

## NRC Economic Review of EPA's Phase I Nutrient Criteria Rules

On March 6, 2012, a National Research Council (NRC) panel issued a report criticizing EPA's estimated implementation and compliance costs for its lakes, springs, and streams numeric nutrient criteria.<sup>1</sup> The panel concluded that EPA made invalid and unreasonable assumptions for all impacted sectors: municipal wastewater treatment plants; industrial plants; urban stormwater; agriculture; septic systems; and local governments. The result was an EPA cost projection that was lower than can be reasonably be expected for Floridians.

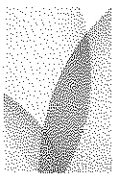
The panel conducted its analysis in response to specific "charge questions" that EPA provided in May 2011. Specifically, the panel was asked to review the implications of: EPA's assumption that costs should only be determined for newly impaired waters; EPA's decision to estimate the costs of only those sources of pollution that directly affect newly impaired waters; and EPA's assumptions about the levels of control used by point and nonpoint sources.

The key findings in the report are provided in a table entitled "Summary of Key Findings by Sector," which is reproduced below. In this table, the NRC panel marked assumptions they agreed with "green," assumptions they somewhat agreed with "yellow," and assumptions they disagreed with "red."

TABLE 2-8 Summary of Key Findings by Sector

	EPA estimate of the area affected or number of units	EPA estimate of the unit cost of BMPs	Can chosen technologies/BMPs meet the NNC?	Strategies to improve the analysis
Municipal Plants	All WWTPs included due to "reasonable potential" provisions of regulations	CAPDET Works cost estimates not verified using Florida-specific experience	Assumed that WWTPs would only be required to treat to 3 mg/L TN and 0.1 mg/LTP and none will treat to NNC at end of pipe	1. Ground truth unit costs based on significant existing Florida experience. 2. More realistically reflection of the proportion of WWTPs receiving administrative relief to avoid treating beyond 3 mg/L TN and 0.1 mg/L TP.
Industrial Plants	Established by averaging flows from only a limited number of facilities and extrapolating to others.	CAPDET Works program (used for municipal facilities) was misapplied to industries.	Same as for municipal WWTPs	Should not have investigated only 1 or 2 plants per SIC but rather analyzed each plant
Agriculture	EPA likely under estimated the area of incrementally impaired watersheds as well as the number of springs affected	Costs from SWET report not representative; need more site-specific cost estimates	No. Alternative BMPs will likely be required along with land retirement	Use existing TMDLs and restoration plans to identify the BMPs and regional treatment needed to meet the criteria
Urban Stormwater	Assumed Urban Turf Rule would insure compliance on all low-density residential land and that all land after 1982 is already in compliance.	EPA used low end of a very wide range of unit costs	Assumed traditional BMPs would meet NNC and assumed 100% compliance and functionality for urban BMP implementation. NNC may necessitate more advanced BMPs.	Consider advanced BMP implementation throughout most developed land area.
Septic Systems	Excluded systems beyond 500 ft and springs areas	Reasonable for technologies evaluated.	Not necessarily, but other technologies may.	Consider wider range of systems and updated per unit costs.
Government Costs	Did not consider other government costs like SSAC approval, variances, etc.	Used old TMDL cost data not specific to FL	NA	1. Use contemporary, Florida and nutrient-specific TMDL development costs. 2. Consider costs of SSACs, TMDL revision, etc.

<sup>1</sup> The NRC Report is available at [http://www.nap.edu/catalog.php?record\\_id=13376](http://www.nap.edu/catalog.php?record_id=13376).



