SEFLUC
Regulatory Update
January 2025 Meeting

Updates

FDEP Potable Reuse Rulemaking

- On July 1, 2024, DEP has published new notices of rule development and public workshop on proposed amendments to Chapter 62-610, Reuse of Reclaimed Water and Land Application, F.A.C., Chapters 62-550, Drinking Water Standards, Monitoring, and Reporting, and 62-555, Permitting, Construction, Operation, and Maintenance of Public Water Systems, F.A.C., and a proposed new Chapter 62-565, Potable Reuse, F.A.C.,
- Public workshop was held July 15, 2024 – Workshop materials available for review: https://floridadep.gov/water/water/content/water-resource-management-rules-development#DW
- November 8, 2024 – Notice of Proposed Rule
- December 13, 2024 – Environmental Regulation Commission hearing
- January 7, 2025 – Notice of Change published by FDEP – based on public comments and comments by Joint Administrative Procedures Committee

FDEP Rulemaking – Facility Operator License Reciprocity

- Rulemaking to implement Ch. 2023-204, Laws of Fla., directing FDEP to adopt rules for the recognition of water treatment, domestic wastewater treatment and water distribution system operator licenses issued by other states, Federal agencies, US Armed Forces by reciprocity.
- Notice of Rule Development issued November 1, 2023. Preliminary rule text is not yet available.
- Public workshop held December 17, 2024
- FDEP Draft rule language available here

PFAS Standards

- Currently, the EPA has a **non-enforceable** health advisory level of 70 parts per trillion for Perfluorooctanoic acid (PFOA) and Per- and polyfluoroalkyl substances (PFAS) combined.
- **February 20, 2020,** EPA issued preliminary determination that it is proposing to regulate PFOA and PFOS under the SDWA. EPA proposes to establish MCLs for PFOS and PFOA in drinking water, proposes to place restrictions on imported goods with PFAS. Identifies six contaminants that are proposed not to be regulated: 1,1-dichloroethane, acetochlor, methyl bromide (bromomethane), metolachlor, nitrobenzene, and RDX.
    - This is the first stage of regulatory determination.

    - AWWA submitted comments recommending that additional analysis is required to develop appropriate health risk assessments, engage an expert panel to evaluate state of available PFAS health risk data.
- **January 19, 2021** EPA announced several PFAS actions:
    - Initiation of process to develop a national primary drinking water regulation for the two identified PFAS. EPA intends to fast track evaluation of PFAS for future drinking water regulatory determinations
    - Advanced notice of proposed rulemaking to get public comment and data on ongoing PFOA and PFOS evaluation, whether EPA should take additional steps, including whether PFAS chemicals should be subject to regulation as hazardous substances under CERCLA, and whether they should be subject to regulation as hazardous waste under RCRA. See https://www.epa.gov/pfas/epa-actions-address-pfas
    - Also announced additional PFAS data collection toxicity assessment for perflourobutane sulfuric acid (PFBS), collection of data regarding presence and treatment of PFAS in wastewater discharges from manufacturing facilities.
- **July 13, 2021** EPA announced Draft Fifth Contaminant Candidate List (CCL 5)
    - Identifies PFAS as an entire class of contaminants that may require future regulation
- **October 18, 2021** – White House announced acts of eight federal agencies regarding PFAS
    - EPA Strategic Roadmap establishing timeframes to complete rulemaking and research for PFAS including
        - Expanded PFAS monitoring under fifth Unregulated Contaminant Monitoring Rule – Fall 2021
        - Enforceable limits on PFOA and PFOS in drinking water proposed by Fall 2022 and finalized by Fall 2023.
        - New ambient water quality criteria for PFOA and PFOS including aquatic life and human health
        - Proposal to designate PFOA and PFOS as hazardous substances under CERCLA – Final Rule Summer 2023. Potential to require cleanup and cost recovery among responsible parties. Proposed rulemaking available for public comment in Spring 2022
    - https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024
- **April 28, 2022** – EPA announces new interim measures, including use of NPDES program to address PFAS discharges
    - **EPA issued permits to publicly owned treatment works where EPA is the pretreatment control authority**
        - Permit conditions requiring industrial user inventory and BMPs to address PFAS discharges to POTWs
- **June 15, 2022** – EPA releases new drinking water health advisories for PFAS chemicals under the Safe Drinking Water Act. The advisories for PFOS and PFOA set in 2016 were lowered from 70 ppt to .02 ppt (PFOS) and 0.004 ppt (PFOA)—an over 99.9% reduction.

