

ENVIRONMENTAL COMMUNITY REBUTTAL TO FLORIDA DEP STATEMENTS ABOUT RECENT WATER QUALITY STANDARDS CHANGES

The following are rebuttal points to a recent release issued by the Florida Department of Environmental Protection regarding proposed water quality standards changes.

1. **DEP - “Our number one priority is to continuously protect and preserve the health of Florida’s families, visitors and incredible natural resources. It is with this mission in mind, that the Florida Department of Environmental Protection, alongside the U.S. Environmental Protection Agency (EPA), are strengthening Florida’s water-quality standards. Moving forward with the proposed criteria will nearly double the number of chemicals that the department will be able to regulate using stringent and protective criteria so we can continue to provide better public health protection for our state.**

DEP is weakening criteria for 23 toxic chemicals that are being dumped in our waters where some people get their drinking water and where everyone should be able to fish and swim. Eighteen of these chemicals are known carcinogens. This is not protecting the health of Floridians and visitors, or our natural resources. While 39 new criteria were approved by a 3-2 vote of the ERC, DEP also chose not to set any standards for 20 pollutants EPA had provided proposed criteria for. Additionally, every one of the new criteria DEP did set are weaker than EPA recommends for Florida to maintain a one in a million risk for cancer risk level; thereby, greatly increasing the risk of cancer or other illnesses to our residents and tourists.

2. **DEP - I’ve been in contact with the federal EPA, which has confirmed every change is in line with its own recommendations. Furthermore, each and every criterion protects Floridians, according to both the EPA and the World Health Organization.” - DEP Secretary Jon Steverson**

At the ERC hearing, EPA representative Joel Hansel testified that EPA has not made a decision on Florida’s methodology or its ultimate criteria. EPA has been in discussion with Florida the past few years, encouraging Florida to be more in line with the requirements of the Clean Water Act, while acknowledging the flexibility afforded to states. While Florida has begrudgingly accepted a few of EPA’s suggestions, some of the criterion are weaker than what had been in place and are potentially weaker than federal law will allow. Vaguely worded statements, half-truths or factually incorrect statements cannot negate the data which clearly demonstrate that the

standards have been relaxed and risk levels increased in this proposal. The statement above, “each and every criterion protects Floridians”, makes no sense. How do you protect people when you allow more cancer-causing chemicals to be deliberately discharged into our drinking water and waters where we fish and swim? That is not upholding public health or environmental protection.

- 3. Is DEP weakening standards? DEP - Absolutely not. DEP and EPA are strengthening Florida's water quality standards, not weakening them. Moving forward with the proposed criteria is critical to better protect Floridians' health because the criteria nearly double the number of chemicals that the department will be able to regulate. The proposed rule sets stringent and protective criteria for 39 chemicals that currently have no limits. In addition, this rule includes updates for 43 chemicals whose standards are more than 20 years old. Both the new and updated criteria have been calculated using the most advanced science, including recently issued guidance from the EPA. Each and every criterion protects Floridians, according to both EPA and the World Health Organization.**

The DEP could have set criteria for those that didn't have any without weakening 23 of the current standards in place and yes they were weakened in that the new criteria allows higher pollution levels than the previous ones did. The rest are weaker than EPA's recommended criteria for Florida. The new criteria are all weaker than EPA recommends for Florida waters. During the 24 years that DEP has not updated its criteria, EPA has updated the national criteria several times. Most criteria have become more stringent, but some have been weakened. These changes are based on new data collected, new research gets peer reviewed and accepted, and EPA makes changes when better science is found.

Florida DEP has failed to set numeric standards for many pollutants and waterways, leading us to the current water pollution crisis we see in our state. Unfortunately, EPA has allowed much of this stalling. Florida Clean Water Network has been pushing since the early 90's for DEP to regulate all of the human health based toxics being dumped in our waters, including dioxin and many others (link to CWN petition filed with EPA available at <https://we.tl/m4eWXU8I5j>). The Conservancy of Southwest Florida spent years pushing for numeric nutrient water quality standards for all flowing and downstream waters to control the nutrient pollution spurring harmful algae blooms to be controlled at its source. In both cases, DEP has fought EPA's efforts to have the full extent of Clean Water Act protections from being implemented in Florida and our water quality continues to decline as a result.

There is nothing stringent or protective about Florida's criteria. It is as weak (or weaker in some cases) as EPA allows. EPA's requirements are based on the Clean Water Act requirement that designated uses of Florida's waters be protected. Florida's criteria allow the maximum amount of these toxic chemicals,

which has never been Florida's policy until now.

DEP uses EPA's equation, which is an absolute requirement, but substitutes the "Monte Carlo" probabilistic method of calculating factors for body weight, fish consumption rate and drinking water intake - aptly named in that it gambles with public health. This method derives an average from a wide array of far-fetched scenarios rather than the appropriate number to protect the most sensitive populations (i.e. children, native cultures who consume more fish, etc.). For instance, the range of body weights used to find the "mean" or average for the proposed criteria was between 35 kg and 170 kg¹. In pounds that would be between 78 and 375 pounds, with an average of 226 pounds! This combined with an unspecified and impossible to determine fish consumption rate assumption that is likely lower than what EPA recommends or is typically in Florida, can lead to gross inaccuracy of what the risk levels are even for non-sensitive populations with these lax pollution standards.