# The Fertilizer Institute

Nourish, Replenish, Grow

## MEMORANDUM

**TO:** TFI FL NNC Legal Committee  
**FROM:** Bill Herz, Vice President of Scientific Programs  
**SUBJECT:** Draft Talking Points for OMB Meeting  
**DATE:** November 28, 2012

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1. Who are TFI and its members;
2. The impact of this rule on our industry;
3. The litigation that vacated the stream standards;
4. Our role in this litigation -- successfully challenging the technical basis for the stream standards;
5. The defective method that caused the judge to vacate the stream standards;
6. EPA should defer to the State of Florida DEP's NNC rule;
7. If EPA proceeds on remand without fully correcting the deficiencies flagged by Judge Hinkle, it risks protracted litigation; and
8. The potential harmful precedent for the Mississippi River Basin: (a) the necessity determination was made despite Florida's extensive NNC efforts (which are more extensive than any other state); (b) even though a necessity determination was made by EPA, given the states continued efforts to promulgate its own rule (and the statute's emphasis on the states' lead role), EPA should defer when it knows the state is actively moving forward; and (c) bad methodology for standard-setting.

Any questions please contact me on my cell at (202) 256-9986 or via e-mail at [wcherz@tfi.org](mailto:wcherz@tfi.org).



## United States Senate

WASHINGTON, DC 20510-0905

February 15, 2012

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson,

Thank you for your continued efforts to fully consider the impacts of nutrient standards for Florida surface waters. I believe that ultimately this process will result in an outcome that provides clean water and a healthy environment without undue economic hardship for Floridians.

It is my understanding that the Florida Legislature has approved a rule by the Department of Environmental Protection (FDEP) to set state-wide nutrient standards for inland waters. Additionally, the National Research Council is in the process of completing an independent economic review of your agency's rule.

The FDEP has excellent water quality data, and the state is uniquely positioned to develop a rule that is both practical to implement and based on substantial data. I support FDEP's efforts. This rule was the product of strong scientific inquiry and consideration of public comment, and you will find that many of the water quality standards mirror those proposed in the EPA rule.

I urge you to promptly review and approve the FDEP rule.

Sincerely,

A handwritten signature in black ink that reads "Bill Nelson". The signature is written in a cursive, flowing style.



United States Senate

WASHINGTON, DC 20510-0905

BILL NELSON  
FLORIDA

June 27, 2012

The Honorable Lisa Jackson  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Dear Administrator Jackson,

I'm writing regarding the Florida Department of Environmental Protection's proposed water quality standards for nutrients. There's been significant progress made lately. After ratification from the Legislature and approval by an Administrative Law Judge, Florida submitted its proposal to EPA for approval on June 13<sup>th</sup>.

While I recognize there are both regulatory and legal requirements that EPA must comply with in analyzing the FDEP rule, time is of the essence. It's imperative that EPA moves towards a solution. I urge you to promptly review and approve FDEP's rules as quickly as possible to ensure clean water for all Floridians.

Sincerely,

A handwritten signature in black ink that reads "Bill Nelson". The signature is written in a cursive, slightly slanted style.

Enclosure



## United States Senate

WASHINGTON, DC 20510-0905

BILL NELSON  
FLORIDA

March 10, 2011

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson,

Thank you for meeting with me yesterday to discuss the Environmental Protection Agency's (EPA) rule to establish limits on nitrogen and phosphorous for Florida lakes, flowing waters, and clear springs.

There are few people as adamant about protecting Florida's environment as I am. Common sense tells us that a clean environment - in this instance, clean water - is good for our citizens and Florida's tourism-driven economy.

Understandably, there are steep costs associated with algae blooms, fish kills and closed beaches. But there remains intense debate over the cost of complying with this the rule for cities, communities and businesses. EPA estimates range from \$135 and \$206 million. The Florida Department of Agriculture and Consumer Services found agriculture alone would face up to \$1.6 billion annually.

Without more precise figures of the actual costs to Floridians, municipalities and the state's economy, the EPA should not spend money to enforce the rule. In the meantime, I'm asking that you expeditiously commission an independent third-party review of the total costs of compliance, perhaps under the auspices of the National Academies of Science or the state university system.

Critics charge the EPA's cost estimates are flawed. For example, they say, the EPA assumes most agricultural activities won't be directly regulated and that utilities won't need to invest in the most expensive types of new wastewater treatment. An independent review will shed light on whether these assumptions are correct.

