

Florida Department of Agricultural and Consumer Services (FDACS), Office of Agricultural Water Policy (OAWP)'s BMP program. March 2011.

Florida Department of Environmental Protection (FDEP). 2010a. TMDL Water Quality Restoration Grants. <http://www.dep.state.fl.us/water/watersheds/docs/tmdl-grant-nutrient-costs-0210.pdf>. Accessed July 2011.

Florida Department of Environmental Protection (FDEP). 2010b. FDEP Review of EPA's "Preliminary Estimate of Potential Compliance Costs and Benefits Associated with EPA's Proposed Numeric Nutrient Criteria for Florida."

Florida Geological Data Library (FGDL). 2004-2008. GIS Data: lu_nwfwmd_2004; lu_sfwmnd_2004; lu_sjrwmd_2004; lu_srwmd_2008; and lu_swfwmd_2007. <http://www.fgdl.org/download/index.html>

Florida Geological Data Library (FGDL). 2007. GIS Data: npdes_stormwater. <http://www.fgdl.org/download/index.html>

Florida Governmental Utility Authority (FGUA). 2009. Board Agenda Item: Thursday, February 19, 2009: Status Update on the Lehigh Acres Utility Expansion Project – Mandatory Wastewater Connections. <http://www.lehighacresweedandseedproject.info/FGUA/Lehigh%20Acres%20Mandatory%20Wastewater%20Connection.pdf>

Florida State University. December 2010. Wakulla County septic Tank Study, Phase II Report on Performance Based Treatment Systems, FDEP AGREEMENT NO: WM926.

Lombardo Ass., Inc. 2011. Onsite Sewage Treatment and Disposal and Management Options-Final Report for Wakulla Springs, Leon County, & City of Tallahassee, FL (November 2011).

McNeer, Andy. May 2009. Aquapoint Sales Representative. Personal communication.

Soil and Water Engineering Technology (SWET). 2008. Nutrient Loading Rates, Reduction Factors and Implementation Costs Associated with BMPs and Technologies. Report prepared for South Florida Water Management District.

United States Bureau of Labor Statistics, Department of Labor. 2011. Consumer Price Index.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

United States Census Bureau, Department of Labor. 2007. Economic Census.

Wastewater Technologies. November 2010. Personal communication.

Rule Certification
Package and SERC:
Rules
62-304.330(10)-(11)



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

February 7, 2013

Ms. Liz Cloud
Section Administrator
Administrative Code and Weekly Section
500 South Bronough Street, Room 101
Pepper Building, Room 680
Tallahassee, Florida 32399

Re: Certification package for Rule 62-304.330(10)-(11), F.A.C. (North Escambia Bay)

Dear Ms. Cloud:

Attached is the certification package for Rule 62-304.330(10)-(11), F.A.C. I am the attorney handling this rulemaking. Please note that the Department concurrently published two separate notices of proposed rule for 62-304.330. The subsections included in this certification package relate to provisions that will require legislative ratification. The Department is sending under separate cover another certification package relating to those rule subsections that do not require legislative ratification.

If you have any questions, please call me at (850) 245-2262 or email me at kenneth.hayman@dep.state.fl.us. My mailing address is noted on the letterhead above.

Sincerely,

Kenneth Hayman
Senior Assistant General Counsel

Enclosures

cc: Jan Mandrup-Poulsen

CERTIFICATION OF DEPARTMENT OF ENVIRONMENTAL PROTECTION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and

(2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S., and

(a) Are filed not more than 90 days after the notice; or

(b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

(e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

(g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

(h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

(i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

RECEIVED - DEPARTMENT OF STATE
JAN 20 2007

62-304.330 Pensacola Bay Basin TMDLs.

(1) through (9) No change.

(10) North Escambia Bay and Judges Bayou (marine). The total phosphorus (TP) TMDL for the Pensacola Bay estuary required to restore the marine sections of North Escambia Bay and Judges Bayou is 601,345 lbs/year, a 35 percent reduction in TP from the 2002-2009 period to address nutrient impairments. The existing total nitrogen (TN) loading to the Pensacola Bay estuary is 16,795,853 lbs/year, and no reduction is required. The TMDL is allocated as follows:

(a) The WLA for wastewater sources discharging to the lower Escambia River and areas adjacent to the impaired waters is divided between Gulf Power Company (NPDES permit FL0002275), Pace Water System, Inc (NPDES permit FL0102202), and Ascend Performance Materials LLC (NPDES permit FL0002488). The allocation to Gulf Power Company for TP is 2,852 lbs/year and 21,392 lbs/year for TN. The allocation to Pace Water System, Inc. for TP is 3,852 lbs/year and 32,052 lbs/year for TN. The allocation to Ascend Performance Materials, LLC for TP is 5,147 lbs/year and 73,171 lbs/yr for TN.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the TP and TN targets which, based on modeled concentrations for the 2002 - 2009 period, will require a 35 percent reduction of TP and a 0 (zero) percent reduction in TN for sources contributing to the nutrient impairment, and

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the TN and TP targets which, based on modeled concentrations from the 2002 to 2009 period, will require a 35 percent reduction of TP and a 0 (zero) percent reduction in TN for sources contributing to the nutrient impairment.

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for TN and TP have been expressed as the percent reductions or loads needed to attain the applicable Class III nutrient criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream TN and TP concentrations. However, it is not the intent of the TMDL to abate natural background conditions.

(f) The Department will establish the detailed allocation for sources in paragraphs (b) and (c) above, pursuant to paragraph 403.067(6)(b), Florida Statutes.

(11) Bayou Chico (marine). The TMDL for the marine sections of Bayou Chico is a 30 percent reduction in total nitrogen (TN) and a 30 percent reduction for total phosphorus (TP) to address a nutrient impairment, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the TN and TP targets which, based on modeled concentrations for the 2002-2009 period, will require a 30 percent reduction of both TN and TP for sources contributing to the nutrient impairment, and

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the TN and TP targets which, based on modeled concentrations from the 2002 to 2009 period, will require a 30 percent reduction of both TN and TP for sources contributing to the nutrient impairment.

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for TN and TP have been expressed as the percent reductions needed to attain the applicable Class III nutrient criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream TN and TP concentrations. However, it is not the intent of the TMDL to abate natural background conditions.

Rulemaking Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History—New 6-3-08, Amended 11-14-12,_____.

SUMMARY OF THE RULE

The Florida Watershed Restoration Act, codified at section 403.067, Florida Statutes, requires the Department to establish total maximum daily loads ("TMDLs") for surface waters that have been verified as not meeting applicable water quality standards. Utilizing the scientific methodologies set forth in Chapter 62-303, F.A.C., the Department previously identified the waters in the proposed rule as being impaired for nutrients. Proposed rules 62-304.330(10)-(11) set nutrient TMDLs for North Escambia Bay, the marine portion of Judges Bayou and Bayou Chico that, if met, will redress the identified impairment. A report detailing the derivation of these TMDLs can be found at: http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm#Group4.

5015 FEB - 7 PM 2:09
STATE OF FLORIDA

241 110

STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The Florida Watershed Restoration Act, codified at section 403.067, Florida Statutes, requires the Department to establish total maximum daily loads ("TMDLs") for surface waters that have been verified as not meeting applicable water quality standards. Utilizing the scientific methodologies set forth in Chapter 62-303, F.A.C., the Department previously identified the waters in the proposed rule as being impaired for nutrients. Proposed rules 62-304.330(10)-(11) set nutrient TMDLs for North Escambia Bay, the marine portion of Judges Bayou and Bayou Chico, that, if met, will redress the identified impairment. A report detailing the derivation of these TMDLs can be found at: http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm#Group4.

2009 FEB -7 PM 2:00
STATE OF FLORIDA

SUMMARY OF THE HEARING

No timely request for a hearing was received by the agency, and no hearing was held.

2017 02 07
918 FEB -7 11:20 AM
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Division: *Environmental Assessment and Restoration*
Board:
Rule Number: *62-304.330*
Rule Description: *Incorporation of the state and federal requirements to define a Total Maximum Daily Load (TMDL) for North Escambia Bay and Judges Bayou (marine) Verified for Nutrient Impairment Based on Chlorophyll a Concentration*
Contact Person: *Jan Mandrup-Poulsen*

Please remember to analyze the impact of the rule, NOT the statute, when completing this form.

Section 120.541(1)(b), Florida Statutes, requires the preparation of a Statement of Estimated Regulatory Costs (SERC) in association with agency rulemaking when a proposed rule either will have an adverse impact on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule. The Florida Department of Environmental Protection (Department) has determined that this rule will increase regulatory costs in excess of \$200,000 in the aggregate within 1 year of the implementation of the rule. Therefore, SERC analyses were conducted for the proposed rule.

In preparing a SERC, the Department follows the requirements of 120.541(2), Florida Statutes, to evaluate whether a proposed TMDL rule is likely to (1) have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; (2) have an adverse impact on business competitiveness; and (3) increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. For those entities covered by the Department's regulatory programs, (i.e., National Pollutant Discharge Elimination Systems (NPDES) Permits), the TMDL could affect associated permitting requirements. For those entities not covered under the Department's water and wastewater regulatory programs, the TMDL is not expected to affect them. As such, the SERC evaluation will focus on estimates of future costs to regulated entities as a result of the adoption of this rule.

A. Is the rule likely to, **directly or indirectly**, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to reduce personal income? Yes No
2. Is the rule likely to reduce total non-farm employment? Yes No
3. Is the rule likely to reduce private housing starts? Yes No

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

4. Is the rule likely to reduce visitors to Florida? Yes No
5. Is the rule likely to reduce wages or salaries? Yes No
6. Is the rule likely to reduce property income? Yes No

Explanation

As required by the Federal Clean Water Act and Florida Watershed Restoration Act (403.067, F.S.), the proposed rule sets forth a nutrient TMDL for North Escambia Bay and Judges Bayou (marine) which are verified for nutrient impairment based on elevated annual average chlorophyll a concentrations. This rule is consistent with state and federal laws/regulations, policies, and guidance and will impose no requirements beyond or in addition to those already in these laws and regulations. This rule will not, directly or indirectly, adversely impact personal income, non-farm employment, housing starts, tourism, wages, or property income in excess of \$1 million within 5 years of implementation.

The rule is not likely to reduce total non-farm employment because the majority of the costs will be to reduce the nutrients in stormwater discharged by the regulated entities. The rule is not likely to reduce private housing starts or visitors to Florida. The rule is not likely to reduce wages or salaries.

In summary, while these proposed TMDLs will help facilitate effective implementation of existing laws and regulations, they are not expected to cause any adverse impact on personal income, non-farm employment, housing starts, and wages, and will help maintain property values and provide a safer environment that will benefit tourism of the State.

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, directly or indirectly, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to raise the price of goods or services provided by Florida business?

Yes No

2. Is the rule likely to add regulation that is not present in other states or markets?

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Yes No

3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?

Yes No

4. Is the rule likely to cause Florida businesses to reduce workforces?

Yes No

5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?

Yes No

6. Is the rule likely to make illegal any product or service that is currently legal?

Yes No

Explanation:

The proposed TMDL was developed based on requirements of the federal Clean Water Act. Developing TMDLs for impaired waters is a mandated requirement applied to all states across the nation. It does not apply to the State of Florida alone and, therefore, will not result in unfair prejudice against Florida businesses and will not weaken the competitiveness of the businesses in the state.

If any of these questions are answered "Yes," presume that there is a likely an adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule?

This TMDL establishes Total Nitrogen and Total Phosphorous loads for three industrial facilities and establishes a 35% reduction goal for Total Phosphorous for municipal separate storm sewer systems (MS4) and other nonpoint sources to address nutrient impairments.

