EPA

Moderator: Jim Giattina
December 2, 2010
12:00 p.m. CT

Operator: Good afternoon. My name is (Connie) and I would be your conference operator today. At this time, I would like to welcome everyone to the TMDL-303(d) listing and site-specific criteria conference call. All lines have been placed on mute to prevent any background noise. If you should need assistance in the call, press star, then zero and an operator will come back online to assist you.

Thank you. I would now like to turn the call over to Mr. Jim Giattina. Please go ahead, sir.

Jim Giattina: Thank you, (Connie). This is Jim Giattina, I'm director of the Water Protection Division in EPA's Atlanta office. I want to welcome all of you to our EPA Webinar on the Florida Nutrient Ruling. As the operator said, we're going to be focusing on total maximum daily loads or TMDLs, the 303(d) listing process and the site-specific alternative criteria process or SSAC.

This Webinar is designed to reach out to the public to discuss issues related to the implementation of the Florida Numeric Nutrient Criteria. And in this Webinar, we're going to be specifically addressing TMDLs in impaired waters and site-specific criteria.

I have staff and managers from both EPA and the Florida Department of Environmental Protection, I believe, will also be on the line. I believe (Darryl) Joyner, the chief of their assessment and restoration support group will be the principal speaker for DEP. As you may be aware, EPA's final rule for numeric nutrient criteria for lake and flowing waters provides for an

effective date, 15 months after the rule was published in the Federal Register. And we expect the rule to be published this coming Monday, December 6.

This delayed effective date enables us to address issues and answer questions related to implementation of the final rule. Hence, our Webinar today and several others to follow. The rule was a result of extensive – of an extensive public process and reflects the consideration of many comments that we received. One thing we have heard in our meetings with Floridians across the board is their strong and powerful commitment to clean and safe water in the State of Florida, and their understanding of how essential clean water is to both public health and to Florida's future economic growth.

Many of the stakeholders including Florida DEP agree with the need for numeric standards to meet the goal of clean and safe waters in Florida. But they also emphasize the need for reasonable and cost-effective approaches that allow for appropriate planning and implementation.

The rule that will be published in the Federal Register shortly is a rule that provides clear numeric targets that need to be achieved in order to assure – ensure attainment of Florida's existing nutrient standards in inland streams, lakes and springs. The rule also provides for flexibility in a number of ways. One of the areas of flexibility built into the rule is the ability to establish site-specific alternative criteria where the local data supports numeric criteria different from that in the rule. There have also been many questions with regard to implementation of the rule, particularly focused on the impaired waters listing process, the TMDLs and basin management action plan development, as well as NPDES permitting.

The SSAC process that I have mentioned, along with the TMDL and listing processes, will be the focus of our discussion today and we'll be holding additional Webinars next week to focus on NPDES permitting, specifically POTWs and storm water. That Webinar will be on December 7 from 9:00 to 11:00, and then we have an afternoon Webinar focusing on implementation for nonpoint sources that will also be on December 7 from 1:00 to 3:00. And the implementation for nonpoint sources will focus on agricultural activity. We have some important material to share with you today and we really want

to take this initial opportunity to answer questions and respond to concerns. We envision that there will be many further follow-up opportunities over the course of the next 15 months to also interact with you and deal with very specific issues.

After some logistical information, Annie Godfrey, chief of the water quality standards section will lead the presentation today. And for the question-and-answer session, she'll be joined by others to help answer questions. We have Shawneille Campbell, who is the chief of our TMDL development section, Andrea Zimmer, chief of the monitoring and information analysis section, and Joanne Benante, chief of the water quality planning branch, as well as myself to help answer any of these questions.

So, thank you all for participating in the Webinar today. I also wanted to mention before I forget that as you type in your questions, we will probably get many more questions than we'll be able to actually answer during the session that we have today, but we are taking all of those questions and we intend to provide responses to those questions as we develop them and put them up on the Web site so that we will have a pretty comprehensive set of questions and answers from all of these Webinars that will be posted to EPA's Web site.

