

CHRONOLOGICAL BACKGROUND ON WATER-QUALITY RULEMAKING:

1999: Florida Legislature passes Watershed Restoration Act and directs FDEP to establish Total Maximum Daily Loads (TMDLs) to regulate pollution discharges into waters of Florida.

1999: Wildlife Federation sues EPA over Florida TMDL program. EPA signs consent decree obligating Florida to move forward with TMDL regulation without full studies of waterbody impacts.

2002: FDEP calls for Total Maximum Daily Load standards for the St. Johns River.

2003: TMDL standards established for Marine Section of the River.

2004: The Clean Water Network of Florida and St. Johns Riverkeeper sue EPA over St. Johns River TMDL, saying it does not meet the state's 5 milligrams per liter (mg/L) of dissolved oxygen (DO) standard.

2005: EPA signs Consent Order to require EPA re-write of TMDL.

2006: In January EPA produced a TMDL for the river that would require nitrogen in the river to be lowered by 60 to 80 percent in order to raise DO from 4.8 mg/L to 5.0 mg/L.

2006: In May FDEP passed St. Johns River TMDL with 50% removal of Total Nitrogen (TN) to be sent to EPA for approval. St. Johns Riverkeeper sues EPA over FDEP TMDL for the River. FDEP defends TMDL in court, which sustains the TMDL proposed by FDEP.

July 2008: EPA approves TMDL for Lower St. Johns River.

July 2008: Florida Wildlife Federation sues EPA to require numeric nutrient standards instead of narrative standards used to develop TMDLs. EPA signs Consent Order obligating development of numeric nutrient standards for Florida by 2010.

October 2008: FDEP establishes Basin Management Action Plans (BMAP) for Lower Basin and begins issuing permits to allow local governments and businesses to begin implementing new TMDL standards.

January 2009: EPA Assistant Administrator Grumbles issues "Letter of Determination" stating that Florida's TMDLs do not work, and requires EPA numeric nutrient standards to be established by 2010.

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June 2009: FDEP announce new TMDLs for other Clay County Water Bodies that attempt to link low DO to nutrient discharges in accordance with Consent Orders signed by EPA.

September 2009: New TMDLs for Clay County water bodies are approved by FDEP.

October 2009: First annual TMDL report for the Lower Basin published by FDEP showing progress on water quality improvements resulting from BMAP activities.

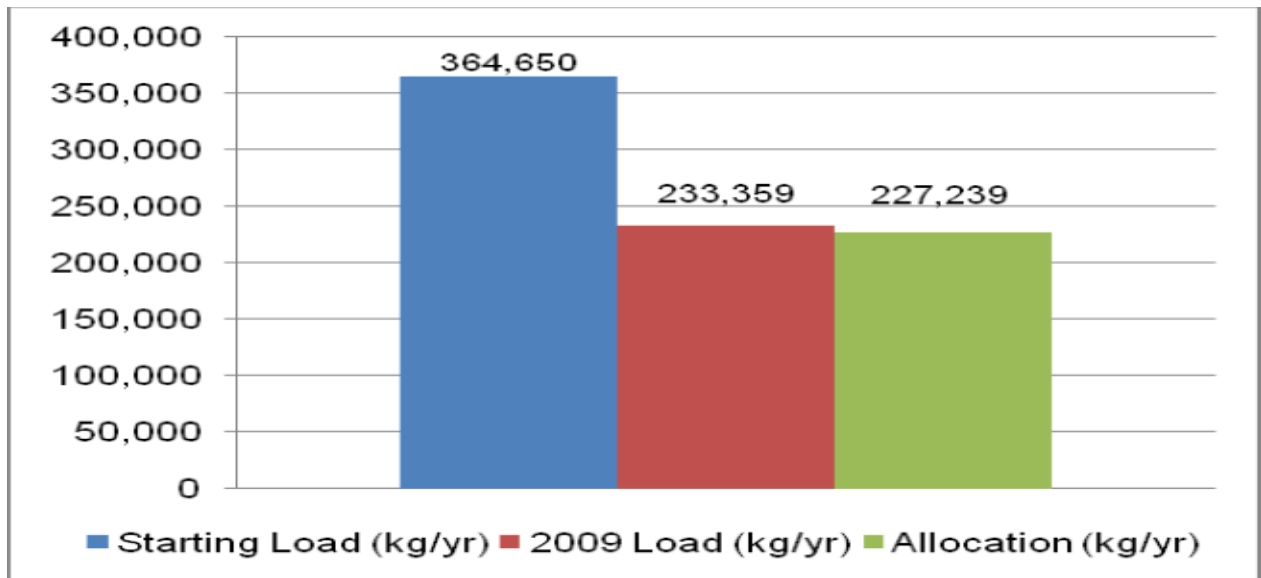


Figure 1: Progress of Wastewater Treatment plants in Freshwater section of Lower basin in meeting TMDL