As part of the process of adopting this TMDL, the Department conducts a thorough analysis of discharge sources and establishes general allocations for these sources. In general, a TMDL allocation is broadly divided among three general categories of sources: Category 1. Wastewater facilities permitted under the Department's National Pollutant Discharge Elimination System (NPDES) program, which receive a Wasteload Allocation (WLA); Category

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

2. local governments having MS4 permits, which receive a WLA separate from the WLA covered in Category 1; and Category 3. all sources other than Categories 1 and 2 receive a Load Allocation (LA).

In performing the analysis for this SERC for the proposed TMDL rule, the Department examined the effect of the rule to entities within the three general allocation categories. For the first allocation category, there are three NPDES permitted wastewater facilities within the basin of the impaired waters that received a specific wasteload allocation. These WLAs are for existing permit conditions and do not require any reductions, therefore there will be no additional costs to these facilities associated with the rule. These WLAs are as follows:

The WLA for wastewater sources discharging to the lower Escambia River and areas adjacent to the impaired waters is divided between:

Gulf Power Company (NPDES permit FL0002275), TP is 7.8 lbs/day (2,852 lbs/year) and 58.6 lbs/day (21,392 lbs/year) for TN,

Pace Water System, Inc (NPDES permit FL0102202), TP is 10.5 lbs/day (3,852 lbs/year) and 87.8 lbs/day (32,052 lbs/year) for TN and

Ascend Performance Materials LLC (NPDES permit FL0002488), TP is 14.1 lbs/day (5,147 lbs/year) and 200.5 lbs/day (73,171 lbs/yr) for TN.

For the second allocation category, there are local governments in the basin that are regulated by a MS4 permit, which are covered by the WLA assigned to this category. For purposes of this SERC analysis, the Bayou Chico MS4 urbanized area is not included as it is covered under a separate SERC. In addition, the MS4 urbanized area within Bayou Texar is not included as the water quality modeling indicates that reducing loadings from this watershed will not make a significant improvement in the impaired water. Finally, as the TMDL does not include reductions for total nitrogen, costs associated with improving septic tank performance were not included. However, significant costs remain for this source category as follows.

The North Escambia Bay/Judges Bayou (marine) watershed includes areas covered by Phase I and II MS4 permits. Only the urbanized areas of MS4's are subject to regulation for which the TMDL imposes costs under the WLA. Based on this analysis, there were 9,717 acres of Phase I MS4 and 3,126 acres of Phase II MS4 anthropogenic landuse within the urbanized area of Escambia and Santa Rosa Counties. The estimated costs for the MS4 entities are based on local information provided by Escambia County, the City of Pensacola, and Santa Rosa County.

The estimated cost is \$12,620,100 per year and includes costs that could be incurred by the MS4 entities to retrofit as many as 12,843 acres to secure load reductions necessary to achieve the TMDL and the one time cost for the development of a MS4 load reduction plan. The cost for addressing stormwater improvements in Phase I urban areas was based on averaging information provided by the City of Pensacola and Escambia County across the urbanized area and presumes that 30 percent of all development meets the urban stormwater rule.

**Florida Department of Environmental Protection
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For Category 3 entities, the proposed TMDL contains LAs, and the Department has evaluated whether promulgation of this TMDL will affect any entities as a result of the LA. Discharges captured in the LA are generally considered nonpoint sources and are not subject to Clean Water Act permitting and do not have costs required by this rule. However, the Department understands that reductions in nonpoint source contributions are needed to meet the TMDL, which will require a process that engages all of the entities responsible for these non-regulated loads. A Basin Management Action Plan (BMAP) will be developed collaboratively by the Department and all of the contributing stakeholders and will include the most cost-effective, specific stakeholder actions to achieve the restoration goal and a timeline for achieving it.

The cost estimates for Category 1 & 2 entities are greater than the \$1 million threshold needed for ratification by the Legislature.

D. Good faith estimates (numbers/types):

- 1. The number of individuals and entities likely to be required to comply with the rule. (Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).**

The total costs of implementing will be primarily assigned to regulated entities and are designed to reduce the nutrients in stormwater discharged by these entities. Within the Escambia Bay/Judges Bayou (marine) Watershed, the stormwater collection systems owned and operated by Escambia County, City of Pensacola, Town of Century and Florida Department of Transportation (DOT) District Three (NPDES MS4 Permit FLS000019) within Escambia County are covered by a Phase I NPDES municipal separate storm sewer system (MS4) permit. The University of West Florida (FLR04E057) and the Pensacola Naval Air Station (FLR04E058) are also within Escambia County and have Phase II MS4 permits. Several other local governments, in the basin have coverage under Phase II NPDES MS4 permits. These include Santa Rosa County (FLR04E069), City of Milton (FLR04E104), and the City of Gulf Breeze (FLR04E085) within Santa Rosa County. The total costs of implementing will be primarily assigned to these entities and are designed to reduce the nutrients in stormwater discharged.

- 2. A general description of the types of individuals likely to be affected by the rule.**

The regulated entities are county and city governments.

E. Good faith estimates (costs):

- 1. Cost to the department of implementing the proposed rule:**

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

None. *The department intends to implement the proposed rule within its current workload, with existing staff.*

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

2. Cost to any other state and local government entities of implementing the proposed rule:

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

Costs are based on an economic analysis spreadsheet developed by the department to estimate costs. References for the analysis are provided in Attachment 1.

Cost to the department of enforcing the proposed rule:

None. *The department intends to enforce the proposed rule within its current workload with existing staff.*

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

4. Cost to any other state and local government of enforcing the proposed rule:

None.

Minimal. *(Provide a brief explanation).*

Costs of enforcement incurred by MS4 entities are already included as a normal cost of implementing the MS4 permit requirements.

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

requirements of the proposed rule. *(Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).*

None.

Transactional costs incurred by the regulated entities are already included as a normal cost of implementing permit requirements.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S. *(Includes:*

- *Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?];*
- *The type of small businesses that would be subject to the rule;*
- *The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?];*
- *The likely per-firm regulatory cost increase, if any).*

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."

No explicit evaluation of costs to small business can be provided in this SERC. There will be no direct costs to small businesses. Additionally, no information is available to separate indirect costs to small business from the total costs of the rule incurred by MS4 permit holders.

A small county is defined in Section 120.52(19), F.S., as "any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census." And, a small city is defined in Section 120.52(18), F.S., as "any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census."

The estimated number of small businesses that would be subject to the rule:

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

- 1-99 100-499 500-999
 1,000-4,999 More than 5,000
 Unknown, please explain:

There is no information available to separate the indirect costs to small business from the total costs of the rule incurred by MS4 permit holders; therefore, the number of small business effected is unknown.

- Analysis of the impact on small business:
- There is no small county or small city that will be impacted by this proposed rule.
- A small county or small city will be impacted. Analysis:
- Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

H. Any additional information that the agency determines may be useful.

None.

Additional.

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

See attachment "A".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "B".

Adopted in entirety.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "C".
- Adopted in entirety.
- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "D".
- Adopted in entirety.
- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "E".
- Adopted in entirety.
- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Attachment 1

Chang, N., M. Wanielista, A. Daranpob, F. Hossain, Z. Xuan, J. Miao, S. Liu, Z. Marimon, and S. Debusk. 2010. Onsite Sewage Treatment and Disposal Systems Evaluation for Nutrient Removal. Stormwater Management Academy, University of Central Florida.

References for Development of the SERC spreadsheet

Florida Department of Agricultural and Consumer Services (FDACS), Office of Agricultural Water Policy (OAWP)'s BMP program. March 2011.

Florida Department of Environmental Protection (FDEP). 2010a. TMDL Water Quality Restoration Grants. <http://www.dep.state.fl.us/water/watersheds/docs/tmdl-grant-nutrient-costs-0210.pdf>. Accessed July 2011.

Florida Department of Environmental Protection (FDEP). 2010b. FDEP Review of EPA's "Preliminary Estimate of Potential Compliance Costs and Benefits Associated with EPA's Proposed Numeric Nutrient Criteria for Florida."

Florida Geological Data Library (FGDL). 2004-2008. GIS Data: lu_nwfwmd_2004; lu_sfwmmd_2004; lu_sjrwmd_2004; lu_srwmmd_2008; and lu_swfwmd_2007. <http://www.fgdl.org/download/index.html>

Florida Geological Data Library (FGDL). 2007. GIS Data: npdes_stormwater. <http://www.fgdl.org/download/index.html>

Florida Governmental Utility Authority (FGUA). 2009. Board Agenda Item: Thursday, February 19, 2009: Status Update on the Lehigh Acres Utility Expansion Project – Mandatory Wastewater Connections. <http://www.lehighacresweedandseedproject.info/FGUA/Lehigh%20Acres%20Mandatory%20Wastewater%20Connection.pdf>

McNeer, Andy. May 2009. Aquapoint Sales Representative. Personal communication.

Soil and Water Engineering Technology (SWET). 2008. Nutrient Loading Rates, Reduction Factors and Implementation Costs Associated with BMPs and Technologies. Report prepared for South Florida Water Management District.

United States Bureau of Labor Statistics, Department of Labor. 2011. Consumer Price Index.

United States Census Bureau, Department of Labor. 2007. Economic Census.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Wastewater Technologies. November 2010. Personal communication.

#

Rule Certification
Package and SERC
Summary:
Rules
62-304.520(14)-(20)



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

March 20, 2013

Ms. Liz Cloud
Section Administrator
Administrative Code and Weekly Section
500 South Bronough Street, Room 101
Pepper Building, Room 680
Tallahassee, Florida 32399

FILED
2013 MAR 20 PM 3:12
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

Re: Certification package for Rule 62-304.520(14)-(20), F.A.C. (IRL)

Dear Ms. Cloud:

Attached is the certification package for Rule 62-304.520(14)-(20), F.A.C. I am the attorney handling this rulemaking. Please note that the Department concurrently published two separate notices of proposed rule for 62-304.520. Subsections (15)-(20) included in this certification package relate to provisions that will require legislative ratification. Subsection (14) does not require ratification. The Department is sending under separate cover another certification package relating to those rule subsections that do not require legislative ratification.

If you have any questions, please call me at (850) 245-2262 or email me at kenneth.hayman@dep.state.fl.us. My mailing address is noted on the letterhead above.

Sincerely,

Kenneth Hayman
Senior Assistant General Counsel

Enclosures

cc: Jan Mandrup-Poulsen

CERTIFICATION OF DEPARTMENT OF ENVIRONMENTAL PROTECTION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and

(2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S., and

(a) Are filed not more than 90 days after the notice; or

(b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

(e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

(g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

(h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

(i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

TALLAHASSEE, FLORIDA
DEPARTMENT OF STATE
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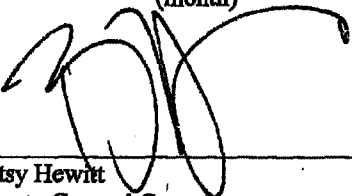
Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No(s).

62-304.520(14) – (20)

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____ (month) _____ (day) _____ (year)



Betsy Hewitt
Deputy General Counsel

4

Number of Pages Certified

62-304.520 Indian River Lagoon TMDLs.

(1) – (13) No change.

(14) Addison Creek: The dissolved oxygen (DO) TMDL for Addison Creek is 35,605 lb/year of biochemical Oxygen Demand (BOD) and is allocated as follows:

(a) The WLA for wastewater sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is a 72.3% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005.

(c) The LA for nonpoint sources is a 72.3% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and

(d) The Margin of Safety is implicit.

(e) While the LA for BOD has been expressed as the percent reduction needed to attain the applicable Class III DO criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the restoration of DO condition in the impaired waterbody. However, it is not the intent of this TMDL to abate natural background conditions.