The EPA also added new interim health advisories for two other types of PFAS: 10 ppt for GenX and 2,000 ppt for PFBS.
    - EPA acknowledges that these values are below "the level of both detection and quantitation. This means that it is possible for PFOA or PFOS to be present in drinking water at levels that exceed health advisories even if testing indicates no level of these chemicals." The interim level for PFOS is 200 times lower than can be measured by current technology; it is 1,000 times below measurement limits for PFOA.
    - EPA: "The updated advisory levels, which are based on new science and consider lifetime exposure, indicate that some negative health effects may occur with concentrations of PFOA or PFOS in water that are near zero and below EPA's ability to detect at this time."
    - The EPA's health advisories are "not to be construed as legally enforceable federal standards" but rather "describe information about health effects, analytical methodologies, and treatment technologies."
- EPA expects to propose National Drinking Water Regulation for PFOA and PFOS in fall 2022, for adoption in 2023.
- **August 26, 2022** – EPA proposes to designate PFOA and PFOS as hazardous substances under CERCLA
    - Releases of PFOA or PFOS over 1 pound in 24 hour period would require reporting.
    - Wastewater treatment facilities are identified as a category of potentially affected entities in the proposed rule
    - Proposed rule published September 6, 2022 with comment due date of November 7, 2022. https://www.regulations.gov/document/EPA-HQ-OLEM-2019-0341-0001
    - National Association of Clean Water Agencies, American Water Works Association, Association of Metropolitan Water Agencies and other groups have urged Congress to pass exemption from CERCLA liability for water and wastewater utilities
- **November 2, 2022** – EPA releases final CCL 5 with broadened definition of PFAS chemical class
    - CCL is a list of currently unregulated contaminants that may pose drinking water risks. The list is used to make future determinations about whether the contaminates should be regulated under national primary drinking water regulations.
- **November 25, 2022** – EPA releases Initial Regulatory Flexibility Analysis (IRFA) and Updated Economic Analysis following the completion of a Small Business Advocacy Review (SBAR) Panel for the Toxic Substances Control Act (TSCA) proposed rule for reporting and recordkeeping requirements. EPA has updated its estimate of costs for the proposed rule as proposed from approximately $10.8M to $875M in social costs.
- **December 5, 2022** - EPA proposed rule to eliminate de minimis exemption for reporting to Toxics Release Inventory by certain facilities.

- **December 6, 2022** – EPA issued update to recommendations to states and Publicly Owned Treatment Works (POTW) under existing NPDES permitting authority and through pretreatment and monitoring programs:
    - Update list of industrial users who may be potential sources of PFAS.
    - Monitor effluent, influent, and biosolids for PFAS and provide data on daily monitoring reports (DMRs).
    - Utilize BMPs to address PFAS discharges to POTWs.
    - Develop local limits for PFAS where appropriate.
    - Encourage industrial users to implement pollution prevention, product substitution and good housekeeping practices to reduce PFAS introduced to POTWs.
    - Reduce the amount of PFAS in biosolids
- **January 26, 2023 – Toxic Substances Control Act Proposed Rule**
    - New rule for PFAS in the TSCA inventory that have not been manufactured since 2006. Must notify EPA at least 90 days prior to manufacturing, at which point EPA can determine whether use presents an unreasonable risk of injury to health or environment.
- **March 14, 2023 – Safe Drinking Water Act - National Primary Drinking Water Regulation**
    - Proposed regulation establishing MCLs for 6 PFAS substances in drinking water
    - PFOA and PFOS MCL 4 ppt
    - Hazardous index calculation to limit mixture containing PFNA, PFHxS, PFBS, and/or GenX Chemicals
    - Plan to finalize regulation by end of 2023 with requirement that public water systems will be required to monitor for these chemicals, notify the public of PFAS levels, and reduce PFAS if levels exceed the proposed regulatory standards.
    - EPA is also proposing health-based, non-enforceable Maximum Contaminant Level Goals (MCLGs) for the six PFAS. These levels represent the maximum level of a contaminant in drinking water where there are no known or anticipated negative health effects. The proposed MCLG for PFOA and PFOS is any amount above zero.
    - Virtual public hearing on May 4
    - Comments due by May 30
    - September 2024 target for final rule issuance
- **April 13, 2023 EPA Advanced Notice of Proposed Rulemaking – CERCLA**
    - Request for comments on whether EPA should designate certain PFAS, in addition to PFOA and PFOS, as hazardous substances under CERCLA – PFBS, PFHxS, PFNA, HFPO-DA, PFBA, PFHxA, PFDA, categories of PFAS
    - Comments due by June 12, 2023
- **June 2, 2023 – Chemours, DuPont, Corteva PFAS Drinking Water Settlement**
    - 3 chemical companies announced agreement in principle to resolve PFAS-related drinking water claims for defined public water systems in a pending class action lawsuit