Several cities and businesses have asked for EPA's guidance regarding alternatives to meeting the rule's standards. EPA must be responsive to these requests and continue to provide assistance. And I urge you to do so.

In a nutshell, I ask for the EPA to suspend application and enforcement of the rule, while providing for an independent analysis of the costs of compliance and continuing to help cities and counties prepare for its eventuality. I look forward to your response and thank you in advance for your efforts to ensure an accurate, unbiased assessment of the aforementioned costs.

Sincerely,

A handwritten signature in black ink that reads "Bill Nelson". The signature is written in a cursive, flowing style.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR - 6 2011

THE ADMINISTRATOR

The Honorable Bill Nelson  
United States Senate  
Washington, DC 20510

Dear Senator Nelson:

Thank you for the letter dated March 10, 2011 regarding the Environmental Protection Agency's final rule establishing limits on nitrogen and phosphorus for Florida's lakes, springs and flowing waters. I also appreciate the opportunity to continue our positive dialogue on this very important issue.

Nitrogen and phosphorus pollution are well recognized as significant contributors to degraded water quality, in Florida and many other states. This pollution – which causes harmful algae blooms – the thick, green muck that fouls clear water – can produce toxins harmful to humans, animals and ecosystems across the State of Florida. Addressing this pollution is central to supporting the economic prosperity of the State of Florida, which relies on clean water for tourism, recreation and industrial uses.

EPA finalized numeric nutrient limits at the end of last year, but delayed the effective date until early 2012 to permit stakeholders and the State of Florida to understand the new requirements and work with EPA to make implementation as cost-effective, flexible and least burdensome as possible. For instance, last month, EPA reiterated its openness to requests to establish Site Specific Alternative Criteria in lieu of the federal criteria. We also advised the State of Florida that EPA will not object to state-issued NPDES permit limits based on existing Total Maximum Daily Loads (TMDLs), absent specific new information demonstrating the TMDL targets are not protective. Through these and other efforts, we have worked collaboratively with the State of Florida to find flexibility without sacrificing the end goal that we both share: clean water in Florida.

A critical issue throughout the rulemaking process has been the costs associated with implementing numeric nutrient criteria. EPA's analysis of our rule shows an annual cost of between \$135 and \$206 million. To put this into perspective, this would cost all households on inland waters between eleven and twenty cents a day. However, other analyses show significantly higher costs, in some cases by assuming use of treatment technology, which EPA believes does not need to be deployed to meet pollution limits, by including hundreds of municipal treatment systems that are not covered by the inland rule and by including millions of acres of farmland that will not be affected by this rule.

Because the economic impact of the rule is dominating the public discussion in Florida, I agree with you, Senator, that an independent cost review of EPA's economic analysis should be performed. EPA has begun the process of working with the National Academy of Sciences (NAS) – a highly reputable and independent organization that has the capability to do such economic reviews in a non-partisan, non biased manner – to review the Agency's cost estimate in comparison with those of other stakeholders.

Specifically, the NAS will conduct a third party independent review of EPA's cost estimate, in addition to other cost estimates, associated with this rule. EPA's rule, with the exception of the site-specific alternative criteria provision, will not take effect until March of 2012.

Thank you for your letter as well as your ongoing work on this and many other issues for the citizens of Florida. I look forward to continuing to work collaboratively with you. Please feel free to contact me, or to have your staff contact Arvin Ganesan, EPA's Deputy Associate Administrator for Congressional Affairs, at (202) 564-4741.

Sincerely

A handwritten signature in black ink, appearing to read 'Lisa P. Jackson', written in a cursive style.