(15) Eau Gallie River: The DO and nutrient TMDLs for the Eau Gallie River are 28,842 lb/year of TN, 4,307 lb/year of TP, and 70,056 lb/year of BOD and are allocated as follows:

(a) The WLA of TN and TP for the Melbourne Reverse Osmosis is the TN and TP loading limits established in 62-304.520(6)(a), F.A.C. for the facility. The WLA of BOD is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is a 51.0% reduction of TN, 58.0% reduction of TP, and 86.3% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005.

(c) The LA for nonpoint sources is a 51.0% reduction of TN, 58.0% reduction of TP, and 86.3% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and

(d) The Margin of Safety is implicit.

(e) While the LAs for nutrients and BOD have been expressed as the percent reductions needed to attain the applicable Class III nutrient and DO criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the restoration of nutrient and DO conditions in the impaired waterbody. However, it is not the intent of the TMDL to abate natural background conditions.

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
TALLAHASSEE, FLORIDA

(16) Crane Creek: The DO and nutrient TMDLs for Crane Creek is 110,547 lb/year of BOD and the TN and TP percent reduction established in 62-304.520(7)(b)1, and 2, F.A.C. These TMDLs are allocated as follows:

(a) The WLA of TN and TP for the Melbourne Grant Street Wastewater Treatment Facility is the TN and TP loading limits established in 62-304.520(7)(a), F.A.C. for the facility. The WLA of BOD granted to the facility is 139 lb/year.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is a 80.1% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)1, F. A. C.,

(c) The LA for nonpoint sources is a 80.1% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)2, F. A. C., and

(d) The Margin of Safety is implicit.

(e) While the WLA and LA for nutrients and BOD have been expressed as the percent reductions needed to attain the applicable Class III nutrients and DO criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the restoration of nutrient and DO conditions in the impaired waterbody. However, it is not the intent of the TMDL to abate natural background conditions.

(17) North Prong Sebastian River: The DO TMDL for the North Prong Sebastian River is 282,346 lb/year of BOD, and is allocated as follows:

(a) The WLA to the Barefoot Bay Advanced Wastewater Treatment Facility is 2,707 lb/year of BOD.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is 69.7% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005,

(c) The LA for nonpoint sources is 69.7% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and

(d) The Margin of Safety is implicit.

(e) While the WLA and LA for BOD have been expressed as the percent reduction needed to attain the applicable Class III DO criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the restoration of DO condition in the impaired waterbody. However, it is not the intent of the TMDL to abate natural background conditions.

(18) C-54 Canal at Confluence with the Sebastian River: The DO and nutrient TMDLs for C-54 Canal at Confluence with the Sebastian River is 834,397 lb/year of BOD and the TN and TP percent reduction established in 62-304.520(7)(b)1. and 2, F. A. C. These TMDLs are allocated as follows:

(a) The WLA for wastewater sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is a 72.3% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)1, F. A. C.,

(c) The LAs for nonpoint sources are 72.3% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)2, F. A. C., and

(d) The Margin of Safety is implicit.

(e) While the WLA and LA for nutrients and BOD have been expressed as the percent reductions needed to attain the applicable Class III nutrients and DO criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the restoration of nutrient and DO conditions in the impaired waterbody. However, it is not the intent of the TMDL to abate natural background conditions.

(19) South Prong Sebastian River Freshwater Segment and South Prong Sebastian River Estuary Segment: The DO and nutrient TMDLs for the South Prong Sebastian River Freshwater Segment and the South Prong Sebastian River Estuary Segment is 515,178 lb/year BOD and the TN and TP percent reduction established in 62-304.520(7)(b)1. and 2, F. A. C. These TMDLs are allocated as follows:

(a) The WLA for wastewater sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is a 78.2% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP loads reductions established in 62-304.520(7)(b)1, F. A. C.,

(c) The LA for nonpoint sources is a 78.2% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)2, F. A. C., and

(d) The Margin of Safety is implicit.

(e) While the WLA and LA for nutrients and BOD have been expressed as the percent reductions needed to attain the applicable Class III nutrients and DO criteria, it is the combined reductions from both anthropogenic point

and nonpoint sources that will result in the restoration of nutrient and DO conditions in these impaired water segments. However, it is not the intent of these TMDLs to abate natural background conditions.

(20) Sebastian River above the Indian River: The DO and nutrient TMDLs for the Sebastian River above the Indian River is 1,722,130 lb/year of BOD and the TN and TP percent reduction established in 62-304.520(7)(b)1, and 2, F. A. C. These TMDLs are allocated as follows:

(a) The WLA for wastewater sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is a 74.2% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)1, F. A. C.,

(c) The LA for nonpoint sources is a 74.2% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)2, F. A. C., and

(d) The Margin of Safety is implicit.

(e) While the WLA and LA for nutrients and BOD have been expressed as the percent reductions needed to attain the applicable Class III nutrient and DO criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the restoration of nutrient and DO conditions in these impaired water segments. However, it is not the intent of these TMDLs to abate natural background conditions.

Rulemaking Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History—New 6-3-08, Amended 3-26-09, _____.

SUMMARY OF THE RULE

The Florida Watershed Restoration Act, codified at section 403.067, Florida Statutes, requires the Department to establish total maximum daily loads ("TMDLs") for surface waters that have been verified as not meeting applicable water quality standards. Utilizing the scientific methodologies set forth in Chapter 62-303, F.A.C., the Department previously identified the waters in the proposed rule as being impaired for dissolved oxygen and / or nutrients. Proposed rules 62-304.520(14)-(20) set dissolved oxygen and /or nutrient TMDLs for Addison Creek, Eau Gallie River, Crane Creek, North Prong Sebastian River, the C-54 Canal at Confluence with the Sebastian River, the South Prong Sebastian River Estuary Segment, and the Sebastian River above the Indian River that, if met, will redress the identified impairment. A report detailing the derivation of these TMDLs can be found at: http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm .

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2013 MAR 20 PM 3:13
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TALLAHASSEE, FLORIDA

SUMMARY OF THE HEARING

No timely request for a hearing was received by the agency, and no hearing was held.

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2013 MAR 20 PM 3:13
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The Florida Watershed Restoration Act, codified at section 403.067, Florida Statutes, requires the Department to establish total maximum daily loads ("TMDLs") for surface waters that have been verified as not meeting applicable water quality standards. Utilizing the scientific methodologies set forth in Chapter 62-303, F.A.C., the Department previously identified the waters in the proposed rule as being impaired for dissolved oxygen and / or nutrients. Proposed rules 62-304.520(14)-(20) set dissolved oxygen and /or nutrient TMDLs for Addison Creek, Eau Gallie River, Crane Creek, North Prong Sebastian River, the C-54 Canal at Confluence with the Sebastian River, the South Prong Sebastian River Estuary Segment, and the Sebastian River above the Indian River that, if met, will redress the identified impairment. A report detailing the derivation of these TMDLs can be found at: http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm .

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2019 MAR 20 PM 3:13
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

Notice of Proposed Rule

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.: RULE TITLE:

62-304.520: Indian River Lagoon Basin TMDLs

PURPOSE AND EFFECT: The purpose of the rule is to adopt Total Maximum Daily Loads (TMDLs), and their allocations, for certain waters impaired for dissolved oxygen (DO) and/or nutrients in the Indian River Lagoon Basin. Furthermore, upon paragraph 62-302.531(2)(a), F.A.C., becoming effective, the nutrient TMDL for the Eau Gallie River in subsection 62-304.520(15), F.A.C., will constitute a site specific numeric interpretation of the narrative nutrient criterion set forth in paragraph 62-302.530(47)(b), F.A.C.

SUMMARY: These TMDLs address certain DO and nutrient impairments in the Indian River Lagoon Basin. Specifically, DO and nutrient TMDL rules being proposed for adoption are for the Eau Gallie River, Crane Creek, the C-54 Canal at Confluence with the Sebastian River, the South Prong Sebastian River Estuary Segment, and the Sebastian River above the Indian River. DO-only TMDLs are being proposed for Addison Creek, the North Prong Sebastian River, and the South Prong Sebastian River Freshwater Segment. These waterbodies were verified for nutrient and/or DO impairments due to elevated chlorophyll a concentrations and/or depressed DO concentrations using the methodology established in Chapter 62-303, F.A.C., Identification of Impaired Surface Waters. Based on results from water quality modeling and statistical analyses, it was demonstrated that the low DO condition in these impaired waters were mainly caused by loads of biochemical oxygen demand (BOD) and sediment oxygen demand (SOD) resulting from the long-term accumulation of BOD in the sediment. Therefore, BOD loading limits were established by these proposed TMDLs to restore the DO condition in these impaired waters. Using statistical analyses of spatial and temporal patterns of nutrient-related data in nutrient impaired waters, it was determined that the observed elevation in chlorophyll a concentrations in most nutrient impaired water segments, except for the Eau Gallie River, were mainly caused by receiving water processes under extreme weather conditions instead of by elevated watershed nutrient loadings. Therefore, the nutrient loading targets for nutrient impaired water segments were established to be consistent with the nutrient loading targets adopted previously into this rule to protect the seagrass communities in the mainstem of Indian River Lagoon. Because the Eau Gallie River showed consistent long-term elevation in chlorophyll a concentration compared to other water segments in the same area, nutrient reduction goals more stringent than those adopted previously for the same watershed area were established to restore the nutrient condition in the river. The watershed nutrient and BOD loads were simulated using the Hydrological Simulation Program – Fortran (HSPF) and the Pollutant Load Screening Model (PLSM). The DO and chlorophyll a dynamics in receiving waters were simulated using the HSPF model and the Environmental Fluid Dynamic Code (EFDC) model. This rulemaking has been given an OGC case number 12-1681.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the agency.

Specifically, three separate SERC analyses have been prepared by the Agency for watershed areas of (1) the Sebastian River system, including the North Prong Sebastian River, the C-54 Canal at Confluence with the Sebastian River, the South Prong Sebastian River Freshwater Segment, the South Prong Sebastian River Estuary Segment, and the Sebastian River above the Indian River, (2) the Eau Gallie River and Crane Creek, and (3) Addison Creek.

The Agency has determined that these proposed rules are expected to require legislative ratification based on the

statement of estimated regulatory costs. However, the TMDL proposed for Addison Creek will not increase the regulatory costs in excess of \$1.0 million and is not expected to require legislative ratification.

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.

RULEMAKING AUTHORITY: 403.061, 403.067 FS.

LAW IMPLEMENTED: 403.061, 403.062, 403.067 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

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. For the 21 day period after this notice, the Department will accept written comments on the establishment of the Eau Gallie River nutrient TMDL as a site specific interpretation of the narrative nutrient criterion. Written comments should be directed to Jan Mandrup-Poulsen at the address above.

THE FULL TEXT OF THE PROPOSED RULE IS:

62-304.520 Indian River Lagoon TMDLs.

(1) – (13) No change.

(14) Addison Creek: The dissolved oxygen (DO) TMDL for Addison Creek is 35,605 lb/year of biochemical Oxygen Demand (BOD) and is allocated as follows:

(a) The WLA for wastewater sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is a 72.3% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005.

(c) The LA for nonpoint sources is a 72.3% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and

(d) The Margin of Safety is implicit.

(e) While the LA for BOD has been expressed as the percent reduction needed to attain the applicable Class III DO criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the restoration of DO condition in the impaired waterbody. However, it is not the intent of this TMDL to abate natural background conditions.

(15) Eau Gallie River: The DO and nutrient TMDLs for the Eau Gallie River are 28,842 lb/year of TN, 4,307 lb/year of TP, and 70,056 lb/year of BOD and are allocated as follows:

(a) The WLA of TN and TP for the Melbourne Reverse Osmosis is the TN and TP loading limits established in 62-304.520(6)(a), F.A.C. for the facility. The WLA of BOD is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is a 51.0% reduction of TN, 58.0% reduction of TP, and 86.3% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005.

(c) The LA for nonpoint sources is a 51.0% reduction of TN, 58.0% reduction of TP, and 86.3% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and

(d) The Margin of Safety is implicit.