    - $1.185 billion dollars contributed to settlement fund by the companies
    - Finalization of definitive agreement expected end of June 2023 and subject to approval of US District Court, expected to occur 2 months after settlement finalization
    - Class would consist of all Public Water Systems defined under 42 U.S.C § 300f (Safe Drinking Water Act) with a current detection of PFAS, OR that are currently required to monitor for PFAS under EPA UCMR 5 or other applicable state or federal law
    - Does not include claims of personal injury due to PFAS or harm to natural resources
    - As part of approval, Court will establish timeframes for notice to class members, hearings on approval, and opt out procedures
    - Final settlement entered into on June 30, 2023
- **June 22, 2023 – 3M Drinking Water Settlement**
    - Stuart, Florida claim
    - Payment of up to $12.5 billion over 13 years
    - Provides funding for treatment technologies for PWS that have tested positive for PFAS or test positive by the end of 2025
    - Settlement is subject to final court approval
- **June 13, 2023 – PFAS CERCLA Rulemaking Delay**
    - EPA pushes back publication of final rule designating PFAS as hazardous substance under CERCLA from August 2023 to February 2024
    - Gives Congress opportunity to offer statutory protections to water and wastewater providers
- **July 27, 2023 – EPA Semiannual Agenda**
    - EPA indicated that it intends to issue a final Toxic Substances Control Act (TSCA) reporting and recordkeeping Requirements rule by September 2023.
    - EPA anticipates final rule setting MCLs for PFOA and PFOS under the Safe Drinking Water Act by January 2024, a delay of several months.
- **September 28, 2023 – TSCA Reporting and Recordkeeping Final Rule**
    - Requires manufacturers of PFAS to provide information on uses, amounts produced, byproducts, potential toxicity and exposures, and disposal methods for PFAS in their products or processes within 18 months.
- **October 18, 2023 –** EPA adds PFAS substances to Toxics Release Inventory (TRI) under the Emergency Planning Community Right-to-Know Act (EPCRA). Result is that PFAS substances no longer qualify for a de minimis exemption under the rule.
    - Reporting requirements apply to facilities that manufacture, process, or otherwise use listed chemicals, which must report the environmental release and other waste management quantities of TRI chemicals annually.
- **February 1, 2024** – EPA announced proposed rules to "to require corrective action to address releases not only of substances identified as hazardous waste in the regulations but of any substance that meets the statutory definition of hazardous waste" under

Resource Conservation and Recovery Act (RCRA) for hazardous waste treatment, storage and disposal facilities and list 9 additional specific PFAS as hazardous constituents.

- **April 10, 2024** – EPA Final National Primary Drinking Water Regulation for PFAS
  - **MCL** – 4 ppt for PFOA and PFOS, 10ppt for PFNA, PFHxS, PFBS, and GenX (HFPO-DA)
  - **MCLG** – 0 for PFOA and PFOS, 10 ppt for PFNA, PFHxS, PFBS, and GenX (HFPO-DA)
  - **Must complete initial water monitoring for PFAS within 3 years of rule promulgation (by 2027)**
    - Monitoring on quarterly basis for PWS with over 10,000 customers
  - **5 years following promulgation, must take action to comply with exceeded MCLs and notify public of MCL violations (2029)**
  - MCL Hazard Index of 1 for mixtures containing 2 or more of PFNA, PFHxS, PFBS, and GenX (HFPO-DA)
  - Compliance monitoring protocols go into effect when levels reach ½ of MCLs
  - EPA does not specify treatment technologies
  - EPA found that 6 to 10% of the 66,000 public drinking water systems subject to rule are estimated to be out of compliance and will need to take remedial measures.
- **April 19, 2024** – EPA final rule designating PFOA and PFOS as hazardous under CERCLA
  - First PFAS chemicals designated as hazardous substances
  - Gives EPA and states authority to seek investigation and cleanup costs for PFOA and PFOS releases into the environment from any potentially responsible party (PRP)
  - EPA also announced a **PFAS Enforcement Discretion and Settlement Policy**
    - EPA will exercise discretion to focus on entities who "significantly contributed" to the release of PFAS into the environment
    - EPA does not intend to pursue entities where "equitable factors" do not support response actions, including:
      - community water systems and publicly owned treatment works,
      - municipal separate storm sewer systems,
      - publicly owned/operated municipal solid waste landfills,
      - publicly owned airports and local fire departments, and
      - farms where biosolids are applied to the land.
    - For "equitable factor" parties, EPA say it "can use CERCLA statutory authorities when appropriate to enter into settlements that provide contribution protection from third party claims for matters addressed in the settlement."
- **PFAS CERCLA Legislation** – Pending H.R. 7944 and S. 1430 – Water System PFAS Liability Protection Act
  - Would exempt public water systems, public or private treatment works, municipality with FWPCA stormwater discharge permit, wholesale water agencies, and their contractors from liability under CERCLA
- **PFAS Lawsuits**