So, again, thank you for participating in the Webinar. I'm going to hand it over to Lauren Petter to go over some of the logistical aspects of the Webinar and then we'll proceed with the presentation.

Lauren Petter: Right. Thank you, Jim. In order to ensure that all participants can listen in without issue, we will be muting the audio lines of the participants. However, in order to allow for the question-and-answer portion of this Webinar, you will be able to submit your questions electronically through the chat function located on the menu bar. If you'd like to submit a question, locate the menu bar on the right side of your screens. Expand the chat box window found near the bottom, and type in your questions and then select "Send chat or Question to U.S. EPA Organizer Only." This will submit your question for our compilation.

Please use this option for asking questions as opposed to the option to raise your hand because the muted line prevents us from addressing your raised hand at this time. As questions are received, they will be compiled and once the presentation portion is over, the panelists will provide answers to those questions. The specific question will be read to the entire audience followed by an answer or information on how to obtain an answer.

The presentation is – that we're giving today will be provided after the Webinar on EPA's main page for Florida Nutrient Criteria. There will be links to this Web page during the presentation. It is our expectation to provide the corresponding portion of the audio once it is made available to us. As Jim says, to ensure that everyone benefits from a response to the question, we'll be working to address all of the questions and provide that in some form at a later date. Once that document is developed, you will be notified of its availability.

The previous Webinar will be handled in the same way. As you are watching the presentation, or at any time during the Webinar, you can minimize the menu bar by clicking on the orange box with the white arrow located near the top left corner of the menu bar. To expand it, you would simply click on the arrow button again. Lastly, towards the end of the Webinar, a poll will be made available and you may elect to take this poll but you're not obligated to do so. That is all for our logistics and now I'll turn it over to Annie Godfrey.

Annie Godfrey: Thank you, Lauren. I want to start the Webinar by going through a summary of the rule. If you were on the Webinar on Tuesday, some of these will look very familiar. And then, I'm going to go through each of the components that we are going to talk about today and I will explain briefly how they work and how they might be impacted by the Florida Nutrient Rule.

EPA developed criteria for lakes, streams, and springs and everything except for South Florida. And when we developed the criteria for lakes, we classified those into three groups based on color and alkalinity. We developed criteria from data that correlated trophic transition levels of chlorophyll A, to levels of phosphorus and nitrogen to get the criteria for those groups. We also include an option for the state to adjust the nitrogen and phosphorus criteria

for a particular lake if they have data to show this is protective and that the chlorophyll A criteria is met.

This slide shows the actual numbers that we came up with. The numbers in bold are the default criteria for the different categories of lakes. But we also as I said have a provision that if you have a lake in a certain category that is meeting chlorophyll A criteria, there is a provision for you to then use a number within that range that is in the box, in the non-bolded numbers. And that is spelled out in the rule how that will work. For streams, it takes classified streams into five different nutrient regions that account for different geological phenomena throughout the state. And we, in this case, use field data in least disturbed streams that are not impaired for nutrient-related impacts.

This slide shows the numbers that we developed for the streams and although the map there shows South Florida – I just want to repeat that South Florida is not included in this rule. But we do have numbers and instream protection values for both nitrogen and phosphorus for the different areas.

Another component of our rule is providing for downstream protections for lakes. EPA's regulation to require that our water quality standards protect downstream waters, and so our final rule for the nutrient criteria includes a flexible approach to apply the downstream protection value for nitrogen and phosphorus, and there are three ways that that can be done. All of these will be applied at the point of entry of a water stream into the lake itself.

The first choice is to use a model – use a model BATHTUB or another model that is scientifically defensible to develop the appropriate levels of nitrogen and phosphorus. If the lake itself is meeting the criteria, then an option is to use the ambient instream levels of nitrogen and phosphorus at the point of entry into the lakes for the downstream protection value. And then the third option if the lake is impaired or if the lake is unassessed, then the lake's criteria values become the downstream protection values for the stream that's entering the lake.

