

Up and Running – Florida's TMDL Program Has Arrived

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EDITORS NOTE: Because of our extensive coverage of the Florida Water Resources Conference in the June issue, publication of the following technical article on Florida's TMDL program was delayed until July.

The total maximum daily load (TMDL) program promises to be the most wide-ranging and visible water-quality regulatory program nationally since the creation of the National Pollutant Discharge Elimination System (NPDES) program in the 1970s. Domestic and industrial wastewater dischargers across Florida are likely to face significant additional permitting and operational requirements under the TMDL program, and traditionally unregulated nonpoint sources of water pollution are likely to face intense pressure to reduce their pollutant discharges.

The TMDL program is attracting significant interest because implementing TMDLs is expected to be very expensive. The Florida Stormwater Association recently estimated statewide costs of almost **\$1 billion** to retrofit urban stormwater systems so that 45 percent of the developed areas within watersheds on the 1998 303(d) list would achieve compliance with current stormwater treatment standards.¹ This figure jumps to **\$5 billion** if 90 percent of the stormwater systems within impaired watersheds must meet current treatment standards. Of course, these figures do not include costs to other affected sectors such as agricultural or industrial sources, or the administrative costs of developing and implementing TMDLs.

This article examines all significant aspects of Florida's TMDL program. First, it summarizes the legal framework for the program—the relevant provisions of the federal Clean Water Act (CWA) and the state enabling legislation, §403.067, Florida Statutes (F.S.). Second, it reviews the Florida Department of Environmental Protection's (DEP's) methodology rule for determining which waters require TMDLs, Chapter 62-303, Florida Administrative Code (F.A.C.), which is known as the Impaired Waters Rule (IWR). Third, it reviews the legal challenges brought against Florida's TMDL program—a state administrative rule challenge and a federal citizens' suit—and it also previews addi-

tional anticipated litigation. Finally, it summarizes the DEP's TMDL implementation scheme within its watershed management/rotating basin approach and evaluates the DEP's implementation of the TMDL program to date.

Legal Framework for the TMDL Program

Federal Law

The states are directed to identify waters that are not meeting applicable water-quality standards and then to develop TMDLs for those impaired waters, by §303(d) of the CWA. Although these requirements have been present in the CWA since its adoption by Congress in 1972, TMDLs remained an afterthought for over two decades.

During the first decade or so after the enactment of the CWA, the U.S. Environmental Protection Agency (EPA) focused on the promulgation and implementation of (and litigation over) technology-based effluent limitations (TBELs). TBELs are end-of-pipe discharge limitations, based on technological and economic considerations, that are applicable to point sources of pollution. The second decade or so of CWA activities focused on the development and implementation of statewide water-quality standards, which in essence consist of defined "uses" for surface waters, "criteria" to protect those uses, and an "antidegradation policy."

Once the TBELs and water-quality standards were fully implemented, attention was then turned to developing water-quality-based effluent limitations (QBELs), in which the pollutant loading from an individual point source is reduced below the TBEL where necessary to ensure that water-quality standards are attained. NPDES permits were the primary legal vehicle for requiring point sources to comply with TBELs and QBELs.

Throughout these first two decades, the TMDL provisions were perceived as a very low priority by both the EPA and the states. In fact, the EPA did not promulgate its initial, cursory implementing regulations for the TMDL program until 1985, and the current TMDL regulations, located at 40 CFR 130.7, were not adopted until 1992. For its part, the DEP wrote a letter to the EPA in 1989 declaring that the basic purpose of the TMDL program was being fulfilled through other means, including Surface Water

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Improvement Management (SWIM) plans and selected wasteload allocations under Chapter 62-650, F.A.C.

Attention was finally given to the TMDL program in the mid-to-late 1990s, as public-interest groups filed lawsuits in almost 40 states—including Florida—challenging the states' and the EPA's failure to implement the TMDL requirements of the CWA. The lawsuit in Florida ultimately led to the enactment of legislation that clarifies the DEP's authority to implement the TMDL program and provides direction for the program.