- June 6, 2024, AWWA and AMWA filed suit regarding EPA NPDWR regulations, particularly with regard to proposed use of Hazard Index, failure to use best available science
- June 10, 2024, National Association of Manufacturers, American Chemistry Council, and others filed suit regarding NPDWR regulations
- June 10, 2024, US Chamber of Commerce and others filed suit challenging CERCLA designation of PFOA and PFOS

- **December 16, 2024** - EPA released Preliminary Effluent Limitation Guidelines (ELG) Plan 16 – Preliminary plan for treatment technologies for harmful chemicals including PFAS
- **December 19, 2024** – EPA releases draft health-based recommendations for levels for PFOA, PFOS, and PFBS.
  - Public comment period through February 24, 2025.
  - Draft criteria which, if not exceeded are protective of adverse health effects due to ingesting water, fish, and shellfish from inland and nearshore water bodies.
  - Significantly lower than drinking water MCLs for PFOA and PFOS announced in April 2024

Table 1. Draft Human Health Criteria (HHC) for Three PFAS.

PFAS	Water + Organism HHC (ng/L; ppt)[1]	Organism Only HHC (ng/L; ppt)[1]
PFOA	0.0009	0.0036
PFOS	0.06	0.07
PFBS	400	500

[1] Values are provided in ng/L units to aid in comparison to method detection limit (MDL).

  - HHCs are considered by states and tribes when adopting water quality criteria under the Clean Water Act

Continuing to Monitor/No Update

USACE's Development of New Lake Okeechobee Regulation Schedule

- **NOTE: See Continuing to Monitor Section Below for Additional Background Information**
- **Project purposes** - flood control, water supply, recreation, navigation and environmental effects to fish and wildlife, cultural and recreational resources.
- Updated Lake Okeechobee System Operating Manual (LOSOM) and accompanying Environmental Impact Statement
- **Announced USACE Schedule:**

Public Scoping/Plan Formulation	Feb. – Sept. 2019
Public Workshops/Alternative Evaluation	Oct. 2019 – Sept. 2021
Prepare Draft LOSOM/EIS	Dec. 2021 – Jul. 2022
Public Comment on LOSOM/EIS	July -Sept. 2022
Prepare Final LOSOM/EIS	Oct. 2022 – Feb. 2023
Final LOSOM/EIS	May 2024
Signed Record of Decision	August 2024

- **Project Delivery Team Meetings:**
    - Using LORS 2008 as baseline
    - PDT and subteams evaluating balancing of plan purposes
    - Does not presume Savings Clause applies to analysis
    - Development of five "balanced" lake schedules and development of balanced plans
- Preliminary preferred Alternative CC identified by Corps on July 19, 2021
- Final preferred alternative announced August 9, 2021
- Next step optimization of Alternative CC in Iteration 3 of evaluation process – now continuing through mid-November
- November 16, 2021 – Corps presents model run that is basis for final Preferred alternative and evaluation of Iteration 3 model optimization data
- **Concerns about evaluation of impacts on water supply and modeling**
- **Draft Operation Guidance/Water Control Plan released 3/7/22**
    - **USACE Operational Guidance Listening Session 3/21/22**
    - **"USACE intends to make releases that are consistent with the SFWMD's requests and does not anticipate a conflict with federal project purposes in any zone of the schedule."**
- **Issue of potential conflict with State of Florida's authority to regulate water supply**
    - SEFLUC Comment Letter Submitted to USACE and SFWMD on 1/7/22
- **Current Concerns**
    - Extreme flexibility in draft operational guidance – lack of predictability
    - Evaluation of real-world impacts of outcomes under operational guidance
    - Impacts of operations on SFWMD MFLs
    - Deference to state water control/ Savings Clause
- **Draft EIS Released July 29, 2022**
- Numerous comments on draft EIS submitted September 12, 2022
    - SEFLUC Comment Letter
        - Importance of State control of operations above Water Shortage Management Zone
        - Proper evaluation of preferred alternative