For springs, EPA developed a nitrate-nitrite criterion of 0.35 mg/L to protect springs from nutrient pollution. And this is based on both lab data and field data that document a response of algae to nitrate-nitrite concentration. This slide gives you some information and we will repeat the website(s) further in the slide especially at the end so you'll have time to copy that down and as Lauren said, we'll be making this available to you to get phone numbers for this, but this is in contact information for the rule itself.

I wanted to let you know, as far as the material that's in this www.regulations.gov, the Federal Register notice this will be posted on Monday, December 6 and at that time, all of the material that supports this final phase of the rule will be available at that site.

Before I go into the specific areas I'm going to talk about – I'm first going to do a general overview of how all these pieces fit together. The Clean Water Act provides goals for the nation as far as protecting its waters. And one of those goals is to provide for protection and propagation of fish, shellfish and wildlife and to provide for recreation in and on the water. We call that often the fishable, swimmable goal. In order to meet that goal, the state develops and adopts water quality standards. Those standards have three components. One is the designated use which tells the public how that water is to be used. The default is for fishable, swimmable. But then you can also add additional uses such as public water supply or shellfish harvesting as additional uses for that water.

Then, the state also develops and adopts criteria which are either narrative or numeric criteria that are meant to be in place to protect the designated use, and then the third component is an antidegradation policy to prevent degradation of high quality water.

We're going to talk about site-specific alternative criteria. Those are considered water quality standards, so they put it in that box on the slide here. Standards are then used by various Clean Water Act programs such as the NPDES permitting program, the 303(d) impaired waters listing program, and the TMDL program.

But in order to use those, you need to know what the water looks like, and so the state does monitoring to gather data on the concentrations of chemicals and other parameters in the water. And they use that data to assess against the water quality standards to see how the water is doing. If the water body is meeting the water quality standard, then it – that's a good thing. And the water is then further protected by the antidegradation policy and we use tools like the permitting program and like best management practices through the nonpoint source programs to continue protecting that water.

If the answer is maybe, then the state needs to gather more data to see where that water is. And if the answer is no, then we go into some of these components that we're going to be talking about in a minute.

If a water is assessed and it does not meet the water quality standard, then it is placed on the state's 303(d) list of impaired waters and then it's prioritized for future TMDL development. And as part of that, the TMDL is implemented, you go back to the programs that EPA has under the Clean Water Act to ensure that the water is cleaned up.

For the 303(d) list, as I said, that is the section of the Clean Water Act that provides for states to identify waters that are not meeting the standards, and also to prioritize those impaired waters for total maximum daily load or TMDL development. Florida uses the impaired waters rule to assess their water quality data against the applicable criteria. And they will use the impaired waters rule for this nutrient criteria. However, they will need to revise the IWR to include this new criteria, and include methods for doing that.

If Darryl Joiner – is on the line, I was going to ask him to elaborate a little bit on that. (Darryl), are you on? Apparently, he is not on the line. But there will be a process for Florida to amend their IWR and they will set part of our 15-month period, delayed effective date, is to allow them time to do that.

Florida is already assessing the waters for nutrient impairment with their narrative criteria and in their 2010 integrated water quality assessment report, they identified almost 2,000 miles of rivers and streams that were impaired for

nutrients and over 378,000 acres of lakes that were impaired for nutrients. Their waters are currently assessed against their narrative criteria which states that in no case shall nutrient concentrations of a body of water be altered, so as to cause an imbalance in natural populations of aquatic flora or fauna. They, as I said, use the impaired waters rule to translate this narrative into conditions that can be used to assess the water. They use things like the trophic state index and the chlorophyll A levels to make that translation of water bodies' characterizations into their narrative standards.

