

November 18, 2003

Mr. David Struhs, Secretary
Florida Department of Environmental Protection
3900 Commonwealth Blvd.
Tallahassee, FL 32399

Mr. Jimmy Palmer, Region 4 Administrator
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-3104

Dear Secretary Struhs and Mr. Palmer:

On September 17, 2003, the Florida Department of Environmental Protection held a public workshop/hearing regarding the final (verified) list for Group 2 waters to be submitted to the EPA for approval for listing and delisting. The list has continued to change since that time and even though we have tried to follow the changes to the list that FDEP has made since the public workshop/hearing there may be some that we did not know about and therefore are not reflected in this letter.

We continue to be disappointed that FDEP is using the Impaired Waters Rule methodology to assess Florida's waters for excessive pollution. The U.S. Environmental Protection Agency (EPA) made it clear to Florida in EPA's Decision Document regarding Florida DEP's ss. 303(d) list amendment dated June 11, 2003 that the list submitted by Florida to EPA on October 1, 2002 and May 12, 2003 did not properly implement Florida's approved water quality standards or EPA regulations. This list was purportedly based on the requirements of Chapter 62-303, F.A.C. Chapter 403.067(1), F.S. requires ". . . the development of a total maximum daily load program for state waters as required by ss. 303(d) of the Clean Water Act will promote improvements in water quality throughout the state. . ." 403.067(2) states "In accordance with ss. 303(d) of the Clean Water Act, . . . the department must submit periodically to the United States Environmental Protection Agency a list of surface waters or segments for which total maximum daily load assessments will be conducted. The assessments shall evaluate the water quality conditions of the listed waters and, if such waters are determined not to meet water quality standards, total maximum daily loads shall be established, subject to the provisions of 403.067(4)." 403.067(2)(c) requires, "The provisions of this subsection are applicable to all lists prepared by the department and submitted to the United States Environmental Protection Agency pursuant to section ss. 303(d) of the Clean Water Act . . ."

The EPA Decision Document for Florida's 2002 303(d) list makes it clear that the Impaired Waters Rule is NOT consistent with federal law and therefore EPA was unable to use it to review Florida's 2002 submittal. In fact EPA added 80 water body segments back onto the 2002 303(d) list and rejected FDEP's attempt to delist (by placing on the "planning" list) an additional 112 waters for one or more parameters.

It is our belief that this confirms what our 65 member organizations have been saying for the past several years – that the Florida Impaired Waters Rule is inconsistent with Florida law and it is inconsistent with federal law. FDEP's stubborn insistence to anything otherwise is an insult to the citizens of Florida who have just as much right to the Clean Water Act as citizens in every other state. FDEP's efforts to protect polluters from the law and to allow Florida's waters to further degrade are transparent to all.

We are attaching our analysis of the 2003 list to this letter. We object to every occasion where DEP has removed an impaired water body segment from the 303(d) list that was listed on the 1998 303(d) list, for which a TMDL has not been established or for which DEP has not provided a good cause (under federal guidelines) for the delisting. Additionally we object to all water body segments that have not been newly listed for which there is adequate data under federal guidelines to list the waters as impaired.

We find (and concur with EPA) that the Florida listing methodology deficiencies include but are not limited to the following:

1. The IWR requires that the presence of chlorophyll a be the sole indicator of nutrient imbalance and that chlorophyll a populations be averaged over four seasons. This requirement ignores all the other indicators of a nutrient imbalance, such as highly elevated nitrogen and phosphorus levels. It masks even a chlorophyll a problem by requiring that an annual average be used.
2. The IWR excludes numerous categories of data from even being considered. For instance: data resulting from permit violations, sewage spills, mixing zones, advisories, warnings, and closures based on red-tides, contaminant spills, discharges due to unauthorized upsets and bypasses from permitted facilities or heavy rain.
3. Florida's IWR does not provide for a review of whether anti-degradation requirements are being met and therefore the list does not reflect an assessment of this component of Florida's water quality standards. Any time it can be demonstrated that any degradation of water quality caused by point sources was authorized in a NPDES permit, and there is no record of the permit authority going through the analysis and public process that is laid out in state and EPA regulations, then antidegradation requirements have not been met and the water should be listed.
4. The IWR has temporal and spatial guidelines which lead to polluted waters not being properly identified and listed. 62-303(320)(4) does not properly implement Florida's approved water quality standards.

5. The IWR at 62-303.330(3) and 62-303.400(1) (biological integrity standard) is not consistent with the underlying narrative water quality standard and will result in not listing a water that is actually impaired.
6. The IWR does not allow any water bodies to be listed on the 303(d) list unless the pollutant causing the impairment has been identified. This is inconsistent with federal requirements.
7. Federal regulations require that all readily available data be used to assess the condition of the water bodies. The IWR does not consider trends, pollutant levels during critical conditions, consider the magnitude of any exceedances or other data such as biological monitoring, water quantity and flow impacts.
8. The IWR does not consider magnitude, frequency and duration of any exceedances.
9. The IWR requires that a water body must fail two bioassessments and have the pollutant and its concentration determined in order to get on the 303(d) list.
10. The IWR relies on fecal coliform thresholds used to protect recreational uses and not shellfish harvesting uses. Therefore the IWR methodology for determining impairment to shellfish harvesting is invalid.