Lisa P. Jackson

Congress of the United States  
Washington, DC 20515

March 5, 2012

The Honorable Lisa Jackson  
Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20450

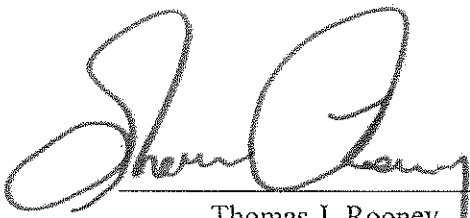
Dear Administrator Jackson:

As members of the Florida Congressional delegation we write to respectfully request your prompt review and approval of the Florida Department of Environmental Protection's (FDEP) numeric nutrient criteria rule. The rule that you have received reflects months of extraordinarily hard work by many individuals in the state to ensure that it could be approved as soon as it was submitted to your agency. Based on sound science and years of research, the rule reflects the views of stakeholders, environmental regulators, the Florida Environmental Regulation Commission and finally the Florida Legislature. The rule was approved unanimously by the Florida legislature and signed by Governor Scott on February 16, 2012.

FDEP's rule has strong scientific underpinnings and will protect the unique and critical water bodies of our state. It is specifically designed to protect lakes, streams, and estuaries from nutrient pollution without inflicting unnecessary costs and hardships on Floridians. We are all in agreement that Florida needs strong regulatory protection for its waters that should be in conjunction with, not against, the needs of the consumer and our industries. The FDEP rule does an admirable job of considering all factors and protecting our waters.

EPA officials have stated on numerous occasions that it would prefer States, including Florida, to establish their own water quality standards. Florida has delivered on its responsibilities and we ask that as quickly as possible you review and approve the rule in its entirety as it was approved by the legislature and signed by our Governor.