        - Need for predictability and standards
        - Need for WRDA 2000 baseline
    - SFWMD Comment Letter
        - Need for language in Water Control Plan that specifically relies on SFWMD to guide decisions when entering the Water Shortage Management Zone
- USACE is evaluating and preparing responses to comments, potentially revising Plan
- USACE PDT Meeting on March 15, 2023
    - National Marine Fisheries Service requested transfer to formal consultation to address red tide analysis through Biological Opinion
    - July 2023 Final NMFS BO
    - October 2023 – NEPA public, agency, and tribe review of final EIS and System Operating Manual
    - December 2023 – Record of Decision
- **July 24, 2023 Corps Update**
    - Revised Final LOSOM Water Control Plan released
        - Adds additional language regarding operations in Zone D and coordination between Corps and SFWMD
        - Revisions to authorizing language
        - Provides some additional clarification, but there is still ambiguity about operations in Zone D.
    - National Marine Fisheries Service Biological Opinion still ongoing. Goal of completion by August 30 but delays are possible.
    - Expected final EIS and System Operating Manual in October, and Record of Decision in December 2023.
- **Delays due to NMFS Biological Opinion**
- **November 7, 2023** - SEFLUC submitted an updated comment letter to USACE reiterating the concerns that remain unaddressed in LOSOM Water Control Plan. A coalition of other water users are submitting their own joint letter reiterating their concerns.
- **May 24, 2024** – USACE announced the availability of the final EIS for LOSOM. There will be a 30 day review period ending June 24, 2024. USACE will hold a stakeholder meeting on June 18, 2024.
    - EIS does not change previously proposed Water Control Plan
    - Response to comments matrix is dismissive of concerns previously expressed regarding impacts to water supply, including statement that it is not USACE's responsibility to assure individual permit allocations are maintained.
    - Concerns we have expressed in previous comments remain.
    - Does not achieve Lake Okeechobee MFL compliance
- Final Record of Decision expected August 2024
- **Public Comments on Final EIS** - SEFLUC and numerous other interested parties have submitted comments on the Final EIS. SEFLUC's comments reiterate the concerns it has expressed throughout the process.
- **Final Record of Decision Signed August 12, 2024** – LOSOM schedule is now in effect.
- **USACE September 20, 2024 PDT Meeting – Operations Coordination & Communications Plan**

- USACE presented plan for:
  - Integrating information and data from agencies, tribes, stakeholders in making release decisions under LOSOM
  - Receiving input from agencies and local governments
  - Requested comment by October 4, 2024
- Concern about whether public water supply is being given sufficient consideration in the process
  - **SEFLUC October 4, 2024 Comment Letter** – Submitted to USACE and requesting that the coordination process explicitly take into account public supply data and objectives, and that process is transparent and assessment of whether LOSOM adoption assumptions are being achieved through actual operations

- Local governments concern about LOSOM implementation and impacts

SFWMD LEC Water Supply Plan Update

- https://www.sfwmd.gov/our-work/water-supply/lower-east-coast
- SFWMD First Stakeholder Meeting held May 18, 2023
- Final plan for SFWMD Board approval April 2024
- Updates to demand protections, water resource analyses, water source options, water resource and water supply projects
- Revised Lake Okeechobee MFL Recovery Strategy
  - No change in regulations for existing legal users expected
  - Update Jan 2024
- District presented information on its water resource protection measures, CERP project update, saltwater intrusion, and resiliency efforts.
- Draft of Chapters and Appendices released on February 7, 2024. Comments due by May 15, 2024.
  - Updated Appendix C (MFLs and Prevention and Recovery Strategies) to be provided following completion of modeling and storage assessment analyses for revised Lake Okeechobee MFL Recovery Strategy "in coming months."
  - A stakeholder meeting will be scheduled.
- Draft Appendix C released by SFWMD – Describes MFLs and Prevention & Recovery Strategies
  - Lake Okeechobee – Acknowledges that under LOSOM lake remains in recovery status.
    - No change to regulatory criteria – maintains restricted allocation area (RAA) within Lake Okeechobee Service Area
  - Stakeholder Meeting – July 12, 2024, 10:00 a.m.
- SEFLUC submitted comment letter to SFWMD on August 14, 2024 echoing concerns expressed by Lake Worth Drainage District in its comment letter.
- LEC WSP update expected to go to SFWMD GB for approval on September 12.
- Final Order approving LEC WSP entered September 24, 2024