(e) While the LAs for nutrients and BOD have been expressed as the percent reductions needed to attain the applicable Class III nutrient and DO criteria, it is the combined reductions from both anthropogenic point and

nonpoint sources that will result in the restoration of nutrient and DO conditions in the impaired waterbody. However, it is not the intent of the TMDL to abate natural background conditions.

(16) Crane Creek: The DO and nutrient TMDLs for Crane Creek is 110,547 lb/year of BOD and the TN and TP percent reduction established in 62-304.520(7)(b)1. and 2. , F.A.C. These TMDLs are allocated as follows:

(a) The WLA of TN and TP for the Melbourne Grant Street Wastewater Treatment Facility is the TN and TP loading limits established in 62-304.520(7)(a), F.A.C. for the facility. The WLA of BOD granted to the facility is 139 lb/year.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is a 80.1% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)1., F. A. C.,

(c) The LA for nonpoint sources is a 80.1% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)2, F. A. C., and

(d) The Margin of Safety is implicit.

(e) While the WLA and LA for nutrients and BOD have been expressed as the percent reductions needed to attain the applicable Class III nutrients and DO criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the restoration of nutrient and DO conditions in the impaired waterbody. However, it is not the intent of the TMDL to abate natural background conditions.

(17) North Prong Sebastian River: The DO TMDL for the North Prong Sebastian River is 282,346 lb/year of BOD, and is allocated as follows:

(a) The WLA to the Barefoot Bay Advanced Wastewater Treatment Facility is 2,707 lb/year of BOD,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is 69.7% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005,

(c) The LA for nonpoint sources is 69.7% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and

(d) The Margin of Safety is implicit.

(e) While the WLA and LA for BOD have been expressed as the percent reduction needed to attain the applicable Class III DO criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the restoration of DO condition in the impaired waterbody. However, it is not the intent of the TMDL to abate natural background conditions.

(18) C-54 Canal at Confluence with the Sebastian River: The DO and nutrient TMDLs for C-54 Canal at Confluence with the Sebastian River is 834,397 lb/year of BOD and the TN and TP percent reduction established in 62-304.520(7)(b)1, and 2, F. A. C. These TMDLs are allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is a 72.3% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)1, F. A. C.,

(c) The LAs for nonpoint sources are 72.3% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)2, F. A. C., and

(d) The Margin of Safety is implicit.

(e) While the WLA and LA for nutrients and BOD have been expressed as the percent reductions needed to attain the applicable Class III nutrients and DO criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the restoration of nutrient and DO conditions in the impaired waterbody. However, it is not the intent of the TMDL to abate natural background conditions.

(19) South Prong Sebastian River Freshwater Segment and South Prong Sebastian River Estuary Segment: The DO and nutrient TMDLs for the South Prong Sebastian River Freshwater Segment and the South Prong Sebastian River Estuary Segment is 515,178 lb/year BOD and the TN and TP percent reduction established in 62-304.520(7)(b)1, and 2, F. A. C. These TMDLs are allocated as follows:

(a) The WLA for wastewater sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is a 78.2% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP loads reductions established in 62-304.520(7)(b)1, F. A. C.,

(c) The LA for nonpoint sources is a 78.2% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)2, F. A. C., and

(d) The Margin of Safety is implicit.

(e) While the WLA and LA for nutrients and BOD have been expressed as the percent reductions needed to attain the applicable Class III nutrients and DO criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the restoration of nutrient and DO conditions in these impaired water segments. However, it is not the intent of these TMDLs to abate natural background conditions.

(20) Sebastian River above the Indian River: The DO and nutrient TMDLs for the Sebastian River above the Indian River is 1,722,130 lb/year of BOD and the TN and TP percent reduction established in 62-304.520(7)(b)1, and 2, F. A. C. These TMDLs are allocated as follows:

(a) The WLA for wastewater sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is a 74.2% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)1, F. A. C.,

(c) The LA for nonpoint sources is a 74.2% reduction of BOD based on the year 2000 landuse and a modeling period from 1996 through 2005, and the TN and TP reductions established in 62-304.520(7)(b)2, F. A. C., and

(d) The Margin of Safety is implicit.

(e) While the WLA and LA for nutrients and BOD have been expressed as the percent reductions needed to attain the applicable Class III nutrient and DO criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the restoration of nutrient and DO conditions in these impaired water segments. However, it is not the intent of these TMDLs to abate natural background conditions.

Rulemaking Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History—New 6-3-08, Amended 3-26-09, _____.

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

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Herschel T. Vinyard Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 7, 2013

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: November 23, 2011

Rule Certification
Package, SERC, and
Explanatory Letter:
Rule
62-304.610(12)



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

August 14, 2012

Ms. Liz Cloud
Section Administrator
Administrative Code and Weekly Section
500 South Bronough Street, Room 101
Tallahassee, Florida 32399-0250

Re: Certification package for Rule 62-304.610, F.A.C.

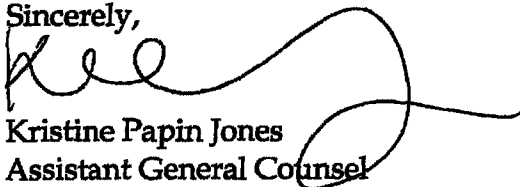
Dear Ms. Cloud:

Attached is the certification package for Rule 62-304.610, F.A.C. I am the attorney handling the rule and my telephone number is 245-2247, Kristine.P.Jones@dep.state.fl.us, and mailing address is Department of Environmental Protection, Office of General Counsel, MS 35, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000. The program staff person is Jan Mandrup-Poulsen, who may be reached at 245-8448, Jan.Mandrup-Poulsen@dep.state.fl.us, and whose mailing address is 2600 Blair Stone Rd., Tallahassee, Florida 32399-2400.

This final rule contains a technical change from the Notice of Change published on June 8, 2012. The rule number (12) was changed to (10) to keep the rule sequential. Failing to change it in the Notice of Change was an administrative or typographical error.

Please also find enclosed a Statement of Ratification Being Necessary for this rule and the associated economic analysis the Department performed to make that determination. If you have any questions, please do not hesitate to ask.

Sincerely,



Kristine Papin Jones
Assistant General Counsel

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC) and a
Finding of Ratification Being Necessary**

Division: Environmental Assessment and Restoration
Board:
Rule Number: 62-304.610
Rule Description: Incorporation of the state and federal requirements to define the dissolved oxygen and nutrient Total Maximum Daily Load (TMDLs) for Channelized Stream
Contact Person: Jan Mandrup-Poulsen

In order to evaluate whether ratification would be necessary under this rule, the Department proceeded to evaluate this rule in the same manner it creates a Statement of Estimated Regulatory Costs (SERC). Therefore, this document serves to act as a SERC and finds that ratification will be necessary.

Section 120.541(1)(b), Florida Statutes, requires the preparation of a Statement of Estimated Regulatory Costs (SERC) in association with agency rulemaking when a proposed rule either will have an adverse impact on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule. Local stakeholders and the public at large often are interested in the cost of restoration. However, the total cost is unknown at the time of adoption of a TMDL rule because so much is dependent on implementation of restoration activities to achieve the TMDL. The Florida Department of Environmental Protection (Department) has determined that the most transparent and efficient action is to prepare a SERC for proposed TMDL rules that cover areas where there are regulated sources in the watershed.

In preparing a SERC, the Department follows the requirements of 120.541(2), Florida Statutes, to evaluate whether a proposed TMDL rule is likely to (1) have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; (2) have an adverse impact on business competitiveness; and (3) increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. The Department has determined that implementation of the reductions imposed directly by this rule will be assigned to entities covered by the Department's regulatory programs (i.e., National Pollutant Discharge Elimination Systems (NPDES) Permits. As such, the SERC evaluation will focus on estimates of future costs to these regulated entities as a result of the adoption of this rule.

A. Is the rule likely to, **directly or indirectly**, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC) and a
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- | | | |
|--|------------------------------|--|
| 1. Is the rule likely to reduce personal income? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the rule likely to reduce total non-farm employment? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Is the rule likely to reduce private housing starts? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Is the rule likely to reduce visitors to Florida? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Is the rule likely to reduce wages or salaries? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 6. Is the rule likely to reduce property income? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Explanation

As required by the Federal Clean Water Act and Florida Watershed Restoration Act (403.067, F.S.) this rule will define the TMDL for dissolved oxygen and nutrients for Channelized Stream. The rule is consistent with state and federal laws/regulations, policies, and guidance and will impose no requirements beyond or in addition to those already in statute. The rule will not, directly or indirectly, adversely impact personal income, non-farm employment, housing, tourism, wages, or property income in excess of 1 million dollars within 5 years of implementation.

As part of the process of adopting the TMDL, the Department conducts a thorough analysis of discharge sources and establishes general allocations for these sources. The general allocations are broadly divided among three general categories of sources: 1) facilities permitted under the National Pollutant Discharge Elimination System (NPDES) program, which receive a Wasteload Allocation (WLA), 2) local governments requiring a Municipal Separate Storm Sewer System (MS4) permit, which receive a WLA separate from the WLA covered in Category 1, and 3) all sources other than Categories 1 and 2 receive a Load Allocation (LA).

In determining the SERC for the proposed TMDL rule, the Department examined the effect of the rule to entities within the three general allocation categories. There are no NPDES permitted wastewater facilities within the basin that received a specific wasteload allocation.

For the second allocation category, there are local governments in the basin that are regulated by a Phase I MS4 permit, which are covered by the WLA assigned to this category.

These rules are not likely to reduce total non-farm employment because the majority of the costs will be to reduce the nutrients in stormwater discharged by the regulated entities and improve septic tank performance. These rules are not likely to reduce private housing starts or visitors to Florida. These rules are not likely to reduce wages or salaries.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC) and a
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Category 3 entities are not currently covered by any regulatory programs of the Department, and a SERC analysis on Category 3 entities, therefore, is considered outside the scope of this analysis.

A potentially important nonpoint source is the nutrient contribution from septic tanks. The cost estimate in Table 1 of the number of septic tanks that need to be removed (total of fifty-two) from the watershed, that are within 200 meters of surface waterbodies, are good faith estimates of likely costs that might be incurred by stakeholders during the implementation phase of the BMAP. At this time, there remains uncertainty as to which specific combination of projects will be required to meet the nutrient reductions.

In summary, while the proposed TMDL will help facilitate effective implementation of existing laws and regulations, they are not expected to cause any adverse impact on personal income, non-farm employment, housing starts, and wages, and will help maintain property values and provide a safer environment that will benefit tourism of the State.

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to raise the price of goods or services provided by Florida business?

Yes No

2. Is the rule likely to add regulation that is not present in other states or markets?

Yes No

3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?

Yes No

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4. Is the rule likely to cause Florida businesses to reduce workforces?
 Yes No

5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?
 Yes No

6. Is the rule likely to make illegal any product or service that is currently legal?
 Yes No

Explanation:

As required by the Federal Clean Water Act and Florida Watershed Restoration Act (403.067, F.S.) the rule will define the TMDL for dissolved oxygen and nutrients in Channelized Stream. The rule is consistent with state and federal laws/regulations, policies, and guidance and will impose no requirements beyond or in addition to those already in statute.

The implementation of the rule is not likely to raise the price of goods or services provided by Florida business, as the total costs of implementing will be primarily assigned to entities covered by existing regulations and are designed to reduce the nutrients in stormwater discharged by the regulated entities and improve septic tank performance. These improvements should not add any additional costs to the price of goods or the services provided by businesses within the watershed. The rule is not likely to add regulation that is not present in other states or markets because the federal TMDL requirements are applied nationwide. The rule is not likely to reduce the quantity of goods or services Florida businesses are able to produce. The rule is not likely to cause Florida businesses to reduce workforces as the total costs of implementing will be primarily assigned to regulated entities and are designed to reduce the nutrients in stormwater discharged by these entities and to improve septic tank performance. The rule is not likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovations as the total costs of implementing will be primarily assigned to regulated entities and are designed to reduce the nutrients in stormwater discharged by these entities and to improve septic tank performance. The rule does not make illegal any product or service that is currently legal.