State Law

In 1999, the Florida Legislature enacted §403.067, F.S., which is known as the Florida Watershed Restoration Act. This statute establishes the following essential features for the TMDL program in Florida:

- All significant steps in the TMDL process must allow for stakeholder participation, and clear points of entry are provided under Chapter 120, F.S. (Florida's Administrative Procedures Act, or APA) for stakeholders to challenge key decisions in the TMDL process.
- The DEP must adopt by rule its methodology for determining those waters that are impaired and require a TMDL.
- This rule must employ a two-step listing process, with an initial list of potentially impaired waters to be further assessed and a final list of impaired waters that is subject to review under the APA.
- The program is to be "scientifically based" and the listing methodology rule can rely only on "objective and credible data."
- Individual TMDLs must be adopted by rule.
- TMDL allocations may be implemented through a basin plan, and incentives are

provided for agricultural and nonagricultural nonpoint sources to implement Best Management Practices (BMPs) to reduce their pollutant loadings.

- The DEP may adopt rules to establish a pollutant trading program to implement TMDLs.

Florida is the first state with legislation pertaining to the TMDL program and also the first state to require that its listing methodology be formally adopted as a rule.

Florida's Impaired Waters Rule **Development of the Impaired Waters Rule**

One of the more important features of §403.067, F.S., is the requirement that the DEP adopt its listing methodology by rule. Before this statute was enacted, the DEP's previous efforts at listing impaired waters had been based on informal, sometimes ad hoc, criteria that resulted in lists of impaired waters that were inappropriate to serve as the basis for a regulatory program.²

The DEP assembled a highly qualified Technical Advisory Committee (TAC) to assist in the development of the listing methodology rule. The TAC met 13 times over a 12-month period to develop its recommendations. All TAC meetings were publicly-noticed in the *Florida Administrative Weekly*, and the public was invited to attend and provide comments at all of these meetings.

The DEP also held five "policy" meetings specifically to receive comment from interested persons on the policy (as opposed to technical) aspects of the rule. Moreover, the DEP briefed the Environmental Regulation Commission (ERC) five times on the development of the rule and also held two formal rule development workshops.

Many members of the environmental community, the regulated community, state agencies, local governments, and EPA Region IV actively participated in the TAC and policy meetings, rule development workshops, and ERC briefings; many also submitted written comments. Chapter 62-303, F.A.C. (the Impaired Waters Rule, or IWR), was adopted by the ERC on April 26, 2001—the culmination of a very open, public process. Importantly, the department was able to build a substantial consensus among the stakeholders in support of the primary features of the IWR.

Overview of the Impaired Waters Rule

In response to the legislative requirement for the DEP to employ a two-step listing process, the IWR provides criteria for establishing two lists of waters: the Planning List and the Verified List. In general, the Planning List provisions are based on relatively broad, inclusive criteria to ensure that all potentially impaired waters are scheduled for additional data collection and further assessment. Then the Verified List provisions are based upon

more rigorous data quality and quantity thresholds to ensure that listed waters truly are impaired. In this way, the IWR strikes a balance between ensuring both that listed waters truly are impaired³—in order to justify the significant costs inherent in developing and implementing the TMDL—and that all waters that are not attaining their designated uses are identified and scheduled for TMDL development if appropriate.

Another key feature of the rule is that it focuses on impairment that can be remedied through the TMDL program. This concept is addressed in three ways.

- First, only waters impaired by point and nonpoint sources of pollution will be listed; waters that do not meet water-quality standards due to natural conditions or physical alterations of a water body (such as a dredged inlet) will not be placed on the Verified List. See Rule 62-303.100(2), F.A.C.
- Second, data collected under conditions that are not representative of conditions in the water body will be excluded from the assessment, including data collected immediately after a spill event or severe storm events. See e.g., Rule 62-303.420(5), F.A.C.
- Third, waters will not be placed on the Verified List if reasonable assurance is provided to the DEP that other pollution-control programs will remedy the impairment. See Rule 62-303.600, F.A.C.

A third key feature of the IWR is the concept of independent applicability. The Planning List and Verified List sections of the rule contain parallel provisions for evaluating the compliance of a water body with the following designated uses:

- Aquatic Life Support, which is in turn broken down into the following four components:
 - Numeric water-quality criteria
 - Biological assessment
 - Toxicity
 - Interpretation of narrative nutrient criteria
- Primary Contact and Recreation Use Support
- Fish and Shellfish Consumption Use Support
- Drinking-Water Use Support and Protection of Human Health.