U.S. EPA Lead and Copper Rule Revision

- EPA published proposed revisions to the Lead and Copper Rule (LCR) on November 13, 2020.
    - Significant changes to existing LCR Rule including:
        - Maintains lead action level at 15 ppb but creates trigger level of 10 ppb that trigger additional planning, monitoring, and treatment requirements
            - Required actions depend on size of community water system, status of use of Corrosion Control Treatment, and existence of Lead Service Lines (LSL)
        - Prioritizes sampling of sites served by LSLs
        - All water systems with LSLs required to prepare plan for an LSL replacement program if lead trigger or action level is exceeded, including notification of consumers
        - Initial LSL inventory completed within 3 years
        - All water systems must conduct targeted sampling and education at schools and childcare facilities they serve
        - When an individual sample exceeds 15 ppb, water systems are required to "find and fix" the sites, provide information to consumers, evaluate cause of elevated lead level
        - Additional reporting requirements to and from primacy agency
- LCR Rules took effect December 16, 2021 – Compliance deadline of October 16, 2024 for submittal of initial LSL inventory.
- EPA announced conclusion of its review and intent to develop additional rules, with objective of replacing 100% of LSLs referred to as Lead and Copper Rule Improvements (LCRI), with intended final action prior to October 16, 2024.
- On October 19, 2022, SEFLUC submitted a comment letter to FDEP regarding Florida-specific guidance regarding implementation of LCRR.
    - Supports FDEP adoption of the EPA's Guidance for Developing and Maintaining a Service Line Inventory (EPA Guidance), released on August 4, 2022.
    - Encourages FDEP to adopt EPA Guidance language regarding Galvanized Requiring Replacement Material Classification.
    - Recommends FDEP approval of the use of predictive modeling as method for potential service line investigations.
    - Requests FDEP clarify that privately maintained water mains, such as large HOAs or universities, are the responsibility of the private system.
    - Request to address the issue of the use of public funds with limitations/restrictions on the use of public funds for private side work.
- EPA April 2023 7th Drinking Water Infrastructure Needs Survey Assessment
    - Projection that Florida has 1,159,300 projected LSLs – more than any other state
    - Drinking Water State Revolving Fund funding of $376,162,000 to Florida — $254,788,000 of which will go toward lead pipe removal for 2023.
- **Lead and Copper Rule Improvements – November 30, 2023**

- EPA announces proposed rule updates to existing LCR adopted in 2021
    - Requires replacement of all lead service lines and galvanized requiring replacelment lines under control of public water systems within 10 years
    - Requires states to set shorter deadlines for individual water systems when state determines it is feasible
    - Allows for deferral of deadlines for systems with high prevalence of LSLs and GRR
    - Applies to all service lines "under the control" of the water system – i.e. legal and physical access
    - Prohibits partial replacements unless part of an emergency repair in in coordination with planned infrastructure work
    - Requires an updated initial service line inventory due 3 years after final LCRI is published. 2021 LCRR requirement of initial inventory with October 16, 2024 deadline remains unchanged
    - Requires water systems to review similar records used to develop 2021 LCRI inventories for connector materials and include locations of lead connectors in the proposed LCRI baseline inventory, and tracking of replaced lead connectors
    - Requires validation of the accuracy of a subset of non-lead service lines in the inventory, based on the number of lines that were identified using techniques other than reviewing records listed in the rule or two-point visual inspection
    - Requires water systems to identify the materials of unknown service lines by the replacement deadline.
    - Expands existing replacement plan requirements to include identification if state and local laws and water tariff agreements relevant to ability to gain access to conduct service line replacement, and a communication strategy to inform consumers and owners of the replacement program.
    - Lowers lead action level to 0.010 mg/L
    - Water systems would be required to collect first liter and fifth liter samples at sites with lead service lines and use the higher of the two values when determining compliance with the rule.
    - Water systems with multiple action level exceedances required to conduct additional outreach and make certified filters available
- Webinar held December 6
- Virtual public hearing January 15, 2024
- Comments due February 5, 2024
- Anticipated finalization by October 2024
- EPA LCRI website
- SEFLUC and other entities have submitted comments to EPA offering questions about feasibility of implementing certain proposed provisions.
    - Issue of access and control of service lines on private property
    - Feasibility of implementing all replacement requirements within 10 years and addressing the lowered lead action level of 10 ug/L

- Final LCRI Rule Issued by EPA October 8, 2024

DEP Triennial Water Quality Review

- DEP has initiated triennial review of state surface water quality standards as required by Federal Clean Water Act.
- Revisions to Ch. 62-302, Ch. 62-303, and Ch. 62-4.
- **Workshop Scheduled for September 10, 2024 – rule language and agenda available**
- https://floridadep.gov/dear/water-quality-standards/content/triennial-review-water-quality-standards
  - Workshop presentation
  - Comments due by September 24.