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

**Florida Department of Environmental Protection
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C. Is the rule likely, directly or indirectly, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule?

Low and high end estimated costs were calculated using an Excel spreadsheet and are provided in Table 1. It is uncertain at this time where in the cost range the actual costs might be to implement this TMDL. The one-time low end cost is \$310,400, and includes the cost of removing the fifty-two septic tanks in the watershed, within 200 meters of a surface waterbody, and connecting those parcels to central sewer and the one time cost for the development of a MS4 load reduction plan. The low end cost for addressing stormwater improvements in urban areas presumes all development meets the urban stormwater rule, and results in \$0 added costs.

The high end cost is \$3,969,300, an estimate which includes costs that can be incurred by the MS4 entities to retrofit as many as 609 acres to conform to stormwater rules requirements, as well as the costs of removing the septic tanks and developing the MS4 load reduction plan. The one-time high end estimated cost for removing fifty-two septic tanks and connecting to central sewer is \$930,800.

The high end cost is more than the \$1 million threshold needed for ratification by the Legislature.

If the total annual cost is greater than \$200,000, there is likely an increase of regulatory costs in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule. *(Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).*

The total costs of implementing will be primarily assigned to regulated entities and are designed to reduce the nutrients in stormwater discharged by these entities and to remove septic tanks and connect parcels to a centralized wastewater system. Within the Channelized Stream Watershed, the stormwater collection systems owned and operated by Polk County and the Florida Department of Transportation (FDOT) District Seven, within Polk County, are covered by a Phase I NPDES municipal separate storm sewer system (MS4) permit. The total costs of implementing will be primarily assigned to these entities and are designed to reduce the nutrients in stormwater discharged by these entities and to remove septic tanks within 200 meters of a surface waterbody.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC) and a
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2. A general description of the types of individuals likely to be affected by the rule.

The regulated entities are county and state governments.

E. Good faith estimates (costs):

1. Cost to the department of implementing the proposed rule:

None. *The department intends to implement the proposed rule within its current workload, with existing staff.*

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

2. Cost to any other state and local government entities of implementing the proposed rule:

None. *This proposed rule will only affect the department.*

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

Costs are based on an economic analysis spreadsheet developed by the department to estimate costs. References for the analysis are provided in Attachment 1.

Cost to the department of enforcing the proposed rule:

None. *The department intends to enforce the proposed rule within its current workload with existing staff.*

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

4. Cost to any other state and local government of enforcing the proposed rule:

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC) and a
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None.

Minimal. *(Provide a brief explanation).*

Costs of enforcement incurred by MS4 entities are already included as a normal cost of implementing the MS4 permit requirements.

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule. *(Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).*

None.

Transactional costs incurred by the regulated entities are already included as a normal cost of implementing permit requirements.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S. *(Includes:*

- *Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?];*
- *The type of small businesses that would be subject to the rule;*
- *The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?];*
- *The likely per-firm regulatory cost increase, if any).*

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."

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No explicit evaluation of costs to small business can be provided in this SERC. There will be no direct costs to small businesses. Additionally, no information is available to separate indirect costs to small business from the total costs of the rule incurred by MS4 permit holders.

A small county is defined in Section 120.52(19), F.S., as "any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census." And, a small city is defined in Section 120.52(18), F.S., as "any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census."

The estimated number of small businesses that would be subject to the rule:

- 1-99 100-499 500-999
 1,000-4,999 More than 5,000
 Unknown, please explain:

There is no information available to separate the indirect costs to small business from the total costs of the rule incurred by MS4 permit holders; therefore, the number of small business affected is unknown.

Analysis of the impact on small business:

There is no small county or small city that will be impacted by this proposed rule.

A small county or small city will be impacted. Analysis:

Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC) and a
Finding of Ratification Being Necessary**

Table 1

Source	Low End Cost	High End Cost
Urban MS4	\$0	\$2,988,500
Septic Tanks	\$270,400	\$930,800
Reduction Plan	\$40,000	\$50,000
Total	\$310,400	\$3,969,300

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC) and a
Finding of Ratification Being Necessary**

Attachment 1

- Chang, N., M. Wanielista, A. Daranpob, F. Hossain, Z. Xuan, J. Miao, S. Liu, Z. Marimon, and S. Debusk. 2010. Onsite Sewage Treatment and Disposal Systems Evaluation for Nutrient Removal. Stormwater Management Academy, University of Central Florida.*
- Florida Department of Agricultural and Consumer Services (FDACS), Office of Agricultural Water Policy (OAWP)'s BMP program. March 2011.*
- Florida Department of Environmental Protection (FDEP). 2010a. TMDL Water Quality Restoration Grants. <http://www.dep.state.fl.us/water/watersheds/docs/tmdl-grant-nutrient-costs-0210.pdf>. Accessed July 2011.*
- Florida Department of Environmental Protection (FDEP). 2010b. FDEP Review of EPA's "Preliminary Estimate of Potential Compliance Costs and Benefits Associated with EPA's Proposed Numeric Nutrient Criteria for Florida."*
- Florida Geological Data Library (FGDL). 2004-2008. GIS Data: lu_nwfwmd_2004; lu_sfwmd_2004; lu_sjrwmd_2004; lu_srwmd_2008; and lu_swfwmd_2007. <http://www.fgdl.org/download/index.html>*
- Florida Geological Data Library (FGDL). 2007. GIS Data: npdes_stormwater. <http://www.fgdl.org/download/index.html>*
- Florida Governmental Utility Authority (FGUA). 2009. Board Agenda Item: Thursday, February 19, 2009: Status Update on the Lehigh Acres Utility Expansion Project – Mandatory Wastewater Connections. <http://www.lehighacresweedandseedproject.info/FGUA/Lehigh%20Acres%20Mandatory%20Wastewater%20Connection.pdf>*
- McNeer, Andy. May 2009. Aquapoint Sales Representative. Personal communication.*
- Soil and Water Engineering Technology (SWET). 2008. Nutrient Loading Rates, Reduction Factors and Implementation Costs Associated with BMPs and Technologies. Report prepared for South Florida Water Management District.*
- United States Bureau of Labor Statistics, Department of Labor. 2011. Consumer Price Index.*
- United States Census Bureau, Department of Labor. 2007. Economic Census.*
- Wastewater Technologies. November 2010. Personal communication.*

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.: RULE TITLE:

62-304.610: Hillsborough River Basin TMDLs

(1) through (9) No Change.

(10) Channelized Stream. The TMDLs to address the low dissolved oxygen and nutrient impairments are an annual average 1.16 mg/L of TN and an annual average of 0.473 mg/L of TP and are allocated as follows:

(a) The WLA for wastewater point sources is not applicable.

(b) The WLAs for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program are a 52.1 percent reduction in anthropogenic loadings of TN and a 60.5 percent reduction in anthropogenic loadings of TP for the 2000-2007 period at sources contributing to exceedances of the criteria, and

(c) The LAs for nonpoint sources are a 52.1 percent reduction in anthropogenic loadings of TN and a 60.5 percent reduction in anthropogenic loadings of TP for the 2000-2007 period at sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reductions of in-stream TN and TP concentrations. However, it is not the intent of the TMDL to abate natural background conditions.

Rulemaking Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History--New 12-22-04, Amended 7-7-10, Amended _____.

SUMMARY OF THE HEARING

A notice of rule development for Rule 62-304.610, F.A.C., was published on June 19, 2009, simultaneously with a Notice of Workshop. The workshop was held on July 7, 2009, in Temple Terrace, Florida. Parties attending included environmental consultants, city and county personnel, and other state agency personnel. There were many comments on the rule proposed, but no specific comments on the waters included in the final rule. Following the workshop, however, written comments were received from FDOT and Hillsborough County on the method used to develop the DO and nutrient TMDLs for streams located in the Hillsborough River Basin, which included the Channelized Stream segment relevant to the final rule. The issues raised included their concerns about the modeling approach and the water quality targets used to develop the TMDLs. After the comment period, the Department worked with the local stakeholders to revise the methodology used for TMDL development and in February 2010 the Department proposed revised TMDLs to address their concerns.

CERTIFICATION OF DEPARTMENT OF ENVIRONMENTAL PROTECTION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

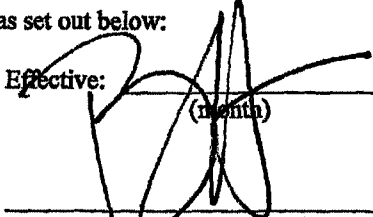
- (1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and
- (2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and
- (3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S., and
- (a) Are filed not more than 90 days after the notice; or
- (b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or
- (c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or
- (d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or
- (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or
- (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or
- (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or
- (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or
- (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No(s).

62-304.610

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective:  _____
(month) (day) (year)

Signature, Person Authorized to Certify Rules

Deputy General Counsel

Number of Pages Certified

DETAILED WRITTEN STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULES

Pursuant to Section 303(d) of the federal Clean Water Act (CWA), each state is required to identify waterbodies within the state for which traditional point source control of surface water discharges are not sufficient to assure that the affected waterbodies meet state water quality standards. For those waters identified as not meeting standards, the state must identify the pollutant or pollutants causing the exceedance(s) of water quality criteria and establish a pollutant budget or Total Maximum Daily Load (TMDL) for the waterbody. A TMDL is the amount of a pollutant that a waterbody may assimilate and still meet applicable water quality standards.

Florida's TMDL program was established by the Florida Watershed Restoration Act of 1999 and is primarily codified as Section 403.067, F.S. This Act mandated the development, by rule, of a methodology to identify those waters that are "impaired," or not meeting standards, and are in need of a TMDL. The Department promulgated Chapter 62-303, F.A.C., commonly known as the Florida Impaired Water Rule, establishing a science-based methodology for identifying those waters that are truly impaired, meriting inclusion on the verified list as well as those waters that may be impaired, but required additional study for verification. Such waters are included on the planning list.

The Department uses a watershed management approach to assess waters, verify impairment, and schedule waters for establishment of a TMDL. Upon establishment of a TMDL, allocations may be made. This rule amendment is proposed in order to adopt a TMDL and provide gross allocations associated with low dissolved oxygen and nutrient impairments pursuant to the Department's authority under sections 403.061 and 403.067, F.S. This waterbody was identified as impaired using the methodology established in Rule 62-303, FAC, Identification of Impaired Surface Waters. Rule 62-304.610(10), F.A.C., provides for the TMDL as well as the waste load allocations (WLA) to designated Municipal Separate Storm Sewer Systems permitted under the Department's NPDES Municipal Stormwater Permitting program as well as nonpoint sources in the Channelized Stream watershed of the Hillsborough River basin.

Rule Number:	Rule Title:	Specific Waters:
62-304.610	Hillsborough River Basin TMDLs	(10) Channelized Stream

SUMMARY OF THE RULE

The Florida Watershed Restoration Act, codified at section 403.067, Florida Statutes, requires the Department to establish total maximum daily loads ("TMDLs") for surface waters that have been verified as not meeting applicable water quality standards. Proposed subsection 62-304.610(10), F.A.C., sets a TMDL associated with dissolved oxygen and nutrient impairments as well as wasteload allocations to designated Municipal Separate Storm Sewer Systems permitted under the Department's NPDES Municipal Stormwater Permitting program and nonpoint sources in the Channelized Stream watershed of the Hillsborough River Basin.

