

I am the co-founder of the Council of Civic Associations, a not-for-profit organization registered with the State of Florida since 1996. Our goal is to make government at all levels accountable for enforcing the laws for which they are responsible for the benefit of all citizens and not just specific special interest groups.

We believe that the EPA is implementing numeric nutrient criteria as a result of a settlement over a lawsuit filed by Earth Justice – not because they thought it was the right thing to do.

Looking at recent history, the Everglades are an example of the utter breakdown of implementation of the Clean Water Act in Florida.

The Miccosukee Tribe of Indians has attempted to obtain clean water for the Everglades, which is its traditional homeland. Their water quality standards include a 10 ppb numeric criterion for phosphorus, which, was approved by the EPA in 1999, as protective of the Everglades and scientifically defensible. Unfortunately, the Tribe has had to file numerous administrative actions and permit challenges in federal court to force the State of Florida, the SFWMD, the FDEP and EPA to protect their interests through compliance with the Clean Water Act. The EPA has sided with the State on these challenges even on appeal. In each of these cases the judge has ruled in favor of the Tribe.

The following are some of Judge Alan J. Gold's quotes:

“...the Florida Legislature...violated its fundamental commitment and promise to protect the Everglades...” [2]

--Turning a ‘blind eye’, the U.S. Environmental Protection Agency concluded that there was no change in water quality standards.” [2]

-- “...any further delay through endless, undirected rounds of remands to EPA TO DO ITS DUTY, WHICH IT STEADFASTLY HAS REFUSED TO DO, is, alone, insufficient and that it is imperative that this Court exercise its equitable power to avoid environmental injury to

the Everglades through...BLANKET EXEMPTIONS. [93] (Emphasis added)

**** “The ‘effect’ of the Amended EFA [Everglades Forever Act] is to replace the...phosphorus criterion with an escape clause that allows non-compliance...” [46]**

**** “...the Amended [Everglades Forever Act] changes Florida water quality standards by authorizing continuing violations...” [58]**

**** “...the Rule...is layered with ‘avoidance mechanisms’...” [62]**

**** “The EFA has condoned ...a de facto moratorium on compliance...” [76]**

A numeric phosphorus criterion for the Everglades was established over a decade ago and yet the Everglades still receives an excess of 100 tons of phosphorus per year (based on EPA’s own studies).

EPA Region 4 water managers have repeatedly refused to make the State of Florida incorporate enforceable discharge limits into the National Pollutant Discharge Elimination System permits for stormwater treatment areas. EPA’s track record is that they will “work with the Stakeholders to ease the implement impacts” which is code for essentially never requiring compliance/postponing compliance while the water resources continue to significantly deteriorate. In fact, Federal Judge Gold will be holding hearings in April to consider holding the EPA in “Contempt of Court” for their repeated failure(s) to protect the Everglades.

If EPA will not protect the Everglades with its already established numeric phosphorus criterion, why should we expect anything different?

IN A MEMORANDUM, dated JULY 2, 2009 EPA ADMINISTRATOR LISA JACKSON STATES:

-- Clean and safe water is a priority for this Administration. The American public has a right to expect their water will be clean and EPA has an obligation to use its resources and authorities to the fullest to ensure this

result. Too many of our streams, lakes and rivers do not meet our water quality standards.”

--“We are also falling short of this Administration’s expectations for the effectiveness of our clean water enforcement programs.

--The first step is to improve transparency. Americans have a right to know how their government is doing in enforcing laws to protect the Nation’s waters and government has an obligation to clearly inform the public about water quality and our actions to protect it. An informed public is our best ally in pressing for better compliance.

In a letter dated March 17, 2010, from Peter Silva, EPA Asst. Administrator for Water to Mike Sole he writes:

“First, the Agency has decided to delay finalizing promulgation of the “downstream protection value,” or DPVs with respect to downstream estuary protection and to address this issue in the 2011 estuary and coastal rulemaking. The downstream protection values are specific stream concentrations that were proposed to assure the maintenance and protection of water quality standards in downstream estuaries....The Agency is now committed to fold this aspect of establishing protective water quality criteria into the 2011 rulemaking. ...Any Downstream protection values that EPA proposes in January 2011 will also be subject to review and public comment as part of that rulemaking process.”

“Second, EPA will seek additional third party review of the scientific basis for water quality standards to protect downstream estuarine and coastal waters. We commit to consult with FDEP on the scope of third party review and will announce in early April the specific plans for that review.”

CCA OBJECTIONS:

First, Mr. Silva’s proposal to Mr. Sole left the public out of the loop contrary to Administrator Jackson’s belief that the government’s obligation is inform the public about water quality or actions to protect water quality or the need to improve transparency as the public can be the government’s best ally.

Second, the EPA needs to be reminded that they decided that different regions of the state should have different values for surface waters because the inherent environmental differences in those regions. In other words, the EPA recognizes that various parts of the State are essentially different ecosystems. Well, why not look at the surface water systems within each region the same way? Don't just look at the lakes and streams, but also factor in the estuaries so that a holistic approach is taken; an ecosystem.

Third, Mr. Silva's proposal delays the nutrient criterion with another round of scientific review and another round of consultations with the State and another round of public hearings. This delay tactic and the separation of estuaries sounds political to us.

Lastly, Jim Giatinna, Director of Region 4's Water protection Division response to Silva's suggestions was that [it was]... "good news". If the same managers who manipulated and suppressed scientific evaluations are still in charge why should the public expect anything different? We believe that even if nutrient criteria are established there will be no compliance, no enforcement. Without enforcement nutrient criteria is a toothless tiger. Who is going to do the enforcing? The State? The EPA? When the South Florida senior scientist spoke up on many of these same issues he was marginalized and what we see today is a South Florida office that is all but abandoned.

While some of the folks at this hearing are speaking against the establishment of protective criteria to satisfy the special interests of their clients, the silent majority wants clean, safe water AND FOR THE EPA TO DO ITS JOB! We are not buying the EPA's spin campaign.

The CCA HAS SPENT CONSIDERABLE ENERGY TRYING TO WORK THROUGH THE SYSTEM FOR CHANGE. TO THAT END, THE CCA has sent reports with support documents regarding the enforcement of existing laws to Senator Barbara Boxer, Chair, U.S. Senate Environmental and Public Works Committee, Representative Nick Rahall, Chair of the House Committee on Natural Resources, EPA Administrator Lisa Jackson, Mr. Bill Roderick, Deputy Inspector General of the Office of the Inspector General and the Council on Environmental Quality, the President's environmental arm. We have received no response from either committee chairs or agencies WHO HOLD POSITIONS OF AUTHORITY... WHO COULD ACT BUT WHO APPEAR TO NOT BE TRULY INTERESTED

IN PROTECTING OUR FEDERALLY PROTECTED RESOURCES IN
FLORIDA. I submit copies of these reports for the record and copies of the
documents upon request.