Sincerely,

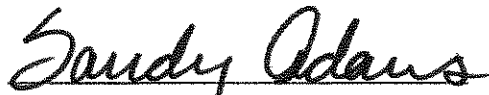


Thomas J. Rooney  
Member of Congress



Marco Rubio  
United States Senator





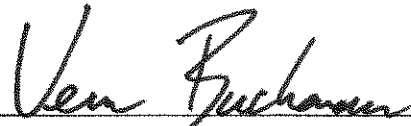
Sandy Adams  
Member of Congress



Gus Bilirakis  
Member of Congress



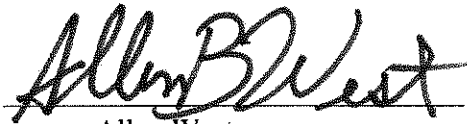
Corrine Brown  
Member of Congress



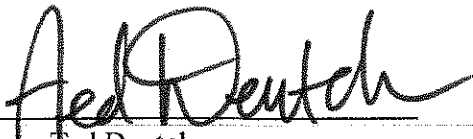
Vern Buchanan  
Member of Congress



Ander Crenshaw  
Member of Congress



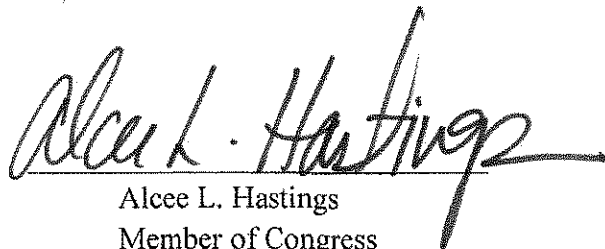
Allen West  
Member of Congress



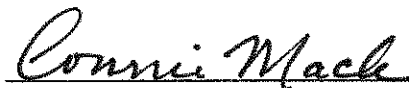
Ted Deutch  
Member of Congress



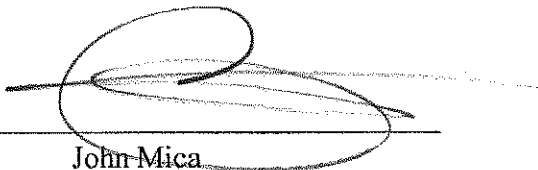
Mario Diaz-Balart  
Member of Congress



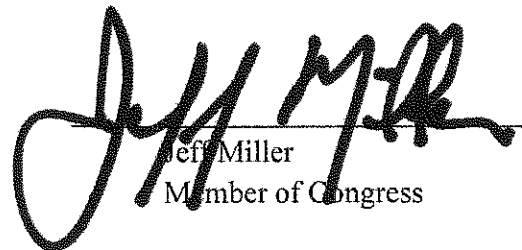
Alcee L. Hastings  
Member of Congress



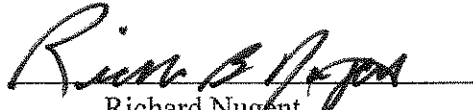
Connie Mack  
Member of Congress



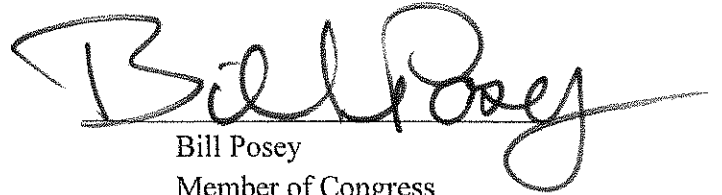
John Mica  
Member of Congress



Jeff Miller  
Member of Congress



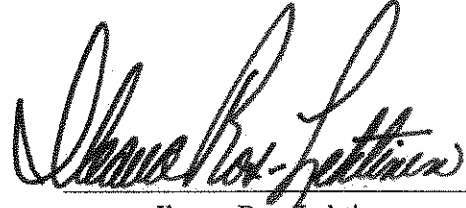
Richard Nugent  
Member of Congress



Bill Posey  
Member of Congress



David Rivera  
Member of Congress



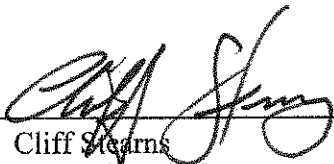
Ileana Ros-Lehtinen  
Member of Congress



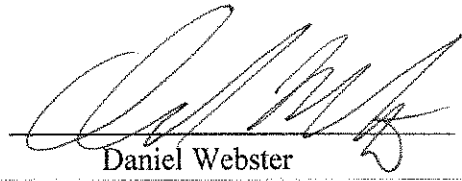
Dennis Ross  
Member of Congress



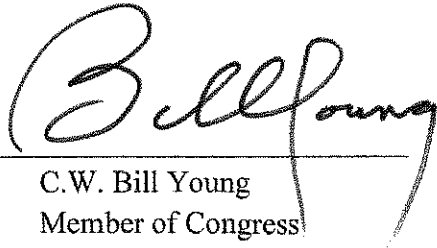
Steve Southerland  
Member of Congress



Cliff Stearns  
Member of Congress



Daniel Webster  
Member of Congress



C.W. Bill Young  
Member of Congress

June 14, 2012

Members of the Florida Congressional Delegation  
U.S. Senate & U.S. House of Representatives  
Washington, DC 20515

**Re: Support Approval of Florida DEP Numeric Nutrient Criteria Rules**

Dear Members of Florida Congressional Delegation:

On June 7, 2012, a Florida Administrative Law Judge upheld numeric nutrient criteria rules developed by the Florida Department of Environmental Protection (DEP) as protective of Florida's surface waters. The Judge's decision clears the way for Florida's nutrient rules to be approved by Environmental Protection Agency (EPA) and implemented across the State of Florida. As Florida stakeholders who support the rigorous DEP rule, we respectfully ask that you endorse this decision by voicing your support for this Florida-driven solution directly to EPA Administrator Lisa Jackson.

These state-adopted rules represent a thoughtful and responsible Florida-led approach to addressing Florida's water quality needs. The Florida DEP has set tough standards that accomplish the same goal as the EPA rules while avoiding the misallocation of resources and unnecessary burdensome costs the EPA rules would impose on our state's employers, households and communities. EPA's prompt approval of the Florida DEP rules in their entirety would expedite efforts to protect our state's waters under the new rules developed by our state – and takes an important step toward ending an era of perpetual litigation on the issue.