In the past, the DEP would average the "score" for a water body for each of these designated uses to make its ultimate determination on impairment. Under the concept of independent applicability, however, a water body will be listed if it fails the criteria for any of these designated uses or any one of the four components of the Aquatic Life Support designated use.

Specific Features of the Impaired Waters Rule

Numeric Water Quality Criteria (62-303.320 and .420): The most common forms

of water-quality data are grab samples that are analyzed to determine the numeric concentrations of various chemical constituents of the water, such as dissolved oxygen, ammonia, chlorine, copper, and lead. The DEP's numeric water-quality criteria for approximately 100 parameters are set forth in the table at Rule 62-302.530, F.A.C. In order to correlate a finite number of random sam-

	Planning List	Verified List
Minimum Sample Size.....	10	20
Exceedance Frequency	10%	10%
Confidence Level	80%	90%
Maximum Age of Data	10 years	5 years

pling events with compliance with the numeric water quality criteria, the IWR applies universally recognized statistical concepts such as exceedance frequencies, confidence levels, and minimum sample sizes. The IWR establishes the following thresholds:

Rules 62-303.320 and 62-303.420, F.A.C., respectively: Previously the DEP had used the 10-percent exceedance frequency without the use of minimum sample sizes, confidence levels, or age restrictions on the data. The rule also establishes minimum intervals between sampling events (one week), the minimum distance between sampling stations (generally 200 meters), seasonal requirements (the data set must include at least one data point from three of the four calendar quarters), and quality-assurance requirements.

Biological Assessment (62-303.330 and .430): The IWR employs three rapid bioassessment procedures to evaluate the biological health of a water body by examining its population of benthic macroinvertebrates. The Stream Condition Index and BioRecon are used for rivers and streams, and the benthic macroinvertebrate component of the Lake Condition Index is used for lakes. One failure within the past 10 years is sufficient to place a water body on the Planning List; however, two failures are required within the past five years for a water body to be placed on the Verified List.

All bioassessments must conform to the specific DEP-approved standard operating procedures for each method that have recently been adopted into the DEP's quality-assurance rule, Chapter 62-160, F.A.C. Also, the DEP must identify the pollutant causing the biological impairment before placing a water body on the Verified List under the biological assessment provisions. Note that at this time, the DEP has not validated any rapid bioassessment procedures for estuaries or marine waters.

Toxicity (62-303.340 and .440): A water body must fail two ambient toxicity tests within 12 months in order to be placed on

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the Planning List for toxicity. If the tests are for acute toxicity, the water will be placed on the Verified List once the pollutant is identified. If the tests are for chronic toxicity, there must also be one failed bioassessment to confirm the chronic toxicity results.

Interpretation of Narrative Nutrient Criteria (62-303.350-.353 and .450): The DEP has the following narrative criterion for nutrients: "In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna." Rule 62-302.530(48)(b), F.A.C. The IWR establishes the following mostly numeric thresholds to interpret this narrative criterion:

- **Streams:** Algae mats that pose a nuisance or hinder reproduction of a threatened or endangered species; **or** annual mean chlorophyll a concentrations that are either greater than 20 ug/L **or** have increased 50 percent over historical values two years in a row.
- **Lakes:** For high-color lakes, the annual mean TSI exceeds 60, and for low-color lakes, the annual mean TSI exceeds 40; **or** for any lake the annual mean TSI has increased in a statistically significant manner over the assessment period; **or** the TSI has increased by more than 10 units over historic values.
- **Estuaries:** The annual mean chlorophyll a level for any year is greater than 11 ug/L, **or** data indicate annual mean chlorophyll a values have increased by more than 50 percent over historic values for at least two consecutive years.

Primary Contact and Recreation Use Support (62-303.360 and .460): This section of the IWR relies upon numeric water-quality data for fecal and total coliforms; and on advisories, warnings, and closures issued for public beaches and bathing areas.

Fish and Shellfish Consumption Use Support (62-303.370 and .470): This portion of the IWR relies upon numeric water quality data for fecal and total coliforms; fish consumption advisories issued by the Department of Health; and on changes in shellfish harvesting classifications as determined by the Shellfish Evaluation and Assessment Program.