FDEP Grease Waste Removal and Disposal Rule

- In 2022, the Legislature enacted Section 403.0741, Florida Statutes, creating new requirements for grease waste removal and disposal, and requiring FDEP to adopt rules to implement the section.
- FDEP has scheduled a rulemaking workshop for 9:00 a.m. March 22, 2024 to discuss its rulemaking and the draft rules, which are available for downloading on FDEP's website. Comments due by April 19, 2024.
- The draft rule includes requirements for "inspecting entities" with the authority to inspect originator grease interceptors and grease traps, and procedures for certification of disposal facilities.
  - Facilities operated under permits issued pursuant to chapters 62-701, 62-620, and 62-640 are not required to obtain a separate certification if the processing, disposal of grease waste is authorized by the existing permit.
  - Inspecting entities are required to verify existence of a contract and that removal and disposal is documented in accordance with the rules.

USACE LOSOM 2022 Regulation Schedule Background

- In January 2019, the U.S. Army Corps of Engineers (USACE) announced that a series of National Environmental Policy Act (NEPA) public scoping meetings would be held
- In January 4, 2019 letter, Gov.-Elect DeSantis requested Pres. Trump to direct the U.S. Army Corps of Engineers commence public review of LORS to protect human health and safety, including "mitigating toxic water flows into the population of the Florida public, ensuring the necessary water quantity and quality for the greater Everglades region, and protecting the stability of the Herbert Hoover Dike."

- On January 29, 2019 Gov. DeSantis announced that he supported reducing the lake level to about 10.5 feet, about 2 feet lower than the current 12.6 feet pre-wet season level currently implemented by the U.S. Army Corps of Engineers in the existing 2008 LORS
- **Public Scoping Meetings – SEFLUC Scoping Comments Submitted April 22, 2019.** Member utilities comments at public scoping meeting raise concerns about change in regulation schedule:
    - Need to provide safe, reliable water services to 6.5 million customers
    - CERP and WSE are foundation for current water use permits and SFMWD regulations
    - LORS08 was intended as interim measure and WSE regulation schedule was to be restored after dike repairs
    - Even more onerous regulatory schedule may jeopardize meeting permit and rule requirements, dependable water supply
    - Base condition for reevaluation should recognize reliance of existing programs on WSE, 1 in 10 level of protection for public supply
    - Any proposed changes should maintain current levels of public supply availability and reduce water shortage frequency, take into account cutbacks caused by LORS08
    - Lower lake levels could exacerbate saltwater intrusion, change in scheduled should maintain necessary hydraulic head
    - Evaluation should incorporate climactic impact variability on regional system
- **March 15, 2019 joint letter of concern submitted to USACE and SFWMD regarding current Lake operations**
- **December 2019 University of Florida Water Institute Report regarding LOSOM**
    - Concludes LOSOM 2022 can only result in incremental changes in the operation of the C&SF System as long as the ACOE adheres to the current philosophy of balancing water supply, flood control and environmental protection.
    - Concludes that the only way that LOSOM 2022 can substantively change the operation of the C&SF System would be to change current philosophy of balancing the various uses of the system so that one or more uses would be emphasized to the detriment of other uses.
- **Savings Clause Issue -** USACE has announced that it does not believe the WRDA 2000/CERP "savings clause" applies in the LOSOM process
    - <u>SEFLUC submitted a comment letter to USACE on January 30, 2020, with copies to SFWMD, objecting to failure to apply savings clause in the LOSOM process</u>.
        - WRDA 2000 and CERP adopted with clear understanding that existing legal water uses would be protected, and SFWMD would implement existing water supply planning and regulation
        - Savings clause applies to any project implementing CERP, which LOSOM will do
        - Florida law also protects existing water users, and SFWMD is tasked with protecting these guarantees
    - Potential to address/clarify Savings Clause issue in WRDA 2020 bill currently in Congress

Federal Suit Regarding CERP Implementation

- Lawsuits filed by agricultural interests challenging USACE CERP actions under WRDA 2000 and NEPA, regarding Central Everglades Planning Project ("CEPP").
- Suits raise issue of whether USACE improperly used LORS08 baseline instead of WSE baseline in analysis. Allegation that action violates WRDA 2000 "Savings Clause" and NEPA requirements.
- On April 28, 2022 Court denied USACE motion to dismiss complaints on standing basis.
- Potential implications for evaluation of LOSOM and USACE obligations under Savings Clause and appropriate baseline analysis.
- Trial court ruled in USACE's favor on cross-motions for summary judgment. Savings clause was not violated by using LORS08 as baseline for EAA Project analysis.
- Ag interests appealed to the 11th Circuit Court of Appeals and have filed initial briefs. Several amici curiae have filed briefs in support of savings clause position, including LWDD, West Palm Beach, Florida Farm Bureau.
- SFWMD filed an amicus brief supporting USACE's position. Brief states that:
    - SFWMD issues permits with 1-in-10 year level of certainty, but an allocation is not a guarantee that water is available under those conditions
    - Water supply planning is based on 1-in-10 year standard, but there is no statutory requirement that permits be issued under the same standard