- 4. Why is DEP updating these standards? Florida's current standards were last updated in 1992. Under the federal Clean Water Act, states are required to periodically review standards publicly and modify and adopt changes as appropriate. To meet this requirement and to incorporate new data released by EPA last summer, DEP is working to update these criteria based on this new scientific information.**

If the DEP stalled updating standards, the EPA could promulgate more stringent criteria for Florida than those DEP would propose - as EPA did when Florida failed to develop numeric nutrient water quality standards in a timely manner a few years ago.

- 5. Is it true that the 39 additional chemicals are not currently allowed in Florida's waters and that these standards will now allow them in our surface waters? This is simply not true; in fact, the opposite is the case. There are currently no standards in place to allow DEP to directly regulate these 39 additional chemicals. This is exactly why it is so important for these standards to be adopted. The new standards will provide the basis for permit limits for these chemicals in surface water discharges from permitted facilities. In addition, the new criteria will provide critical information for water-quality assessments, which take into account these chemicals and target them for restoration.**

Again, DEP did not have to weaken existing standards in setting new standards for pollutants previously without them. Nor should DEP omit setting standards for 20 pollutants such as dioxin that had and still have no standards. EPA has promulgated a dioxin criterion for Florida, but Florida has not implemented or enforced it. When it appears in NPDES permits, mostly for pulp and paper mills,

¹ TSD at page 18, Figure 3-1

it is always accompanied by a footnote that negates its implementation and replaces this water quality criterion (limit at 0.014 ppq) with a technology-based criterion (10 ppq) – allowing more than thousand-fold increase in the amount of that pollution to be discharged. Unfortunately, the new criteria DEP did set were set at the weakest possible level and offer the lowest human health protection allowed by EPA.

- 6. Why didn't DEP just adopt EPA's numbers? EPA's guidance and recommendation to states is to develop criteria that “use local or regional data in place of EPA's default value.” DEP's proposed criteria take into account how, and how much, Floridians eat seafood, drink, shower and swim, and set the limits necessary to protect Floridians from adverse health effects. The criteria consider a range of environmental variables specific to Florida and account for the most at-risk populations, including young children, pregnant women and those whose diets comprise primarily of Florida seafood. Each and every criterion protects Floridians, according to both EPA and the World Health Organization.**

Unfortunately, Florida data was not used in the “range of variables” utilized for developing the proposed criteria. For instance for body weight, the lowest body weight in the range is 78 pounds, which does not protect anyone who weighs less including unborn babies which are the most vulnerable to the adverse health affects of these toxic chemicals. The highest fish consumption rate in the DEP “range of variables” is 45 grams/day which is less than 2 ounces a day and only about 11 ounces per week. DEP should be using the deterministic method used by EPA and other states, plugging in Florida specific data on average weight and fish consumption rate of most sensitive populations, to create standards that are protective of all Florida's citizens and visitors.

- 7. Why do some of EPA's and DEP's limits go up, while some go down? Both the new and updated criteria have been calculated using the most advanced science, including recently issued guidance from the EPA for updating 43 chemicals whose standards are more than 20 years old. While EPA and DEP's chemical limits go up and down based on new data and science, each and every criterion protects Floridians, according to both EPA and the World Health Organization.**

EPA issued new scientific recommendations in 2015, based on national water quality trends as well as averages for factors such as human weight and water use. EPA set standards to provide a framework of the minimum protections and standards that should be put in place by the states. The state DEP is required to follow EPA's science while also accounting for Florida's specific water chemistry and population, which they did not do with these proposed criteria.

- 8. What did DEP do to engage and inform the public? DEP's nationally recognized scientists have worked diligently since 2012 to develop the**

proposed Florida-specific human health criteria. These criteria have been calculated based on the best science available, guidance from EPA and a scientific peer review panel, and input from the public. Since 2012, the department has held 11 public workshops/meetings at a variety of locations across Florida as part of this rulemaking. These included public workshops in West Palm Beach, Orlando, Tallahassee, Leesburg, Fort Myers and Stuart. There was also public participation in the public meeting for the Human Health Criteria Peer Review Committee in 2012, which discussed the methodology to derive the criteria in detail. All parties that requested notification of rulemaking activities and updates as part of our interested parties list were also sent notices via email notifying them of the public meetings. Through this effort, the department has regularly communicated with more than 1,000 individuals, organizations and stakeholders to provide updates and solicit feedback.

DEP's proposed criteria changed significantly between 2012 and 2016. There were only three workshops held for the 2016 proposed rule and those were in Tallahassee, Orlando and Stuart. DEP told the public at these workshops that the ERC adoption hearing would be in the Fall, likely September. Then in late June they suddenly announced that the ERC hearing would be on July 26th in spite of the fact that two seats on the ERC are vacant. These seats are legislatively required to represent the environmental community and local governments. Despite no urgency requiring them to take action now and numerous stakeholders asking they wait until those seats were filled, they declined to do so and pushed forward the proposal prior to their own stated timeframe for doing so.

9. **Are these standards being changed to cater to industry or allow fracking? No, this update stems from requirements under the Clean Water Act as well as the new EPA guidance. It is not in response to any specific industry or practice and has nothing to do with hydraulic fracturing.**

The fact is that at the ERC meeting, all of the public stakeholders representing environmental groups, local governments, medical associations, etc. expressed strong opposition to these standards. The only supporters for these proposed changes were industry groups such as the Associated Industries of Florida and the Florida Paper and Pulp Association. Clearly polluting industries are the only ones benefiting from the relaxation of standards for the pollutants they discharge and with fracking pollutant amongst those standards that are weakened, this will inevitable benefit those entities while putting the general public and the environment at greater risk.