When it comes to addressing issues related to protecting water quality, the State of Florida has done everything that has been asked of it by the EPA. Our leaders found a Florida-driven solution to preserving our beautiful resources while protecting household budgets at a time when so many of our residents and businesses still struggle with a difficult economy. This is a smart and cost-effective approach to regulation.

We sincerely appreciate your strong efforts to stand up for our State by increasing awareness and urging action on this critical environmental and economic issue for Florida. We ask that you urge Administrator Jackson to approve the Florida DEP rules in their entirety and to withdraw all federal numeric nutrient criteria rulemakings in Florida.

Sincerely,

**Associated Industries of Florida  
Association of Florida  
Community Developers  
Carlton Fields, P.A.  
CF Industries**

**Florida Association of Counties  
Florida Beverage Association  
Florida Cattlemen's Association  
Florida Chamber of Commerce  
Florida Citrus Mutual**

**Florida Crystals**  
**Florida Electric Cooperative**  
**Association**  
**Florida Electric Power Coordinating**  
**Group EC**  
**Florida Engineering Society**  
**Florida Farm Bureau Federation**  
**Florida Fertilizer & Agrichemical**  
**Association**  
**Florida Forestry Association**  
**Florida Fruit & Vegetable Association**  
**Florida Golf Course Superintendents**  
**Association**  
**Florida Gulf Coast Building &**  
**Construction Trades Council**  
**Florida Home Builders Association**  
**Florida Land Council**  
**Florida League of Cities**  
**Florida Nursery, Growers &**  
**Landscapers Association**  
**Florida Pest Management Association**  
**Florida Poultry Federation**  
**Florida Pulp & Paper Association**  
**Florida Restaurant & Lodging**  
**Association**  
**Florida Rural Water Association**

**Florida Section – American Water**  
**Works Association Utility**  
**Council**  
**Florida Sod Growers Cooperative**  
**Florida Storm Water Association**  
**Florida Turfgrass Association**  
**Florida Water Environment**  
**Association Utility Council**  
**Florida Water Quality Coalition, Inc.**  
**Floridians for Industry, Jobs &**  
**Growth**  
**Gulf Citrus Growers Association**  
**Manufacturers Association of Florida**  
**Peace River Valley Citrus Growers**  
**PCS Phosphate, White Springs**  
**Port of Tampa Maritime Industries**  
**Association**  
**Rayonier**  
**South Walton Utility Company, Inc.**  
**Southeast Milk Inc.**  
**Sugar Cane Growers Cooperative of**  
**Florida**  
**The Catalina Group, Inc.**  
**The Fertilizer Institute**  
**United Food & Commercial Workers**  
**Union**  
**United States Sugar Corporation**

cc: President Barack Obama  
EPA Administrator Lisa Jackson  
Governor Rick Scott  
Attorney General Pam Bondi  
Commissioner of Agriculture Adam Putnam  
Herschel Vinyard, Secretary of the Department of Environmental Protection  
Tom Vilsack, Secretary of the Department of Agriculture

September 10, 2012

The Honorable Lisa Jackson, Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: Request to Approve Florida Numeric Nutrient Criteria Rule in its Entirety

Dear Administrator Jackson:

The purpose of this letter is to follow up the Florida Department of Environmental Protection's letter (DEP) sent on August 14 to Regional Administrator Gwendolyn Keyes Fleming seeking information on the status of the Environmental Protection Agency's 303(c) review. Because the 60-day time period provided to the agency to review the rule has passed, we would like to request that EPA approve Florida's numeric nutrient rule in its entirety.

We all support clean water and know the great importance it has in enhancing the quality of life in our communities. But we have been deeply concerned about the potential devastating cost increases the EPA's litigation-driven rule would impose on Florida's municipalities, employers and residents. We strongly endorse the EPA's adoption of the Florida DEP rule in its entirety because it provides the best path forward for Florida to responsibly address the water nutrient issue in this state.