Drinking Water Use Support and Protection of Human Health (62-303.380 and .480): This section of the IWR employs various criteria related to drinking water and human health criteria.

Legal Challenges Against the IWR State Administrative Challenge

Immediately upon its promulgation, the IWR was challenged by a handful of local activist groups, pursuant to Chapter 120, Fla.

Stat.⁴ Their challenge was a wide-ranging attack on virtually every aspect of the rule. Among other things, the activists challenged the following features of the rule:

- The use of the two-step listing process (they argued that the broader Planning List should be the official 303(d) list of impaired waters for which TMDLs would be developed)
- The use of statistical methods to evaluate compliance with numeric water-quality data (in fact, they argued that a single exceedance—no matter how minor or how old and regardless of the number of samples that had been taken—should be sufficient for listing)
- The exclusion of nonrepresentative data from the assessment

Since the activists' attack on the IWR threatened the entire structure of the rule, several industry associations intervened in support of the rule.⁵ A three-week administrative hearing ensued, and 30 witnesses testified. The Administrative Law Judge (ALJ) ultimately rejected all the activists' policy, technical, and scientific criticisms of the IWR in a comprehensive, 437-page final order. The ALJ also determined that the IWR is consistent with §403.067, F.S., and all other applicable state laws.

Shortly after the final order was issued, the DEP filed the IWR with the secretary of state and it became effective on June 10, 2002. Although the activists immediately appealed this final order, their appeal did stay the effectiveness of the IWR. Accordingly, the DEP began to implement the IWR in earnest in the summer of 2002, the details of which are discussed in the following section. On May 20, 2003, the 1st District Court of Appeals dismissed the activists' appeals, which effectively ends all challenges to the IWR under state law.

Federal Citizens' Suit

In December 2002, many of the same groups initiated a challenge against the IWR in federal court. Although there is no requirement under the CWA or its implementing regulations that the EPA must review and approve or disapprove a state's 303(d) listing methodology, there is a requirement that the EPA must approve all revisions to a state's water-quality standards. The activists' complaint alleges that the IWR effects revisions to Florida's water-quality standards, and thus it must be approved or disapproved by the EPA. The relief sought is actually quite limited: an order from the court requiring the EPA to review the IWR as a revision to Florida's water-quality standards. On May 29, 2003, the federal judge rejected the activists' claims that the IWR constituted a revision to Florida's water-quality

standards. It is possible that the activists will appeal this ruling.

While the activists in this lawsuit sought a relatively limited form of relief, their underlying agenda appears to be much broader: whether the DEP or the EPA will ultimately control the TMDL program in Florida. Their overarching concern seems to be a belief that the IWR is too restrictive and therefore will fail to list waters that should be found to be impaired. They will have an opportunity to promote this belief in yet another lawsuit in the near future.

EPA's Review of the Verified List

On October 1, 2002, the DEP submitted its first 303(d) list of impaired waters to the EPA that was developed in accordance with the IWR. (The adoption of this first Verified List under the IWR is discussed in the following section). On June 11, 2003, the EPA partially approved the DEP's 303(d) list, but it also partially disapproved the list and consequently added more waters to the list. The EPA is accepting comment on the waters that it is adding through July 18, 2003. It is expected that the same activists from the prior lawsuits will challenge the EPA's partial approval. In addition, it is possible that the DEP and other stakeholders may challenge the EPA's addition of waters to Florida's 303(d) list. Either way, it appears that it will be quite some time before all legal challenges to the IWR are fully resolved.

Initial Implementation of the IWR DEP's Watershed Management Approach

In the summer of 2000, the DEP initiated its watershed management approach for implementing the TMDL program. This approach manages water resources within their natural hydrologic boundaries, as opposed to focusing on political boundaries such as counties and cities. The DEP has outlined five distinct phases of its watershed management approach to guide the implementation of the TMDL program.

Phase 1: Preliminary Evaluation. To initiate TMDL activity within a given basin, the DEP will gather and evaluate all existing water-quality data for that watershed, as well as existing and proposed water-quality management activities. At the end of Phase 1, the DEP will issue a Basin Status Report, which will include the Planning List of potentially impaired waters for that basin and a Strategic Monitoring Plan to guide the collection of additional water-quality data.