The criteria that we have finalized will affect the way that nutrient levels and water bodies are assessed. When the new rule is effective in 15 months, waters will be assessed against these new criteria. This means in some cases, that water bodies that were previously thought to be impaired will be considered to be – to meet the new criteria. But conversely, it means that some water bodies that were considered to meet the criteria will now be determined to be impaired.

New water bodies that are identified as impaired will be added to the 303(d) list and then prioritized for TMDLs. This gives you some contact information for the 303(d) list and as I said, this will be made available for you so that you'll have these phone numbers and these names.

Total maximum daily loads are a plan or a calculation of how much pollution can be allowed in a water body so that water body still meets the water quality standard. It has three components, the waste load allocation takes into account the amount of loading from point sources which can be waste water treatment plant, industrial sources. The load allocation accounts for loads from the nonpoint sources such as agriculture. And then there is a margin of safety that allows to – for uncertainty in these relationships that we see.

There are a number of nutrient TMDLs already in Florida. We have 281 EPA-approved nutrient TMDLs. These are TMDLs that were developed by the Florida DEP. And we have 268 EPA established nutrient TMDLs these are TMDLs that were developed by EPA.

As far as future nutrient TMDLs in Florida, any TMDL has to be written to the criteria that's in effect at that time and this will be true also of nutrient TMDLs. After the effective date of the new criteria, which is in 15 months, the TMDLs must be established at those levels that will meet the new criteria – that will meet all applicable criteria including the new nutrient criteria and the existing narrative criteria.

There are a lot of questions about existing TMDLs and how those will be handled, and the bottom line is that existing TMDLs will remain in place until there is a two-part evaluation that takes place. The first part of this evaluation is the site is determining whether the water body for which the TMDL was written is still impaired. And if it is not impaired, then the state can withdraw the TMDL. If the water body is impaired, then you go through the second part of the evaluation, which is to see if the TMDL meets the new water quality standards. If the answer is yes, then the TMDL remains in place. If the answer is no, then the water body will be put – placed on the 303(d) list of impaired water and the TMDL will be revised.

EPA expects that Florida will be developing a review process and a timetable for looking at these TMDLs. And that will take into consideration their priorities, their resources, and their most recent assessment.

The state or any other entity may decide that TMDL that's in existence is a better reflection of the conditions of a water body, and in those cases, the state or the other party can apply to use the TMDL target as a site-specific alternative criteria. And we'll talk about that in more detail in a minute.

As far as implementing TMDLs, EPA expects that the implementation schedules, the implementation efforts will remain on schedule. The State of Florida uses a Basin Management Action Plan, BMAP, in order to implement their TMDLs and if you're not familiar with these, this is a set of – comprehensive set of strategies, such as BMPs, that are put together to implement the pollution reductions that are necessary according to the TMDL. The BMAPs are developed in coordination with stakeholders and they are adopted by an order of the secretary of DEP in order to be an enforceable document.

If an existing TMDLs goes through a two-part evaluation and if found that the TMDL is insufficient to meet the new criteria and the TMDL is revised, then there may be a need for additional TMDL effort – implementation effort. This is the contact information for TMDLs and again, this will be available on the EPA Web site for use.

The third part of this presentation talks about site-specific alternative criteria. These are alternative values to the criteria that EPA has finalized that can be applied on either a watershed, an area-wide or a water body-specific basis. In order to demonstrate or to get a SSAC the party must demonstrate three things. It must demonstrate that it's being protective of the designated uses, that it has a basis in sound science and it also must ensure protection of downstream water quality standard. A SSAC can either be more stringent or less stringent than the criteria that EPA has finalized.

SSACs can be appropriate if you have additional data or information that shows that there is another level or concentration of nitrogen or phosphorus that will still be protective of the designated use. When this package is submitted to EPA, the EPA regional administrator will look at the technical basis, the effectiveness of the SSAC and make a decision on whether to establish a SSAC after appropriate public involvement. Now, I'll go to a little more detail with that in another slide.