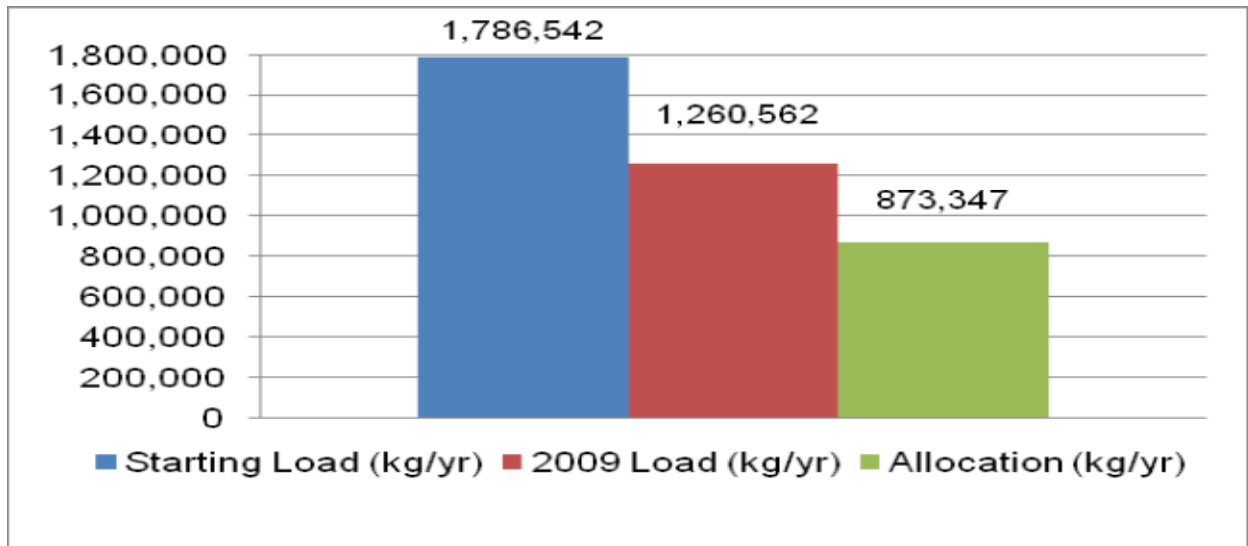


Figure 2: Progress of Wastewater Treatment plants in Marine section of Lower basin in meeting TMDL

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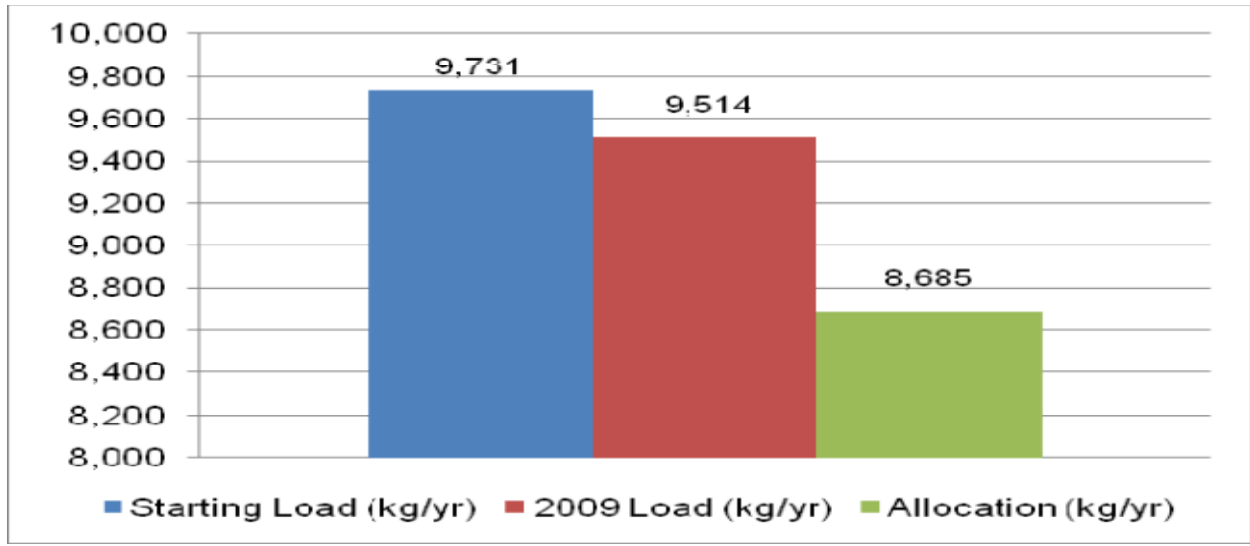