Rule Certification
Package and SERC:
Rules
62-304.645(13), (14)



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

March 8, 2013

Ms. Liz Cloud
Section Administrator
Administrative Code and Weekly Section
500 South Bronough Street, Room 101
Pepper Building, Room 680
Tallahassee, Florida 32399

FILED
2013 MAR - 8 PM 3: 11
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

Re: Certification package for Rule 62-304.645, F.A.C. (Curlew and McKay Creeks)

Dear Ms. Cloud:

Attached is the certification package for Rule 62-304.645, F.A.C. The rules included in this certification package relate to provisions that will require legislative ratification.

I am the attorney handling this rulemaking. If you have any questions, please call me at (850) 245-2262 or email me at kenneth.hayman@dep.state.fl.us. My mailing address is noted on the letterhead above.

Sincerely,

Kenneth Hayman
Senior Assistant General Counsel

Enclosures

cc: Jan Mandrup-Poulsen

CERTIFICATION OF DEPARTMENT OF ENVIRONMENTAL PROTECTION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

- (1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and
- (2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and
- (3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), and
- (a) Are filed not more than 90 days after the notice; or
- (b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or
- (c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or
- (d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or
- (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or
- (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or
- (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or
- (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or
- (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

FILED
2013 MAR - 8 PM 3:11
DEPARTMENT OF STATE
TALAHASSEE, FLORIDA

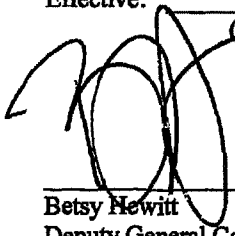
Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No(s).

62-304.645(13) – (14)

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)



Betsy Hewitt
Deputy General Counsel

2
Number of Pages Certified

62-304.645 Springs Coast Basin TMDLs.

(1) through (12) No change.

(13) Curlew Creek Tidal Segment. The TMDL to address the low dissolved oxygen and nutrient impairments is an annual average TN concentration of 0.95 mg/L and is allocated as follows:

(a) The WLA for the Mid-County Wastewater Treatment Plant is 4,245 lb/year of TN.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the Class III marine dissolved oxygen and nutrient criteria which, based on the measured concentrations in the year 2011, will require a 15 percent reduction of TN at sources contributing to exceedances of the criteria.

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the Class III marine dissolved oxygen and nutrient criteria which, based on the measured concentrations in the year 2011, will require a 15 percent reduction of TN at sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for TN have been expressed as the pounds allowed and the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream TN concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(14) McKay Creek Tidal Segment. The TMDLs to address the low dissolved oxygen and nutrient impairments are an annual TN load of 15,563 lb/year and an annual 5-day BOD load of 32,505 lb/year and are allocated as follows:

(a) The WLA for wastewater sources is not applicable.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the dissolved oxygen criterion and nutrient criterion, expressed as a chlorophyll a target, which, based on the calculated loadings from the 2002-2011 period, will require a 45 percent reduction of TN and 45 percent reduction of 5-day BOD at sources contributing to exceedances of the criteria.

FILED
2013 MAR -08 PM 3:11
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

(c) The LAs for nonpoint sources are to address anthropogenic sources in the basin such that in-stream concentrations meet the dissolved oxygen criterion and nutrient criterion, expressed as a chlorophyll a target, which, based on the calculated loadings from the 2002–2011 period, will require a 45 percent reduction of TN and 45 percent reduction of 5-day BOD at sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LAs for TN and 5-day BOD have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream TN and 5-day BOD concentrations. However, it is not the intent of the TMDL to abate natural background conditions.

Rulemaking Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History—New 6-3-08, Amended 11-14-12, _____.

SUMMARY OF THE RULE

The Florida Watershed Restoration Act, codified at section 403.067, Florida Statutes, requires the Department to establish total maximum daily loads ("TMDLs") for surface waters that have been verified as not meeting applicable water quality standards. Utilizing the scientific methodologies set forth in Chapter 62-303, F.A.C., the Department previously identified the waters in the proposed rule as being impaired for nutrients. Proposed rules 62-304.645(13)-(14) set dissolved oxygen and nutrient TMDLs for Curlew Creek and McKay Creek that, if met, will redress the identified impairment. A report detailing the derivation of this TMDL can be found at: http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm .

FILED
2019 MAR - 8 PM 3: 12
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

SUMMARY OF THE HEARING

No timely request for a hearing was received by the agency, and no hearing was held.

FILED

**2013 MAR -8 PM 3: 12
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA**

STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The Florida Watershed Restoration Act, codified at section 403.067, Florida Statutes, requires the Department to establish total maximum daily loads ("TMDLs") for surface waters that have been verified as not meeting applicable water quality standards. Utilizing the scientific methodologies set forth in Chapter 62-303, F.A.C., the Department previously identified the waters in the proposed rule as being impaired for nutrients. Proposed rules 62-304.645(13)-(14) set dissolved oxygen and nutrient TMDLs for Curlew Creek and McKay Creek that, if met, will redress the identified impairment. A report detailing the derivation of this TMDL can be found at: http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm .

FILED

2013 MAR - 8 PM 3: 12

DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Division: *Environmental Assessment and Restoration*
Board:
Rule Number: *62-304.645*
Rule Description: *Incorporation of the state and federal requirements to define a Total Maximum Daily Load (TMDL) for the Curlew Creek Tidal Segment Verified Impaired for Dissolved Oxygen and Nutrients*
Contact Person: *Jan Mandrup-Poulsen*

Please remember to analyze the impact of the rule, NOT the statute, when completing this form.

Section 120.541(1)(b), Florida Statutes, requires the preparation of a Statement of Estimated Regulatory Costs (SERC) in association with agency rulemaking when a proposed rule either will have an adverse impact on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule. The Florida Department of Environmental Protection (Department) has determined that this rule will increase regulatory costs in excess of \$200,000 in the aggregate within 1 year of the implementation of the rule. Therefore, SERC analyses were conducted for the proposed rule.

In preparing a SERC, the Department follows the requirements of 120.541(2), Florida Statutes, to evaluate whether a proposed TMDL rule is likely to (1) have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; (2) have an adverse impact on business competitiveness; and (3) increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. For those entities covered by the Department's regulatory programs, (i.e., National Pollutant Discharge Elimination Systems (NPDES) Permits), the TMDL could affect associated permitting requirements. For those entities not covered under the Department's water and wastewater regulatory programs, the TMDL is not expected to affect them. As such, the SERC evaluation will focus on estimates of future costs to regulated entities as a result of the adoption of this rule.

A. Is the rule likely to, *directly or indirectly*, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to reduce personal income? Yes No
2. Is the rule likely to reduce total non-farm employment? Yes No
3. Is the rule likely to reduce private housing starts? Yes No
4. Is the rule likely to reduce visitors to Florida? Yes No

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

5. Is the rule likely to reduce wages or salaries? Yes No
6. Is the rule likely to reduce property income? Yes No

Explanation

As required by the Federal Clean Water Act and Florida Watershed Restoration Act (403.067, F.S.), the proposed rule sets forth a nutrient TMDL for the Curlew Creek Tidal Segment which is verified for dissolved oxygen and nutrient impairment. This rule is consistent with state and federal laws/regulations, policies, and guidance and will impose no requirements beyond or in addition to those already in these laws and regulations.

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to raise the price of goods or services provided by Florida business?
 Yes No
2. Is the rule likely to add regulation that is not present in other states or markets?
 Yes No
3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?
 Yes No
4. Is the rule likely to cause Florida businesses to reduce workforces?
 Yes No
5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?
 Yes No

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

6. Is the rule likely to make illegal any product or service that is currently legal?
 Yes No

Explanation:

The proposed TMDL was developed based on requirements of the federal Clean Water Act. Developing TMDLs for impaired waters is a mandated requirement applied to all states across the nation. It does not apply to the State of Florida alone and, therefore, will not result in unfair prejudice against Florida businesses and will not weaken the competitiveness of the businesses in the state.

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

- C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule?

This TMDL establishes a 15 percent reduction goal for Total Nitrogen for municipal separate storm sewer systems (MS4) and other nonpoint sources to address the nutrient and dissolved oxygen impairments.

As part of the process of adopting this TMDL, the Department conducts a thorough analysis of discharge sources and establishes general allocations for these sources. In general, a TMDL allocation is broadly divided among three general categories of sources: Category 1. Wastewater facilities permitted under the Department's NPDES program, which receive a Wasteload Allocation (WLA); Category 2. local governments having MS4 permits, which receive a WLA separate from the WLA covered in Category 1; and Category 3. all sources other than Categories 1 and 2 receive a Load Allocation (LA).

In performing the analysis for this SERC for the proposed TMDL rule, the Department examined the effect of the rule to regulated entities within categories 1 and 2. Category 3 entities are not currently covered by any regulatory programs of the Department, and a SERC analysis on Category 3 entities, therefore, is considered outside the scope of this analysis.

For the first allocation category, there is one NPDES permitted domestic wastewater facility (the Mid-County WWTP) that received a specific wasteload allocation. The WLA granted to the facility is the average existing load for total nitrogen in the 2000-2011 period, therefore there will be no additional cost to the facility associated with the rule.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

For the second allocation category, there are local governments in the basin that are regulated by a Phase I MS4 permit, which are covered by the WLA assigned to this category. Only the urbanized areas of MS4's are subject to regulation for which the TMDL imposes costs under the WLA. Based on this analysis, there were 4,874 acres of Phase I MS4 anthropogenic landuse within the urbanized area of Pinellas County.

The estimated cost is \$2,086,700 per year and includes costs that could be incurred by the MS4 entities to retrofit as many as 4,874 acres to secure load reductions necessary to achieve the TMDL and the one time cost for the development of a MS4 load reduction plan. The estimated costs for the MS4 entities are based on stormwater retrofit project information used in the SERC analysis for the State of Florida Numeric Nutrient Criteria. No watershed specific cost estimates for implementing stormwater projects were submitted by the local governments.

For Category 3 entities, the proposed TMDL contains LAs, and the Department has evaluated whether promulgation of this TMDL will affect any entities as a result of the LA. Discharges captured in the LA are generally considered nonpoint sources and are not subject to Clean Water Act permitting and do not have costs required by this rule. However, the Department understands that reductions in nonpoint source contributions are needed to meet the TMDL, which will require a process that engages all of the entities responsible for these non-regulated loads. A Basin Management Action Plan (BMAP) may be developed collaboratively by the Department and all of the contributing stakeholders and will include the most cost-effective, specific stakeholder actions to achieve the restoration goal and a timeline for achieving it.

The cost estimates for Category 1 and 2 entities are greater than the \$1 million threshold needed for ratification by the Legislature.

D. Good faith estimates (numbers/types):

- 1. The number of individuals and entities likely to be required to comply with the rule.** *(Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).*

The total costs of implementing will be primarily assigned to regulated entities and are designed to reduce the nutrients in stormwater discharged by these entities. Within the Curlew Creek Watershed, the stormwater collection systems owned and operated by Pinellas County and Co- Permittees (Florida Department of Transportation (DOT) District 7, and the Cities of Dunedin and Clearwater) are covered by a Phase I NPDES municipal separate storm sewer system (MS4) permit (FLS000005). The total costs of implementing will be primarily assigned to these entities.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

2. A general description of the types of individuals likely to be affected by the rule.

The regulated entities are city, county, and state governments.

E. Good faith estimates (costs):

1. Cost to the department of implementing the proposed rule:

None. *The department intends to implement the proposed rule within its current workload, with existing staff.*

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

2. Cost to any other state and local government entities of implementing the proposed rule:

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

Costs are based on an economic analysis spreadsheet developed by the department to estimate costs. References for the analysis are provided in Attachment 1.

Cost to the department of enforcing the proposed rule:

None. *The department intends to enforce the proposed rule within its current workload with existing staff.*

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

4. Cost to any other state and local government of enforcing the proposed rule:

None.

