



CHARLOTTE HARBOR NATIONAL ESTUARY PROGRAM
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March 24, 2010

Via e-mail

Mr. Eric Shaw
Standards and Assessments Section
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 6511
Tallahassee, FL 32399-2400
Via email: eric.shaw@dep.state.fl.us

Re: Proposed Revisions to F.A.C. 62-302.400 Designated Use and Surface Water Classification System

Dear Mr. Shaw:

The Charlotte Harbor National Estuary Program (CHNEP) has reviewed the proposed revisions to 62-302.400 F.A.C. Classification of Surface Waters, Usage, Reclassification, Classified Waters (Rule) and the technical support document "Draft Process for Reclassifying the Designated Uses of Florida Surface Waters" (Technical Support Document). Overall, the CHNEP supports the proposed revisions to the Rule and commends the Department's efforts to incorporate comments from interested stakeholders into the subsequent proposed revisions to 62-302.400 F.A.C. and Technical Support Document. However, we do request additional revisions to the Technical Support Document, as specified below.

The Charlotte Harbor National Estuary Program (CHNEP) is a partnership program, established under an amendment to the Clean Water Act (Section 320) to identify, restore and protect estuaries along the coasts of the United States. In 1995, the estuarine system around Charlotte Harbor was recognized as an "estuary of national significance", creating the CHNEP.

The CHNEP *Comprehensive Conservation and Management Plan* (CCMP) identifies the region's common priority environmental issues and actions needed to solve them. Relating to changes in Florida's surface water use classifications, two of the CHNEP Quantifiable Objectives included in the CCMP address waterbodies attaining their natural uses:

WQ-1: Maintain or improve water quality from year 2000 levels.

WQ-2: Develop site-specific alternative criteria protective of living resources for dissolved oxygen, chlorophyll *a*, turbidity/total suspended solids, salinity and pesticides.

The CHNEP requests that the Department revise the Technical Support Document so that it is consistent with 62-302.400 F.A.C. Presented below are the CHNEP's suggested revisions in strikethrough/underline format for ease of incorporation into the Technical Support Document:

A. Glossary of the TSD:

1. **Attainable use:** ~~The present and future most beneficial use that can reasonably be attained in a waterbody.~~ At a minimum, the uses (as defined in the State's system of water use classification) that can be achieved when effluent limits under section 301(b) and 306 of the Federal Clean Water Act are imposed on point source dischargers and cost-effective and reasonable best management practices are imposed on nonpoint source dischargers. In this document, the attainable use is determined by conducting the reclassification process described in this document, which evaluates whether the use is established and whether protective criteria can practicably be met.
2. **Biological Integrity Criteria:** As defined in 62-302.530 F.A.C. as the percent reduction of the Shannon-Weaver Diversity Index.
3. **Habitat and Physical Conditions:** Indicators of aquatic life uses as described in Section 4.3.2. of this document.
4. **Natural Surface Waters:** Surface waters of the state in their undisturbed state, including, but are not limited to, rivers, lakes, streams, springs, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface waterbodies (402.031(13) F.S.). ~~Waterbodies that, in their undisturbed state, originally were all or part of the Atlantic Ocean, Gulf of Mexico; a bay, bayou, sound estuary, or lagoon, including natural channels and natural tributary thereto; a river, stream, or natural tributary thereto; a natural lake; and any natural wetland connected to any of the above waters.~~
5. **Water Quality Standard:** The standards composed of designated present and future most beneficial uses (classification of waters), the numerical and narrative criteria applied to the specific water uses or classification, the Florida antidegradation policy (62-302.200(31) F.A.C.).
6. **Wholly Artificial Waterbody:** Includes all artificial structures, including, but not limited to, ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state (373.403(5) F.S.). In this document, wholly artificial waterbodies are excavated waterbodies, but do not include those portions of a natural surface water that have been dredged or filled.

B. Chapter 3 Reclassification to a Lower Class:

1. **Section 3.2.1 Focus of a UAA:** Consistent with 62-302.400(9), all designated uses must be fully protected, even if they are not existing or attainable uses, unless they are *formally* removed from the water quality standards through a UAA process.
2. **Section 3.7 Grouping Multiple Waterbodies in One UAA:** The Department does not ~~support~~ allow categorical reclassifications (reclassifications of waters based solely on waterbody type....

- C. Chapter 4 Waterbody Assessment Relevant to Reclassification to class III-Limited:
1. **Section 4.3.2.4 Hydrologic Indicators:** This gradient rating is for human disturbances, not natural events (e.g., hurricanes, extreme droughts). This score, while giving a general indication of hydrological disturbance, must be used in conjunction with other factors to determine if a change of use is substantiated.
 2. **Section 4.3.3.4 Canals:** Most canals are artificial waterbodies including those that are actively managed for flood control, as well as residential uses. ~~And~~ Therefore it is difficult to establish a biological expectation for a “healthy” canal and, like other waterbodies, canals cannot be downgraded without adequate technical documentation and merit.
- D. Chapter 5 Economic Analyses for UAAs:
1. **Section 5.2 Ownership of Pollution Source:** ~~The choice of~~ Methods used to evaluate economic impacts associated with meeting water quality standards should follow those described in EPA’s Interim Economic Guidance for Water Quality Standards Workbook (1995). The choice of methods used depends, in part on whether pollution control is the responsibility of a privately or publicly owned entity. Regardless of the economic evaluation methods used, the responsibility for pollution control will remain as close to the source as possible, without being deferred to downstream users.
 2. **Section 5.4 Widespread Impacts:** The analysis should also consider the affect of decreased tax revenues associated with loss of tourism or recreation, or if the private sector entity were to go out of business, income losses of income to the community if workers lose their jobs, and associated indirect effects on other businesses, as well as pollution control expenditures for downstream waters.
- E. Similar to the March 2010 Draft Environmental Resource Permit Stormwater Quality Applicant’s Handbook, please add references and links to additional technical and regulatory information for each section of this Technical Support Document.

Thank you for consideration of these comments. If the CHNEP can be of further assistance, or if you have any questions regarding the above concerns, please contact me at the CHNEP office a (239) 338-2556 x 235 or via e-mail at lbeever@swfrpc.org.

Sincerely,



Lisa B. Beever, PhD, AICP
Director