Figure 3: Progress of MS4s in freshwater section of Lower basin in meeting TMDL

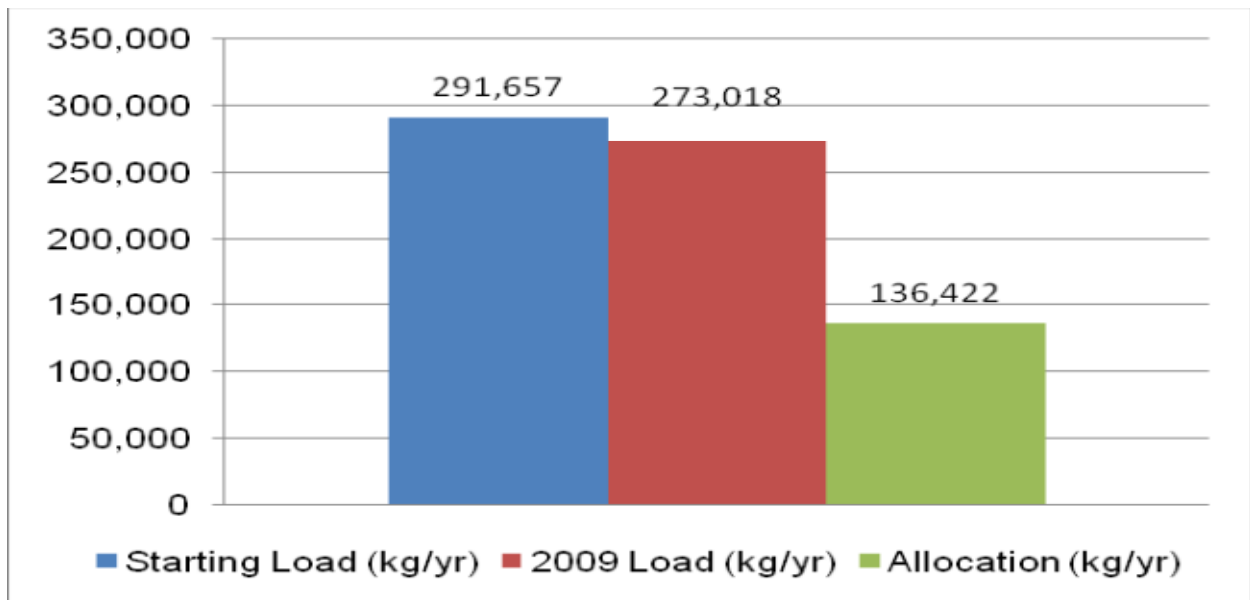


Figure 4: Progress of MS4s in marine section of Lower basin in meeting TMDL

January 2010: EPA secretly rejects TMDLs for other Clay County water bodies previously approved by FDEP, and re-writes TMDLS for publication in the Federal Register. Local governments and businesses are not notified of new proposed rules.

February 2010: EPA holds six public hearings in Florida regarding EPA’s Numeric Nutrient Rules. Dozens of water quality experts testify that there is no strong relationship between nutrients and dissolved oxygen in Florida’s waters. Many experts questioned the EPA Benefit-

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Cost analysis. EPA announces that Numeric Nutrient rule for estuaries and south Florida waters would be reviewed by the EPA Science Advisory Board, but that the Numeric Nutrient rules for inland waters would not be reviewed.

March 2010: EPA holds hearing in Tallahassee on new TMDLs for Clay County water bodies. Dozens of water quality experts, including researchers from SJRWMD, testify that there is no strong relationship between DO and nutrients.

November 2010: EPA announces final Numeric Nutrient Rule for Florida, to be fully implemented fifteen months following publication in the Federal Register. EPA staff refused to release backup documentation until the rule was published and in effect.

