

SEFLUC Meeting June 9, 2014

Agenda Item 2 b - Regulatory Update - Lauren Burack, City of Boca Raton

- (a) Bacterial Impairment Statewide TMDL & BMAP
 - a. FDEP held a TAC meeting on May 14th. The proposed elements of a Restoration Plan were discussed. JEA's program is the model.
 - b. Would automatically impose Basin Management Action Plan which includes costly list of tasks for a WWTP discharging into impaired water body within one year.
 - c. The FDEP is currently heading towards a livable solution for utilities. It's moving in a positive direction.
 - d. The current language has an issue with sewer overflows which is not supported by utilities and is trying to get changed.
 - e. The current language also tries to regulate private lift stations which is not the job of a utility, rather the FDEP.
- (b) Waters of the US Update
 - a. On April 21, 2014, the EPA and Army Corps of Engineers jointly proposed regulations revising the definitions of waters subject to the jurisdiction of the federal government or "waters of the United States" (WOTUS) as the term is used in the application of the Clean Water Act (CWA) and Corps jurisdictional regulations.
 - b. EPA has indicated that the purpose of the proposed regulations is to clarify what waters are (and are not) covered by the CWA and that the new regulations will not have substantial direct effects on the regulated community since they will not significantly change what is currently considered jurisdictional waters. However, an initial analysis by the Florida Stormwater Association indicates otherwise.
 - c. The proposed regulations begin with the traditional definitions of WOTUS but then expand with the following three (3) main concepts:
 - i. Add definition of "adjacent" waters. The proposed regulations provide that all waters (including wetlands) that are adjacent to the WOTUS are included. *Neighboring* waters are also included in the definition of adjacent which means waters within the floodplain of a WOTUS. The definition of "floodplain" is included. EPA has stated that it will use "best professional judgment" when determining where a floodplain exists.
 - ii. Add definition of "tributaries". The current regulations provide that tributaries of a WOTUS are jurisdictional waters, although "tributary" is not defined. The proposed rules keep the same reference but have an expansive definition of what a tributary is, including man-altered or man-made ponds, canals, and ditches. There are some exceptions where ditches are not included.
 - iii. Waters with "significant nexus". This means that on a case-specific basis, the proposed regulations provide that other waters and wetlands, alone or in

combination with other waters that have a significant effect on the WOTUS, are also considered jurisdictional waters.

- d. One positive item is that the new regulation maintains existing exclusions including waste treatment systems.
 - e. The expansion of the number of jurisdictional waters will be especially pronounced in coastal areas; very wet and very dry states will be largely affected.
 - f. Comments are due July 21st, 2014 although an extension has been requested.
- (c) Anti-degradation Lawsuit
- a. Florida Wildlife Federation filed a lawsuit against EPA asserting that various aspects of Florida's water quality protection programs are inadequate. Basically, they are attempting to invalidate Florida's water quality assessment. A mediation has been initiated.
 - b. FDEP and FWEAUC have filed motions to intervene in the lawsuit with the hopes of delaying the mediation. They are both still waiting to get included.
 - c. There is currently no timeframe for the judge to act.
- (d) NNC Implementation Workshop
- a. The FWEA Utility Council will host a Numeric Nutrient Criteria Implementation Workshop on July 11, 2014 from 10:30 a.m. – 3:00 p.m., at Orange County Utilities, 9150 Curry Ford Road, First Floor Public Meeting Room, Orlando, Florida 32825. This will be a POTW-focused workshop that will educate you on how DEP's nutrient criteria rule will be implemented and what you need to do to prepare. Speakers will include top DEP officials, biologists, utility representatives, wastewater engineers, and legal counsel. This event is for member and non-member utilities. Non-members may be required to pay for the cost of lunch.
 - b. Further information on the NNC Implementation Workshop will be distributed soon. If you have any questions, please do not hesitate to contact ucadmin@fweauc.org.
- (e) Domestic Wastewater Facilities Rule Development
- a. This is basically a clean-up for Chapters 62-600 and 62-601, FAC. For the most part, the changes are inconsequential.
 - b. The FWEAUC submitted a comment letter last month and is still awaiting a response. Tightening up of the proposed revisions is needed.
 - c. There are some sinkhole reporting issues and surface water discharge issues for land application sites.
 - d. The FDEP has not yet met on this item.
- (f) FDEP Cross-Connection Rulemaking (62-655 FAC)
- a. The new rule went into effect on May 5th, 2014. Questions have been raised as to when a public water system is required to have the required Cross-Connection Control Plan, including the required ordinance and related components completed and in place. John Sowerby provided information in an email that states that these requirements were to be in place for decades, they are not in fact, new requirements of the Rule. The FDEP will be checking for compliance with the amended Rule during all future sanitary surveys and starting in 2017, during reviews of CCC Program Annual Reports. Per John Sowerby,

“At these times, any CWS having a written CCC plan that is less stringent than, or that is inconsistent with, Table 62-555.360-1 or 62-555.360-2 will be asked to provide the Department with a written description and schedule of actions to bring the CWS’s written CCC plan into compliance with Tables 62-555.360-1 and 62-555.360-2. If a CWS can demonstrate that it is making a reasonable effort to comply, the Department will be understanding.”

(g) CUPCon Rulemaking Updates

- a. The SFWMD is re-initiating rule development to amend its consumptive use permitting and water supply related program rules as part of the FDEP CUPCon. This re-initiation will cure discrepancies between the versions of rules that were published on December 10, 2013 and acted on by the Governing Board on February 13, 2014, as well as correct some inadvertent text inaccuracies. There are no substantive changes as adopted by the Governing Board in February 2014.
- b. A notice was sent out on May 23rd, 2014 of this Proposed Rule. If requested within 21 days of that notice, a hearing will be held on July 10th, 2014 at 10 am at the District.