Phase 2: Strategic Monitoring and Assessment. Phase 2 involves the collection of new data in accordance with the Strategic Monitoring Plan and the production of a Basin Assessment Report (BAR). The BAR

DEP District	Group 1 Basins	Group 2 Basins	Group 3 Basins	Group 4 Basins	Group 5 Basins
NW	Ochlockonee-St. Marks	Apalachicola-Chipola	Choctawhatchee-St. Andrews Bay	Pensacola Bay	Perdido Bay
NE	Suwannee	Lower St. Johns	Upper St. Johns	Nassau-St. Marys	Upper East Coast
Central	Ocklawaha	Middle St. Johns		Kissimmee	Indian River Lagoon
SW	Tampa Bay	Tampa Bay Tributaries	Sarasota Bay-Peace-Myakka	Withlacoochee	Springs Coast
S	Everglades West Coast	Charlotte Harbor	Caloosahatchee	Fisheating Creek	Florida Keys
SE	Lake Okeechobee	St.Lucie-Loxahatchee	Lake Worth Lagoon-Palm Beach Coast	Southeast Coast Biscayne Bay	Everglades

Basins by Group and DEP District Office ⁹

evaluates water quality for all waters within the basin and serves as the comprehensive 305(b) water-quality report for the basin. The BAR also includes the draft Verified List for the basin, which is then workshopped and adopted by secretarial order.

Phase 3: Development and Adoption of TMDLs. TMDLs will be developed for the waters on the final Verified List. Public meetings will be held on the draft TMDLs, and each final TMDL must be adopted by rule.

Phase 4: Development of TMDL Management Action Plan. Broad stakeholder participation will be encouraged in the development of the Management Action Plan (MAP), which is the implementation plan for each TMDL. The MAP will describe the allocations of allowable pollutant loading, both on an individual basis (primarily for NPDES sources) and by source categories (primarily for non-NPDES sources). The MAP will also provide an implementation schedule for the required pollutant load reductions.

Phase 5: Implementation. Begin implementation of the MAP, and secure public funding where it is needed and available.

Each phase is expected to take approximately one calendar year to complete, and when Phase 5 is complete, the DEP will begin the process again for that basin with Phase 1.

DEP's Basin Rotation Schedule

Due to administrative resource limitations, the DEP could not initiate the watershed management process for the entire state

simultaneously, so it has developed a basin rotation schedule for implementing the TMDL program. The department has six district offices, and the geographic area of each office has been subdivided into five basin groupings, for a total of 30 basin groupings across the state, as illustrated above.

Starting with the initiation of the watershed management approach in the summer of 2000, DEP is commencing the process for one basin grouping in each district per year. Thus, the Group 1 basins began Phase 1 in mid-2000, and the Group 5 basins will begin Phase 1 in mid-2004, as illustrated in the chart below.

While the primary focus of the watershed management approach and associated basin rotation schedule is the TMDL program, other existing water-quality programs will be incorporated into this framework as well. For example, the DEP intends to eventually align all NPDES permits within a given watershed on the same schedule for permit renewals, and to schedule those renewals during Phase 5.

The Group 1 Verified List

The DEP adopted the Verified List for the Group 1 basins by secretarial order dated August 28, 2002. A draft list had been made available for review, and eight workshops (including one within each Group 1 basin) were held to receive public comment on the draft list.

A total of 226 pollutant-specific water segments were listed as impaired and in need of a TMDL; however, 226 separate TMDLs

will not be necessary because many water bodies have more than one segment listed and some TMDLs may address more than one pollutant. For example, a TMDL for nutrients could address both nutrient and dissolved oxygen impairment.

The Verified List also includes a schedule for TMDL development. Approximately half of the listed water segments are scheduled for immediate TMDL development and should have TMDLs adopted by rule during 2003. The remaining water segments will be deferred until the next watershed management cycle and are expected to have TMDLs adopted in 2008.

The broad-based support for the IWR is reflected in the minimal number of administrative challenges that were filed against the August 28, 2002, order. Two challenges were filed alleging that the DEP had failed to list certain waters that should have been determined to be impaired under the IWR, and both have been resolved without resort to litigation. One resulted in the addition of certain estuarine water segments in Lee County, and the other resulted in no changes to the Verified List.