EPA'S ECONOMIC ANALYSIS IS FLAWED

There is an enormous disparity between EPA's cost estimate for Numeric Nutrient implementation and the cost estimates provided by local water-quality experts. EPA states that the costs will be between \$135- and \$206-million. Florida experts estimate the costs between \$1 billion and \$7 billion.

EPA performed a benefit-cost analysis to support its rule, although they refused to release the analysis until the rule became effective. EPA'S economic baseline for Numeric Nutrient costs is the difference between the costs of implementing EPA's numeric nutrient rule and an FDEP numeric nutrient rule that was never adopted and does not exist. The baseline does not consider the cost differential between implementation of the EPA numeric nutrient rules and the current TMDL. The TMDL is the reality baseline for the stakeholders in the Lower Basin who are in the process of spending in excess of \$700 million to comply.

ACCORDING TO EPA THE INCREMENTAL ANNUALIZED COST OVER THE BASELINE: \$135.5 TO \$206.1 MILLION.

On the benefit side of the Benefit-Cost analysis, EPA's basis for Numeric Nutrient benefits is difference between the benefits created by the EPA numeric nutrient rule and the current conditions.

ACCORDING TO EPA THE INCREMENTAL ANNUALIZED BENEFIT OVER BASELINE: \$28.2 MILLION.

THE BIG QUESTION: IF EPA'S BENEFIT-COST ANALYSIS IS CORRECT WHY WOULD ANYBODY SPEND \$135.5 - \$206.1 MILLION PER YEAR TO GET \$28.2 MILLION PER YEAR IN BENEFITS?

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WHY THE BIG DIFFERENCE IN COST ESTIMATES?

If the EPA cost estimates are low-balled because of baseline assumptions, the low estimates are further exacerbated by the extremely low unit-price of construction cited in the EPA Economic Analysis. For example, EPA rates the ability of a 5-stage Bardenpho system as excellent in removing Total Nitrogen and GOOD in removing Total Phosphorous. The City of Green Cove Springs is selecting a Bardenpho-type system for its South WWTP improvements to meet the Current TMDL. The City's engineers estimate the construction costs to be about \$8 - \$12 per treated gallon per day.

The Town of Orange Park is completing the second phase of its Advanced Wastewater Treatment Project, which includes construction of a 5-stage Bardenpho system. The actual construction costs are \$4 per treated gallon per day, which to my knowledge is a record low-cost for similar construction costs in Florida over the past five years.

In the Economic Analysis presented by EPA, the cost of constructing a 5-stage Bardenpho process is \$1.44 per treated gallon per day.

DO WE GET “BANG-FOR-THE-BUCK” FROM EPA’S NUMERIC NUTRIENT RULE?

At the completion of the Town of Orange Park's Phase 1 AWWTP project, Total Nitrogen discharges to the St. Johns River were reduced by 60%. At the completion of Phase 2, Total Nitrogen discharges to the St. Johns River will be reduced by a total of 80%, the Town's reserves will be depleted, the budgets will be choking on debt service, and the wastewater customers will be paying 20% more for wastewater service than they did in 2008. At the end of Phase 2, the Town will not be able to meet the Numeric Nutrient requirements created by EPA.

When Green Cove Springs completes its South WWTP improvements, Total Nitrogen discharges to the St. Johns River will be reduced by 60%, the City's reserves will be depleted, the budgets will be choking on debt service, and the wastewater customers will be paying 20% more for wastewater service than they did in 2008. At the end of the Project, the City will not be able to meet the Numeric Nutrient requirements created by EPA.