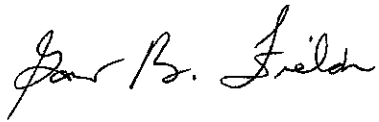
This rule creates the most comprehensive water quality standard for excess nutrients in the nation and accomplishes the EPA's ultimate objective without misallocating resources and increasing costs. The Florida-driven solution up for your approval is strong and effective. In fact, as DEP Secretary Herschel T. Vinyard, Jr. has noted, because the Florida DEP's rule requires additional algae measurements before declaring a water body healthy, it is more protective of state waters than the rule proposed by the EPA.

The Honorable Lisa Jackson, Administrator  
Environmental Protection Agency  
September 10, 2012  
Page Two

The Florida Legislature unanimously directed DEP to submit these rules to EPA for review. It is important to remember, as Florida DEP Secretary Vinyard notes in his letter to Ms. Fleming, that the rule is shaped by a decade of scientific research and data collection. The EPA has rightly been an active partner in the development of this rule that has gone through an exhaustive public rulemaking process.

A recent decision by an Administrative Law Judge affirmed the Florida DEP's tough, responsible and cost-effective nutrient criteria. Now, we are urgently and respectfully requesting the EPA to approve the Florida-proposed numeric nutrient rule in its entirety, withdraw the January 2009 determination that Florida needs federal numeric nutrient criteria, and allow Florida the opportunity to take charge of its own clean water program.

Sincerely,

A handwritten signature in cursive script that reads "Gow B. Fields". The signature is written in black ink and is positioned below the word "Sincerely,".

Mayor Gow Fields, City of Lakeland  
President, Florida League of Mayors



**RICK SCOTT**  
GOVERNOR

February 16, 2012

Secretary Kurt S. Browning  
Secretary of State  
Florida Department of State  
R.A. Gray Building  
500 South Bronough Street  
Tallahassee, Florida 32399

FILED  
2012 FEB 16 PM 2:15  
DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA

Dear Secretary Browning:

By the authority vested in me as the Governor of Florida, and under the provisions of Article III, Section 8, of the Constitution of Florida, I do hereby transmit House Bill 7051 with my signature, enacted during the 44<sup>th</sup> Session of the Legislature of Florida, convened under the Constitution of 1968, during the Regular Session of 2012 and entitled:

An act relating to Rules Establishing Numeric Nutrient Criteria; which exempts from legislative ratification, numeric nutrient criteria rule amendments proposed by the Florida Department of Environmental Protection that comply with the federal Clean Water Act, and have been approved by the Environmental Regulations Commission.

This action will expedite the review by the U.S. Environmental Protection Agency, of the Florida Department of Environmental Protection's proposed rule amendments, which may result in the approval of the proposed rule amendments and preempt the implementation of the U.S. Environmental Protection Agency rules, which are scheduled to take effect on March 6, 2012.

For this reason, I hereby sign into law House Bill 7051.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor



National Association of State Departments of Agriculture  
1156 15<sup>th</sup> Street, NW, Suite 1020  
Washington, DC 20005  
Tel: 202-296-9680 | Fax: 202-296-9686  
www.NASDA.org

**Steve Troxler**  
North Carolina  
*President*

October 1, 2012

**Chuck Ross**  
Vermont  
*Vice President*

The Honorable Lisa Jackson  
Administrator  
US Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Washington, DC 20004

**Russell Kokubun**  
Hawaii  
*Second Vice President*

Re: State Water Quality Standards and Nutrient Control Programs

**Greg Ibach**  
Nebraska  
*Secretary-Treasurer*

Dear Administrator Jackson,

**Bill Northey**  
Iowa  
*Past President*

On September 14, 2012, the National Association of State Departments of Agriculture (NASDA) adopted the enclosed Action Item encouraging the US Environmental Protection Agency (EPA) to support effective, State-promulgated water quality standards and nutrient control programs. The basis for this action is the ongoing concern over EPA's decision a few years back to unilaterally impose federal nutrient standards on the State of Florida, as well as concerns about the potential ramifications of a pending federal lawsuit seeking similar EPA action throughout the Mississippi River Basin. We all share the goal of improving and protecting the health of the nation's waters. But these developments do not represent good policy and have the potential to directly and detrimentally interfere with each and every agricultural producer's operation.