One other challenge was filed contesting the listing of certain water segments in the Suwannee River basin. This challenge also has been resolved without litigation and resulted in the removal of two water segments from the Verified List. On March 18, 2003, the DEP issued an order amending the Verified List to reflect these and other corrections to the August 28, 2002, Verified List.

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Basin Rotation Schedule For TMDL Development and Implementation ⁹

YEAR	00	01	01	02	02	03	03	04	04	05	05	06	06	07	07	08	08	09	09	10
Group 1	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5
Group 2		PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3	PHASE 4
Group 3			PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3
Group 4				PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2
Group 5					PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 1

The Verified List for the Group 1 basins was submitted to the EPA on October 1, 2002. As of this writing, the EPA had not yet taken formal action regarding its review of this 303(d) list.

Following the Basin Rotation Schedule chart, the DEP will be undertaking TMDL activities across most of the state in 2003. By this summer, the department should begin adopting TMDLs for the Group 1 basins, adopt the Verified List for the Group 2 basins, and issue the Planning Lists for the Group 3 basins. During the second half of 2003, the DEP will also begin Phase 1 for the Group 4 basins.

Summary

After languishing in the regulatory backwaters for over two decades, the Florida Legislature provided significant direction in §403.067, F.S. (1999), to guide the DEP's development and implementation of the TMDL program. Responding to this statute, in 2001 the DEP promulgated the IWR, which is a comprehensive listing methodology for determining which waters require a TMDL.

Although it enjoys broad-based support among a wide range of stakeholders, the IWR has become the target of a few activist groups who have challenged it in both state and fed-

eral court. While these legal challenges have yet to be fully resolved, the DEP has begun implementing the IWR in earnest. The first Verified List of impaired waters was issued for the Group 1 basins in August 2002, and another basin grouping will be addressed each subsequent summer. The DEP will also adopt its first TMDLs this summer. Thus, the TMDL program is finally up and running in Florida.

References

¹ *Interim Project Report 2003-136, p.7, The Florida Senate, January 2003.*

² *As testified by Jerry Brooks, the DEP's deputy division director of water resource management, at the IWR rule challenge hearing (see hearing transcript, p. 1976).*

³ *The Verified List serves as Florida's list of waters that require TMDLs, as required by CWA §303(d), so it is also referred to as the 303(d) list.*

⁴ *Lane, et al v. DEP, DOAH Case Nos. 01-1332RP, 01-1462RP to 01-1467RP, and 01-1797RP. Jacqueline Lane was unrepresented and filed a *pro se* petition. Linda Young; Apalachicola Bay and River Keeper (ABARK); Save Our Bays, Air and Canals; Florida Public Interest Research Group Citizen Lobby (FPIRG); Santa Rosa Sound Coalition; Friends of Saint Sebastian River (FSSR); and Save Our Suwannee (SOS) were represented by the same counsel and filed similar petitions. All of these cases were consolidated.*

⁵ *The Florida Water Environment Association Utility Council, the Florida Electric Power Coordinating Group, the Florida Minerals and Chemistry Council, and the Florida Pulp & Paper Association Environmental Affairs intervened in the consolidated cases. The regulated community did not consider the IWR to be perfect by any means, and in fact made significant concessions during the rulemaking process regarding minimum sample sizes, confidence levels, and the delisting provisions (to name a few). They intervened to support the IWR because it represents a much more reasonable approach to listing waters than the informal, anecdotal approach promoted by these activist organizations.*

⁶ *Lane v. DEP, Case No. 1D02-2043; and ABARK v. DEP, Case No. 1D02-2319.*

⁷ *FPIRG v. EPA, Civil Action No. 4:02CV408-WS (N.D.Fla., filed December 2, 2002). The Petitioners are FPIRG, SOS, FSSR, Linda Young, and Sierra Club; all but the Sierra Club were parties to the state administrative rule challenge and subsequent appeal.*

⁸ *Comments by David Ludder, Esq., at the Senate Natural Resources Committee meeting in Tallahassee on January 21, 2003. Mr. Ludder is one of three counsel of record for the activists in the recent CWA citizens' suit in federal court.*

⁹ *Both charts were borrowed from an attachment to a DEP e-mail discussing TMDLs that is dated 10/7/02.*