As far as the three components, in order to show that SSAC is protected by the designated use, the submittal needs to provide an analysis that shows how the designated use is supported both in the water body and in the downstream water body. And it must include some indicators of both longer term responses such as a stream condition index and shorter term responses such as water column chlorophyll A concentration.

The package also must show that it is based in sound science. There are several ways that it can do that. A party can use the EPA approach for lakes or streams and just apply that to a more site-specific basis and get different numbers that way. The party can also conduct biological, chemical and physical assessments. It can include things like the stream condition index,

dissolved oxygen fluctuation, habitat assessment, and the hydrologic disturbances.

And then thirdly, in order to provide for flexibility, EPA's rule allows for a party to use another scientifically defensible approach, and this allows someone to come in with something that we haven't thought about when we finalized the rule that could be supportive of site-specific alternative criteria.

And then finally, the SSAC must predict downstream uses. It must be sure that the values in the SSAC are going to provide for attainment and maintenance of the downstream water body. It needs to look at a broader basis than just the stream segment that is – being considered for the SSAC to make sure that there are no – effects on nearby stream segments or downstream water such as lakes.

If you have a – if you have a water – this downstream water body is an estuary, then the SSAC needs to – (SSAC package) needs to show that it will comply with the narrative standards for estuaries.

The process will work by having an entity and this entity can be the state, it can be a city or county, it can be a discharger, it can be an individual that prepares a SSAC package with those three components that I talked about. If the entity is not the state, then the party needs to provide notice to the state. EPA then takes the package and evaluates that and provides – either provides a public notice and a comment period or if the EPA has problems with the package it will return the submittal to the party with an explanation of why it is doing so. After reviewing the comments, at the comment period and public notice, EPA will then make the decision and provide public notice of its approval or disapproval.

~~Things that can be submitted for consideration as a SSAC are~~ [TMDLs, both the final or prepared, reasonable assurance documents for inland waters, or other scientifically defensible~~pendable~~ information are types of information that can support the development of SSAC, although the guidance will more specifically explain EPA's expectations with regard to the complete documentation requirements associated with a specific SSAC request]. This

again is information on contacts for SSAC. And this spot is the end of our presentation. And I'll leave this slide up so that you'll have the Web site – links to the Web site, and – oh I'm just learning that (Darryl) is on the line. (Darryl) we were talking about the IWR and revisions did you want to speak briefly about that.

(Darryl): Yes, can you hear us now.

Jim Giattina: Yes, (Darryl).

(Darryl): Yes, we were on line but for some reason the system wasn't – it was muted. I don't have a whole lot to add but just wanted to note that yes you're correct we would need to revise the impaired waters rule before we could assess using the federal criteria.

And we do not know right now what our schedule for that - (inaudible) to revise the rule is. We will need to brief the new administration when it comes in next year and decide on you know we're still evaluating options on that – on any rule making and need direction on that rule making.

That is one of the advantages of this 15 month delay and effective date that hopefully we'll have time to do any necessary rule making in that timeframe.

Jim Giattina: Good, thank you (Darryl) I appreciate it. Well I wanted to add one point before we turn to the questions on the site specific alternative criteria. One of the things we heard when we were visiting down in Tallahassee a couple of weeks ago was the desire by parties to have more specific guidance on the SSAC process and we have committed to work closely with DEP and with the stakeholders to develop that guidance.

One thing we didn't mention today but may be apparent to folks is that the SSAC provisions of the rule actually take effect in 60 days. So this will allow a period of time within the 60 days and the 15 months for folks that believe they have a better information and can develop scientifically defensible packages for us to consider for alternative criteria. We will begin evaluating those as soon as possible.

But we are going to be putting together guidance that lays out in some degree of greater specificity the kind of information that we would want to see in those packages. So stay tuned as we develop that guidance going forward.