**Leonard Blackham**  
Utah  
*At-Large*

**Lorraine Merrill**  
New Hampshire  
*Northeastern Region*

As you know, Congress expressly empowered the States with primary authority to implement the Clean Water Act. EPA maintains a limited, oversight role. This cooperative federalism structure promotes the establishment of responsible and cost-effective State water quality programs that are tailored to each State's unique water resources.

**Michael Strain**  
Louisiana  
*Southern Region*

**Doug Goehring**  
North Dakota  
*Midwestern Region*

**Franci Havemeister**  
Alaska  
*Western Region*

NASDA believes it is important that EPA recognize the States' primacy in implementing the Clean Water Act. Certainly, EPA's prompt approval of Florida's new science-based nutrient standards and withdrawal of its controversial federal standards for the state would send a strong national signal that EPA is committed to supporting innovative State nutrient control programs. NASDA respectfully requests that you support our efforts to achieve strong State-federal partnerships in improving and maintaining the integrity of our nation's waters.

Sincerely,

**Steve Troxler**  
NASDA President 2012-2013  
Commissioner, North Carolina Department  
of Agriculture & Consumer Services

**Bill Northey**  
NASDA President 2011-2012  
Secretary, Iowa Department  
of Agriculture and Land Stewardship

Encl: NASDA Clean Water Act Action Item





# 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

Gwendolyn Keyes Fleming  
Regional Administrator  
United States Environmental Protection Agency  
Region IV  
Sam Nunn Atlanta Federal Center  
61 Forsyth St SW  
Atlanta, Georgia 30303

Dear Ms. Fleming:

The Florida Department of Environmental Protection ("Department") is inquiring about the status of EPA's 303(c) review of the Department's numeric nutrient criteria rule. Given the extensive coordination between our agencies and the expiration yesterday of the 60 day time-period EPA had to review the rule, the Department expected that EPA would have already issued its 303(c) determination approving the rule.

The rule is a product of more than a decade of scientific research and data collection, as well as a deliberative and public rulemaking process. From the beginning of this endeavor, EPA has been a participant in the Department's efforts. As a product of that proactive interaction, on November 2, 2011, Nancy Stoner, EPA's Acting Assistant Administrator for Water, sent a letter to the Department stating that EPA's preliminary review of the Department's proposed numeric nutrient criteria rule found the rule approvable under the federal Clean Water Act. The letter specifically affirmed EPA's support of the Department's efforts to address nutrient pollution, including the Department's numeric nutrient rulemaking efforts.

With the support of that letter, the Department's Environmental Regulation Commission ("ERC") unanimously approved adoption of the proposed numeric nutrient criteria rule, the Florida legislature unanimously endorsed the rule and required prompt submission to EPA, and a Florida Administrative Law Judge upheld the rule in its entirety in a 58-page final order.

On February 20, 2012, the Department submitted the rule and supporting documentation to EPA for review. While the Clean Water Act prescribes certain timeframes for EPA to complete its formal 303(c) review, EPA has had the ERC-

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approved rule and the science underpinning the rule in its possession for more than eight months.

The Department does appreciate the efforts of EPA staff during this long process. However, a delayed EPA action on our rule will raise concerns within the Department, Florida's elected officials, and the public. To remove the uncertainty, the Department urges EPA to promptly issue the 303(c) determination, withdraw the corresponding federal rule in 40 C.F.R. § 131.43, and affirm that the Department's rule sufficiently addresses EPA's January 14, 2009 necessity determination. These actions enable the Department to incorporate the new numeric nutrient criteria into its other nutrient reduction efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Herschel T. Vinyard, Jr.", written in a cursive style.

Herschel T. Vinyard, Jr.  
Secretary