EPA Draft Guidance Implementing Supreme Court's *Maui* Decision

- In 2018, the US Supreme Court issued its opinion in *County of Maui v. Hawaii Wildlife Fund*, in which the Court held that certain point source discharges that travel through groundwater before reaching waters of the United States are subject to regulation under Section 402 of the Clean Water Act, requiring an NPDES permit.
- In late November 2023, EPA issued draft guidance interpreting the Supreme Court decision.
    - No bright-line rule, evaluation is case specific.
    - To trigger the NPDES permit requirement, an operator must first identify a discharge of pollutants that reaches a water of the U.S. If a discharge through groundwater actually reaches a water of the U.S., the operator must then determine if that discharge could be considered a "functional equivalent" of a direct discharge to surface waters.
    - Does not offer additional factors beyond those identified by the Supreme Court
    - Finding a functional equivalent of a single "indicator constituent" would be sufficient to require a NPDES permit.
    - Provides a recommended list of information that may be useful for the permit writer to consider.
    - Existence of a state groundwater protection program is not relevant to the functional equivalent analysis

- EPA states that by issuing the guidance, it intends only to provide clarity to the public regarding existing requirements under the law or Agency policies.

FDEP Clean Waterways Act Stormwater Rulemaking

- Updated stormwater rulemaking pursuant to 2020 SB 712
- Finalization of rulemaking nearing completion
- Anticipated final workshop December 14, 2022
- Potential rule ratification by Legislature in 2023 session

FDEP Outstanding Florida Springs Rulemaking

- Required by 2016 amendments to Section 373.219, Fla. Stat. relating to Outstanding Florida Springs
- Adopting a uniform definition of term "harmful to the water resources" and uniform rules for issuing permits for groundwater withdrawals harmful to the water resources for Outstanding Florida Springs
- Implications for future definitions of "harm" in other contexts
- FDEP Workshop 3/21/22
- Several water suppliers submitted comments requesting clarification
- Numerous comments from environmental interests urging more restrictive rules

USACE Proposed LORS 2008 Deviation

- On August 6, 2019 the USACE posted notice on the Jacksonville District's web site of proposed changes to the LORS 2008 regulation schedule. The purpose of the deviation is to allow the USACE to suspend the current regulation schedule when harmful algal blooms (HABs) are present.
- In 2019 SEFLUC prepared and submitted a letter objecting to the proposed deviation, explaining the issues with the proposed deviation, and recommending that a full EIS be completed to evaluate the full impact of any proposed deviation.
- In 2019 Comment letters were submitted by FDEP, Lake Worth Drainage District, Martin County, SFWMD, Florida Cattleman's Association, Audubon of Florida, the Palm Beach County Economic Council, Florida Inland Navigation District, the Nature Conservancy, Palm Beach County, Florida Crystals, the Lake Okeechobee Anglers, FDACS, Seminole Tribe of Florida, U.S. Sugar and the City of West Palm Beach.
- USACE has prepared a revised supplemental Environmental Assessment responding to comments received in response to the 2019 LORS Planned Deviation Environmental Assessment
    - See: https://www.saj.usace.army.mil/Deviations/ for information regarding planned deviation
    - Additional modeling conducted with Lake Okeechobee Operations Screening Model including effects on water supply

- **SEFLUC submitted detailed comments concerning proposed deviation**
    - USACE lacks authority to implement 2020 deviation
    - Deviation would grant USACE unbridled discretion to ignore existing LORS
    - LOOPS model not appropriate for evaluation of harm of deviation to water supply
    - No evidence deviation will have beneficial impact on HABs
    - Deviation could have negative impacts on water quality, fish and wildlife
    - Deviation will cause adverse impacts to public health, safety, and welfare
    - Potential for increased coastal flooding
    - Potential for harm to MFL water bodies
    - Deviation requires preparation of an EIS
- City of West Palm Beach, Lake Worth DD, Palm Beach County, US Sugar, Nature Conservancy also submitted comments
- SFWMD 7/31/20 comments raise questions about ability to forecast future rainfall, reliance on water bank (net zero balance approach) and predictability of HABs
- **Corps approved the deviation October 8, announced on October 19**
- **On January 15, 2021, a coalition of 27 stakeholders submitted a letter to USACE expressing concern about current and proposed deviations from operation schedule.**
- Implementation began February 2021