Once again we urge the Florida DEP to reconsider the use of the IWR for constructing Florida's 303(d) list. It is a waste of our tax dollars for Florida to continue to create a list that is unusable to EPA and for EPA to then be required to completely redo the assessment for Florida. Worse than that, Florida's effort to lead the nation in undermining the Clean Water Act is bad public policy especially in a state that is so dependent on clean water for its economy and quality of life.

Sincerely,

Linda L. Young
Southeast Regional Director

Earthjustice
David Guest
Tallahassee, FL

Audubon of Florida
Eric Draper
Tallahassee, FL

Defenders of Wildlife
Laurie Ann Macdonald
St. Petersburg, FL

Florida PIRG
Nina Baliga
Tallahassee, FL

Florida Wildlife Federation
Manley Fuller
Tallahassee, FL

League of Women Voters
of Florida
Kathleen Slebodnik
Tallahassee, FL

Legal Environmental
Assistance Foundation,
Inc. (LEAF)
David Ludder
Tallahassee, FL

The Wildlife Advocacy
Project
Susannah Lindberg
Tallahassee, FL

Apalachicola Bay &
Riverkeeper
David Mclain
Eastpoint, FL

Choctawhatchee Audubon
Society
Don Ware
Ft. Walton Beach, FL

Florida Consumer Action
Network
Philip Compton
Tampa, FL

Around the Bend Nature
Tours
Karen A. Fraley
Bradenton, FL

Conservation Alliance of
St. Lucie County
Bob Bangert
Ft. Pierce, FL

Florida Federation of
Garden Clubs
Marion B. Hilliard
Orange Park, FL

Audubon of St. Johns
Roger Van Ghent
St. Augustine, FL

Control Growth Now, Inc.
(Formerly GEO)
Dan Lobeck
Sarasota, FL

Florida League of
Conservation Voters
Nancy Brown
Tallahassee, FL

Bayou Texar Foundation
Blair Stephenson
Pensacola, FL

ECO-Action
Casselberry, FL
Allies of the Earth
Winter Springs, FL
The Eco-Store
Orlando, FL
Beth Hollenbeck

Florida Native Plant
Society
Kim Zarillo
Vero Beach, FL

Beach to Bay Connection,
Inc.
Celeste Cobena
Santa Rosa Beach, FL

Emerald Coast Parrothead
Club
Rick Ricketts
Destin, FL

Four Rivers Audubon
Society
Frank Sedmera
Lake City, FL

Bruderly Engineering
Associates, Inc.
David Bruderly
Gainesville, FL

Environmental Defense
Fund
Ken Lindeman
Miami, FL

Friends of Fenholloway
Joy Towles Ezell
Perry, FL

Caloosahatchee River
Citizens Association
(CRCA) ("Riverwatch")
Ft. Myers, FL
Mike Buff

Escambia County Citizens
Coalition
Colonel David
Engle (AUS-USACE)
Pensacola, FL

Friends of the St. Mary's
River
Winifred Stephenson
Fernandina Beach, FL

Caribbean Conservation
Corporation
Gary Appelton
Gainesville, FL

Florida Chapter Sierra
Club
John Swingle
Saint Petersburg, FL

Friends of St. Sebastian
River
Tim Glover
Sebastian, FL

Chipola River Economic
and Environmental
Council (CREEC)
Chad Taylor
Marianna, FL

Friends of the Everglades
David Reiner
Miami, FL

Friends of the River, Inc.
John Ovink
Tampa, FL

Gulf Coast Environmental
Defense
Enid Sisskin
Gulf Breeze, FL

Help Our Polluted
Environment (HOPE)
Joy Towles Ezell
Perry, FL

Lake County Fly Fishing
Association
Rick Gonzalez
Mount Dora, FL

Lemon Bay Conservancy,
Inc.
Brenda Bossman
Englewood, FL

Manasota-88
Glenn Compton
Sarasota, FL

Marion County Audubon
Society
Jeri Baldwin
Orange Springs, FL

Munson Area Preservation,
Inc.
Margaret Fogg
Tallahassee, FL

Putnam County
Environmental Council
Timothy Keyser
Interlachen, FL

Santa Rosa Sound
Coalition
Frances Dunham
Gulf Breeze, FL

Save Florida's Springs and
Aquifers (SFS&A)
Stewart Loeblich
Crystal Springs, FL

Save Our Bays, Air, and
Canals (SOBAC)
Dominick Gebbia
Apollo Beach, FL

Save Our Suwannee, Inc.
Svenn Lindskold
Bell, FL

Save the Homosassa River
Alliance
Ron Miller
Homosassa, FL

Save the Manatee Club
Judith Vallee
Maitland, FL

SAVE the St. Johns River,
Inc.
Leroy Wright
Cocoa, FL

St. Johns Riverkeeper
Neil A. Armingeon
Jacksonville, FL

St. Lucie Audubon Society
Harold Phillips
Fort Pierce, FL

Suwannee Audubon
George Griffin
Old Towne, FL

Tropical Audubon Society
Cynthia Guerra
Miami, FL

*The following group(s)
signed on after the letter
was sent in on November
18:*

Marine Resources Council
Jim Egan
Rockledge, FL