Minimal. *(Provide a brief explanation).*

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Costs of enforcement incurred by MS4 entities are already included as a normal cost of implementing the MS4 permit requirements.

Other. (Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).

F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule. (Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).

None.

Transactional costs incurred by the regulated entities are already included as a normal cost of implementing permit requirements.

Minimal. (Provide a brief explanation).

Other. (Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S. (Includes:

- Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?];
- The type of small businesses that would be subject to the rule;
- The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?];
- The likely per-firm regulatory cost increase, if any).

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."

No explicit evaluation of costs to small business can be provided in this SERC. No information is available to separate indirect costs to small business from the total costs of the rule incurred by MS4 permit holders.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

A small county is defined in Section 120.52(19), F.S., as "any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census." And, a small city is defined in Section 120.52(18), F.S., as "any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census."

The estimated number of small businesses that would be subject to the rule:

- 1-99 100-499 500-999
 1,000-4,999 More than 5,000
 Unknown, please explain:

There is no information available to separate the indirect costs to small business from the total costs of the rule incurred by MS4 permit holders; therefore, the number of small business effected is unknown.

- Analysis of the impact on small business:
- There is no small county or small city that will be impacted by this proposed rule.
- A small county or small city will be impacted. Analysis:
- Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

H. Any additional information that the agency determines may be useful.

None.

Additional.

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

See attachment "A".

Adopted in entirety.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "B".
- Adopted in entirety.
- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "C".
- Adopted in entirety.
- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "D".
- Adopted in entirety.
- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "E".
- Adopted in entirety.
- Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Attachment 1

References for Development of the SERC spreadsheet

Florida Department of Agricultural and Consumer Services (FDACS), Office of Agricultural Water Policy (OAWP)'s BMP program. March 2011.

Florida Department of Environmental Protection (FDEP). 2010a. TMDL Water Quality Restoration Grants. <http://www.dep.state.fl.us/water/watersheds/docs/tmdl-grant-nutrient-costs-0210.pdf>. Accessed July 2011.

Florida Department of Environmental Protection (FDEP). 2010b. FDEP Review of EPA's "Preliminary Estimate of Potential Compliance Costs and Benefits Associated with EPA's Proposed Numeric Nutrient Criteria for Florida."

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Florida Governmental Utility Authority (FGUA). 2009. Board Agenda Item: Thursday, February 19, 2009: Status Update on the Lehigh Acres Utility Expansion Project - Mandatory Wastewater Connections. <http://www.lehighacresweedandseedproject.info/FGUA/Lehigh%20Acres%20Mandatory%20Wastewater%20Connection.pdf>

McNeer, Andy. May 2009. Aquapoint Sales Representative. Personal communication.

Soil and Water Engineering Technology (SWET). 2008. Nutrient Loading Rates, Reduction Factors and Implementation Costs Associated with BMPs and Technologies. Report prepared for South Florida Water Management District.

United States Bureau of Labor Statistics, Department of Labor. 2011. Consumer Price Index.

United States Census Bureau, Department of Labor. 2007. Economic Census.

Wastewater Technologies. November 2010. Personal communication.

Rule Certification
Package and SERC:
Rule
62-304.900



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

November 21, 2012

Ms. Liz Cloud
Section Administrator
Administrative Code and Weekly Section
500 South Bronough Street, Room 101
Tallahassee, Florida 32399

RECEIVED
2012 NOV 21 PM 2:05
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Re: Certification package for Rule 62-304.900, F.A.C. (Statewide Mercury TMDL)

Dear Ms. Cloud:

Attached is the certification package for Rule 62-304.900, F.A.C. Please note that this rule will require legislative ratification.

As the attorney handling this rulemaking, if you have any questions, please call me at (850) 245-2262 or email me at kenneth.hayman@dep.state.fl.us. My mailing address is noted on the letterhead above.

Sincerely,

Kenneth Hayman
Senior Assistant General Counsel

Enclosures

cc: Jan Mandrup-Poulsen

CERTIFICATION OF DEPARTMENT OF ENVIRONMENTAL PROTECTION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

2012 NOV 21 11:20:09
FLORIDA SECRETARY OF STATE
TALLAHASSEE, FLORIDA

I hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and

(2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S., and

(a) Are filed not more than 90 days after the notice; or

(b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

(e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

(g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

(h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

(i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

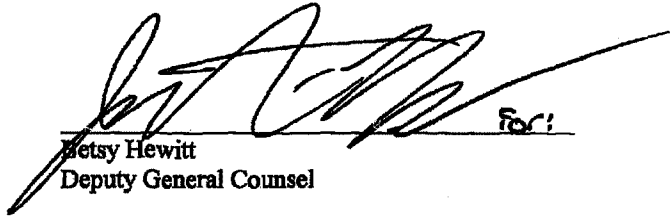
Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No(s).

62-304.900

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)



Metsy Hewitt
Deputy General Counsel

1
Number of Pages Certified

SUMMARY OF THE HEARING

No timely request for a hearing was received by the agency, and no hearing was held.

11/21/12

2012 NOV 21 PM 2:05

FLORIDA STATE
TALLAHASSEE, FLORIDA

62-304.900 Statewide TMDLs.

The statewide mercury (total) TMDL for all fresh and marine waters in Florida is allocated as follows:

(1) The Wasteload Allocation (WLA) for all industrial and domestic wastewater sources holding NPDES permits in Florida, other than those sources covered under subsection 62-304.900(2), F.A.C., is 23 kg/yr mercury (total). Pursuant to paragraph 62-620.100(3)(m), F.A.C., domestic wastewater facilities with a permitted capacity of greater than one million gallons per day and all industrial discharges, other than once-through cooling waters at industrial wastewater facilities and those sources covered under subsection 62-304.900(2), F.A.C., that demonstrate quantifiable mercury (total) levels in their effluent (using clean techniques, such as EPA Method 1631e) will be required to prepare and implement a mercury minimization plan addressing sources of mercury (total) within their jurisdiction.

(2) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program or for other discharges primarily treating stormwater and not expected to add mercury (total) to their discharge, is generally not applicable; however, a permittee or co-permittee may be required to reduce mercury loads if sources of mercury (total) under the direct control of that permittee or co-permittee are found to exist.

(3) The Load Allocation (LA) for nonpoint sources is to address anthropogenic sources in the basin is an 86% reduction of mercury (total) from atmospheric sources, and

(4) The Margin of Safety is implicit.

(5) While the LA for mercury has been expressed as the percent reduction needed to attain the applicable narrative criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reductions. However, it is not the intent of the TMDL to abate natural background conditions.

Rulemaking Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History—
New _____.

FILED
2012 NOV 21 PM 2:06
FLORIDA STATE
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION

STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The Florida Watershed Restoration Act, codified at section 403.067, Florida Statutes, requires the Department to establish total maximum daily loads ("TMDLs") for surface waters that have been verified as not meeting applicable water quality standards. Utilizing the scientific methodologies set forth in Chapter 62-303, F.A.C., the Department previously identified the waters in the proposed rule as being impaired as a result of mercury. Proposed rule 62-304.900 sets a statewide mercury TMDL for Florida's fresh and marine waters that, if met, will redress the identified impairment. A report detailing the derivation of this TMDL can be found at: http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm#state .

2012 NOV 21 PM 2:06
STATE
TALLAHASSEE, FLORIDA

SUMMARY OF THE RULE

The Florida Watershed Restoration Act, codified at section 403.067, Florida Statutes, requires the Department to establish total maximum daily loads ("TMDLs") for surface waters that have been verified as not meeting applicable water quality standards. Utilizing the scientific methodologies set forth in Chapter 62-303, F.A.C., the Department previously identified the waters in the proposed rule as being impaired as a result of mercury. Proposed rule 62-304.900 sets a statewide mercury TMDL for Florida's fresh and marine waters that, if met, will redress the identified impairment. A report detailing the derivation of this TMDL can be found at: http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm#state.

PM 11 2012

2012 NOV 21 PM 2:06

DEPARTMENT OF ENVIRONMENTAL PROTECTION
TALLAHASSEE, FLORIDA

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Division: *Environmental Assessment and Restoration*
Board:
Rule Number: *62-304.900*
Rule Description: *Incorporation of the state and federal requirements to define a statewide Total Maximum Daily Load (TMDL) for Florida Waterways Verified for the Mercury Impairment Based on Fish Tissue Concentration*
Contact Person: *Jan Mandrup-Poulsen*

Please remember to analyze the impact of the rule, NOT the statute, when completing this form.

Section 120.541(1)(b), Florida Statutes, requires the preparation of a Statement of Estimated Regulatory Costs (SERC) in association with agency rulemaking when a proposed rule either will have an adverse impact on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule. The Florida Department of Environmental Protection (Department) has determined that the proposed statewide mercury TMDL will incur costs of more than \$200,000 in the aggregate within 1 year after the implementation of the rule. Therefore, SERC analyses were conducted for the proposed rule.

In preparing a SERC, the Department follows the requirements of 120.541(2), Florida Statutes, to evaluate whether a proposed TMDL rule is likely to (1) have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; (2) have an adverse impact on business competitiveness; and (3) increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. For those entities covered by the Department's regulatory programs, (i.e., the National Pollutant Discharge Elimination Systems (NPDES) Permits), the TMDL could affect associated permitting requirements. For those entities not covered under the Department's water and wastewater regulatory programs, the TMDL is not expected to affect them. As such, the SERC evaluation will focus on estimates of future costs to regulated entities as a result of the adoption of this rule. Specifically for this TMDL, the SERC analyses focused on wastewater facilities that discharge to waters of the State and are regulated by NPDES permits. The Municipal Separate Storm Sewer System (MS4) permittees regulated by the Department's stormwater NPDES permit program are not covered in this analysis because the mercury that may be present in the stormwater is primarily the result of atmospheric deposition and the MS4 permittees are not responsible for treating mercury resulting from atmospheric deposition. This SERC was prepared for a mercury TMDL that covers the entire state of Florida.

A. Is the rule likely to, **directly or indirectly**, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to reduce personal income? Yes No

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

2. Is the rule likely to reduce total non-farm employment? Yes No
3. Is the rule likely to reduce private housing starts? Yes No
4. Is the rule likely to reduce visitors to Florida? Yes No
5. Is the rule likely to reduce wages or salaries? Yes No
6. Is the rule likely to reduce property income? Yes No

Explanation

As required by the Federal Clean Water Act and Florida Watershed Restoration Act (403.067, F.S.), the proposed rule sets forth a mercury TMDL for waterbodies across the state of Florida verified for mercury impairment based on fish tissue. This rule is consistent with state and federal laws/regulations, policies, and guidance and will impose no requirements beyond or in addition to those already in these laws and regulations. This rule will not, directly or indirectly, adversely impact personal income, non-farm employment, housing starts, tourism, wages, or property income in excess of \$1 million within 5 years of implementation.

As part of the process of adopting this TMDL, the Department conducts a thorough analysis of discharge sources and establishes general allocations for these sources. In general, a TMDL allocation is broadly divided among three general categories of sources: Category 1. Wastewater facilities permitted under the Department's NPDES program, which receive a Wasteload Allocation (WLA); Category 2. local governments having MS4 permits, which receive a WLA separate from the WLA covered in Category 1; and Category 3. all sources other than Categories 1 and 2 receive a Load Allocation (LA).

In performing the analysis for this SERC for the proposed TMDL rule, the Department only examined the effect of this rule to Category 1 entities. Category 2 entities are not covered by this SERC because MS4 permittees are not responsible for mercury present in stormwater, which primarily is the result of atmospheric deposition. The same logic also applies to stormwater created from Category 3 entities. SERC analyses on Category 2 and Category 3 entities, therefore, are considered outside the scope of this analysis.