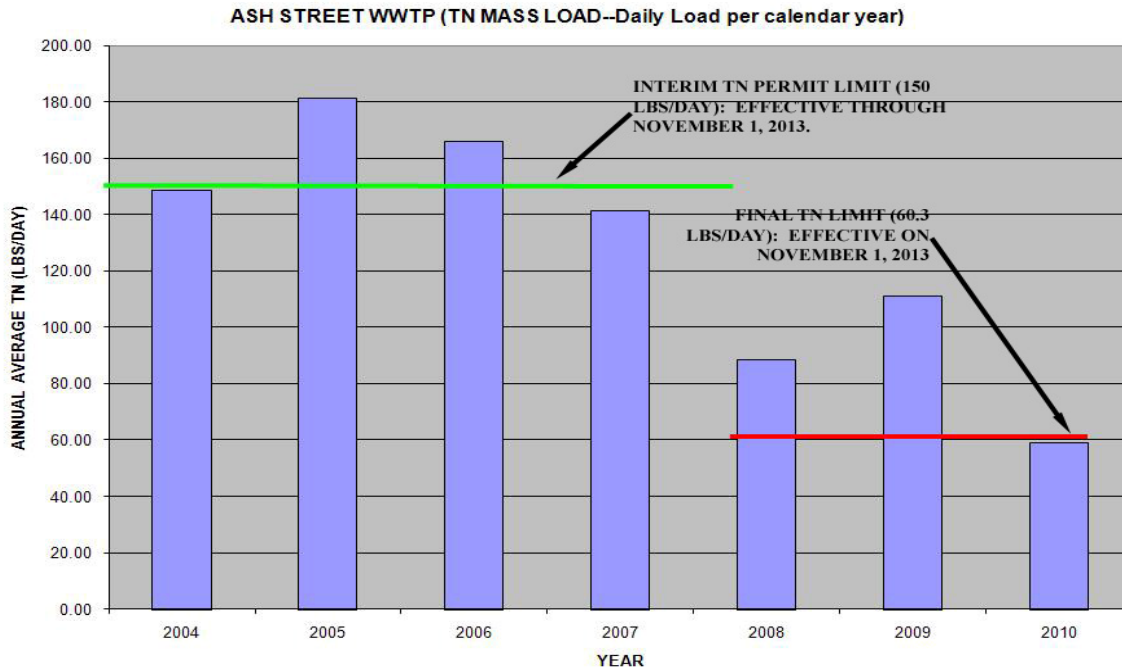
Will EPA's Numeric Nutrient rule clean up the St. Johns River more than our current TMDL plan once the work is completed? Probably not much. The EPA analysis does not provide peer-reviewed analyses to substantiate water-quality improvements, and the regression analysis upon which the EPA analysis is based suggests a probability of water quality-improvement that is somewhat less than buying twelve Lottery Tickets a week and winning the Jackpot once in five years—with far less return on the money.

Figure 5 (below) depicts the Total Nitrogen reductions made at the Town of Orange Parks Wastewater Treatment Plant since the implementation of the Lower Basin TMDL began.

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WHY WORRY ABOUT NUMERIC NUTRIENTS IF AN SSAC CAN BE OBTAINED?

In fact, the EPA Numeric Nutrient rule recognizes Florida’s TMDL program as being a possible “Site Specific Alternative Criteria” (SSAC) to the Numeric Nutrient Rule. Under this provision local governments could apply for an SSAC, and if approved by EPA, continue to make water quality improvements under the provisions of the TMDL.

So, why worry about Numeric Nutrient rules if an SSAC is approved based on existing TMDLs?

The waters of Florida’s regulatory system are polluted with instances where agreements on regulations have been reached between the Stakeholders, the State of Florida, and EPA, only to have those agreements breached when government employees at EPA create court-approved, legally-binding backroom deals with environmental lobbyists who oppose the efforts to improve Florida’s waters. In fact, within seven days of the November 14, 2010 announcement of the Final Numeric Nutrient rules by EPA, EarthJustice.com filed a lawsuit in a Federal Court to have the SSAC provisions of the rule stricken. Those of us who have to translate water-quality rules into water-quality reality see this as another Consent Order waiting to happen.

WHAT SHOULD OUR ELECTED OFFICIALS DO?

For the past 18 months, Florida’s private sector and local governments have spearheaded the challenge to EPA’s unprecedented and intrusive disregard for Article 10 of the United States Constitution. It is time for the State Government to pick up the spear and lead the charge to defend Florida’s right to regulate its waters according to principles that are acceptable to our Citizens and in accordance with peer-reviewed science.

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I respectfully request that this delegation take the following actions during this legislative session:

1. Ask the Attorney General of Florida to file a lawsuit to enjoin the EPA from implementing any Numeric Nutrient rule in Florida until such time as the rule is peer-reviewed by third-party experts and until such time as EPA has proposed similar rules in the other 49 states.
2. Prepare a new budget, and amend the existing budget, to support legal efforts to sue EPA.
3. Work with the Governor and the Secretary of FDEP to prepare budgets sufficient to complete work on streamlined, economical, and easy-to-understand water-quality rules that protect Florida waters for all stakeholders.
4. Work with the Governor and the Secretary of FDEP in the next 60 days to direct FDEP staff to file necessary applications for SSACs on behalf of all TMDL stakeholders.

Thank you for your consideration,

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