The statewide mercury TMDL will require that some NPDES permitted wastewater facilities develop and execute a mercury minimization plan (MMP). For domestic wastewater facilities, this requirement only applies to major facilities [i.e., those that have an annual average daily permitted discharge capacity exceeding 1 million gallon per day (MGD)]. The MMP requirement applies to all industrial wastewater facilities and their discharges, except discharges of once-through cooling water. Any stormwater discharges not expected to contribute additional mercury (i.e., be a separate source) are also excluded from needing a MMP.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Currently, 133 domestic wastewater facilities in the state of Florida have an annual average daily discharge capacity exceeding 1 MGD, and, therefore, may need to meet the mercury MMP requirement. The MMP requirement may also apply to 294 NPDES permitted industrial wastewater facilities. The average cost for MMP development is estimated to be \$5,000 per facility. This is a one-time cost for each regulated facility. In addition, the proposed TMDL rule implementation will require most regulated facilities to include a mercury monitoring program as part of their permit conditions. The average cost of the monitoring program is about \$300 per facility in aggregate in the first five years of implementing the proposed rule. The total cost for each regulated facility in aggregate in the five years of implementing the proposed rule could be the sum of the \$5,000 one-time cost for the MMP development and \$300 monitoring cost, which is a maximum of \$5,300. The average annual cost for each facility should not be more than \$5,300/5 years or \$1,060/year. This is not a major incremental cost for most wastewater treatment facilities. Among the 133 major domestic wastewater facilities, 62 facilities currently have industrial pretreatment plans. Among the 294 industrial wastewater facilities, 87 major facilities currently have pretreatment plans and have existing staff capable of addressing a MMP, should one become necessary. The estimated costs of implementing the proposed rule will be \$5,000 to revise these existing plans to specifically address mercury. When combined with the added monitoring costs, the total estimated cost will be \$5,300, resulting in an annual cost of \$1,060/year for these two categories of facilities (i.e., those with existing pretreatment plans). For the remaining 71 domestic and 207 wastewater facilities that may be subject to the cooperative development and implementation of a MMP, there will likely be added costs to hire staff or to train existing staff to adopt and apply the MMP. As the number of facilities that will be subject to MMP requirements will not be known until the additional monitoring at the time of permit renewal is completed, the actual additional costs for these options are not known at this time. However, it is not likely that the implementation of the proposed rule will reduce, in any meaningful way, the personal income, non-farm employment, private housing starts, wages or salaries, and property income. Implementation of the proposed rule will certainly not reduce visitors to Florida. Reducing the mercury concentration of Florida fish should create a more favorable condition for sport fishing and therefore encourage the tourism of the State.

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to raise the price of goods or services provided by Florida business?

Yes No

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

2. Is the rule likely to add regulation that is not present in other states or markets?

Yes No

3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?

Yes No

4. Is the rule likely to cause Florida businesses to reduce workforces?

Yes No

5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?

Yes No

6. Is the rule likely to make illegal any product or service that is currently legal?

Yes No

Explanation:

The proposed statewide mercury TMDL was developed based on requirements of the federal Clean Water Act. Developing TMDLs for impaired waters is a mandated requirement applied to all states across the nation. It does not apply to the State of Florida alone and, therefore, will not result in unfair prejudice against Florida businesses and will not weaken the competitiveness of the businesses in the state.

In addition, as discussed in the Section A, the incremental costs likely to be incurred by the proposed TMDL rule will only be applied to domestic and industrial wastewater facilities with an annual cost of \$1, 060/facility or less. Of the \$1, 060, \$1,000 is for developing a MMP, which is part of the one-time cost not exceeding \$5,000. The mercury monitoring cost for each industrial and the large domestic wastewater facilities will be a total of \$300, for cleaning sampling and analyses at the time of each permit renewal. For these large domestic and industrial wastewater facilities, \$300 should not be a significant cost, should not result in an increase in the price of goods and services provided by Florida businesses, and should not cause these businesses to reduce their work force as well as the quantity of goods and services they provide. In addition, the proposed TMDL does not prohibit any legal products and services currently provided by Florida business. It will slightly expand upon regulatory procedures for Florida business beyond those already required by existing wastewater permit processes and, therefore, will not significantly add to the regulatory burdens on Florida businesses.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

If any of these questions are answered "Yes," presume that there is a likely an adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule?

As discussed in Section A, the regulatory cost likely to be incurred by the proposed TMDL rule will apply to 133 major domestic wastewater facilities and 294 industrial wastewater facilities through the wastewater permitting processes. Where the need for a MMP is shown (i.e., through a demonstration of quantifiable mercury concentrations present in the effluent being discharged), the costs for each facility include a \$5,000 one-time cost of developing a MMP, and a \$300/five year cost of implementing a mercury monitoring program. The total cost for each facility is about \$5,300 in aggregate for the first five years of implementing the proposed TMDL rule. However, 62 of the domestic waste treatment facilities already have pretreatment plans, as do 87 of the industrial facilities. For these facilities, only a reassessment of the existing plans will be needed to specifically address mercury as a pollutant. The estimated one-time cost to these facilities is \$5,000 to secure an updated MMP. \$300 in monitoring 5-year costs are also expected for these facilities. The remaining 71 domestic wastewater facilities and 207 industrial wastewater facilities may incur added staffing or training costs. In all cases, a MMP, and the cost to develop and implement it, will occur only if the monitoring done at the time of permit renewal indicates a MMP is necessary. Due to the total number of facilities included under this proposed rule, the total cost is expected to exceed \$1 million in the first five years following adoption.

The total number of facilities needing to meet the monitoring requirements at the time of permit renewal is 133 domestic and 294 industrial wastewater facilities at \$300/facility for monitoring, with a total cost of \$128,100. MMP development over the first five years following rule adoption for these 427 facilities is estimated to be not more than \$2,135,000. Potential implementation costs can not reasonably be generated at this time, as they are a function of monitoring results that will not be available until after the next five-year permit renewal cycle is completed. The maximum total incremental cost to be incurred by the affected local governments and businesses under the proposed TMDL rule is = \$2,263,100.

The actual 5-year aggregated cost of implementing the proposed rule is likely to be less than \$2,263,100. Among the 62 major domestic wastewater facilities that currently have pretreatment plans, some plans may address mercury removal, so no incremental costs to update their plans will be incurred. In addition, these calculations conservatively assume that all industrial and major domestic wastewater effluents will demonstrate quantifiable amounts of mercury. However, if mercury is not quantified in the waste stream, then only the monitoring costs (\$300 over a five-year period) will be incurred.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule. *(Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).*

The number of entities likely to be required to comply with the rule includes 133 major domestic wastewater facilities with an annual average daily discharge capacity exceeding 1 MGD and 294 industrial wastewater facilities with permitted surface water discharges in the state of Florida.

2. A general description of the types of individuals likely to be affected by the rule.

The regulated entities are 133 major domestic wastewater facilities and 294 industrial wastewater facilities. Domestic wastewater facilities collect, treat, and discharge wastes generally created by human occupied households. Industrial wastewater can be comprised of a wide range of pollutants, depending on the products and waste streams being created as each facility.

E. Good faith estimates (costs):

1. Cost to the department of implementing the proposed rule:

None.

Minimal. The Department intends to implement the proposed rule (including cooperatively developing generic Mercury Minimization Plans with affected wastewater facilities) within its current workload, using existing staff.

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

2. Cost to any other state and local government entities of implementing the proposed rule:

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Domestic wastewater treatment plants are typically owned by local government entities, and the potential costs they may incur (as broken out below) are already accounted for in Section C, above. There are a total of 99 government-owned facilities that may need to meet the monitoring and MMP requirements. At a cost of \$300/facility for monitoring (at the time permit renewal) the monitoring cost during the first five years following rule adoption will be \$29,700. Combined with a potential cost of \$5,000 for MMP development at these same 99 facilities (or, \$495,000, also over the first five years) yields a total potential cost to be incurred by local governments under the proposed TMDL rule of \$524,700.

The actual 5-year aggregated cost of implementing the proposed rule for these facilities is likely to be less than \$524,700. This is because, among the 99 privately-owned major domestic wastewater facilities, some of the major facilities may currently have pretreatment plans that address mercury removal, so no incremental costs to update their plans will be incurred. In addition, these calculations conservatively assume that all major domestic wastewater effluents will demonstrate quantifiable amounts of mercury. However, if mercury is not quantified in the waste stream, then only the monitoring costs (\$300 over a five-year period) will be incurred.

Cost to the department of enforcing the proposed rule:

None.

The department intends to enforce the proposed rule within its current workload with existing staff.

Minimal. (Provide a brief explanation).

Other. (Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).

4. Cost to any other state and local government of enforcing the proposed rule:

None. This proposed rule will only affect the department.

Minimal. (Provide a brief explanation).

Other. (Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).

F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule. (Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).

None. This proposed rule will only affect the department.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Minimal. (Provide a brief explanation).

Transactional costs incurred by the regulated entities are already included as a normal cost of implementing permit requirements.

Other. (Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S. (Includes:

- Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?];
- The type of small businesses that would be subject to the rule;
- The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?];
- The likely per-firm regulatory cost increase, if any).

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."

A small county is defined in Section 120.52(19), F.S., as "any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census." And, a small city is defined in Section 120.52(18), F.S., as "any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census."

The estimated number of small businesses that would be subject to the rule:

- 1-99 100-499 500-999
 1,000-4,999 More than 5,000
 Unknown, please explain:

Analysis of the impact on small business:

Only domestic wastewater facilities in excess of one million gallons per day are subject to any added costs, thus no small businesses operating domestic wastewater facilities will be impacted. Small industrial wastewater facilities are not defined by the volume of wastewater, but rather by the nature of their activity. As all industrial activities covered by NPDES permits are assigned Standard Industrial Classification (SIC) codes, the US

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

EPA and Department have assessed whether the businesses within each classification are likely to need effluent limits for mercury prior to issuing a permit to operate the business. However, as these agencies ability to detect mercury concentrations at or about the currently adopted criteria has only recently (in the last decade) been achievable using clean techniques, industrial wastewater facilities (major or minor) are subject to the monitoring requirement described above. The only cost which can be assumed to be incurred by each facility (i.e., the monitoring cost) is estimated to be \$300. The Department intends to work cooperatively with both large and small businesses to develop MMP templates that can be applied to each group of facilities falling under an individual SIC code, thereby minimizing cost and achieving consistency of what is expected to be done within each category.

There is no small county or small city that will be impacted by this proposed rule.

A small county or small city will be impacted. Analysis:

Small counties or cities are likely to be impacted by the proposed rule, especially for those small entities that are covered by NPDES wastewater permits. The estimated costs for wastewater have been addressed previously (see Sections A and B). The Department accessed its WAFR database and determined that 15 small counties may be impacted by this rule. Thirteen of these counties have a single domestic wastewater facility that qualifies as being "major," that is, has a permitted capacity to discharge of >1 MGD. Two counties (Flagler and Nassau) have two or more facilities permitted to discharge in excess on 1 MGD. The Department has determined that only three general categories of sources have the potential to contribute significant and measurable amounts of mercury to domestic wastewater facilities (i.e., dental offices, hospitals, and educational facilities with medical or laboratory facilities). As described in Chapter 9 of the TMDL report, the Department already has adopted measures to limit mercury contributions from these types of facilities. However, as the ability to detect mercury concentrations at or about the currently adopted criteria has only recently (in the last decade) been achievable using clean techniques, all major domestic wastewater facilities are subject to the monitoring requirement described above. In each case, the only cost which can be assumed to be incurred by each facility (i.e., the monitoring cost) is estimated to be \$300. If mercury is quantified by the monitoring conducted during permit renewal, the facility will need to adopt a MMP. Some of these domestic facilities may already have pretreatment programs in place that address mercury. In those cases, no added costs will be incurred.

Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

H. Any additional information that the agency determines may be useful.

None.

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Additional.

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

See attachment "A".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "B".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "C".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "D".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

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See attachment "E".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

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