

Navarre group sues EPA over clean water

 pnj.com/story/news/2016/12/30/navarre-group-sues-epa-over-clean-water/95958700/

12/30/2016

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(Photo: Gregg Pachkowski/gregg@pnj.com)

A Navarre-based environmental group has filed a lawsuit asking the U.S. Environmental Protection Agency to create and implement new, more stringent guidelines limiting the toxins that can be released into Florida's surface water.



Florida Clean Water Network Inc., the nonprofit group behind the suit, is one of the numerous organizations and municipalities across the state that oppose new water quality standards proposed by the Florida Department of Environmental Protection. Opponents believe the DEP's new rules will allow higher levels of dangerous pollutants to be dumped in Florida's swimming, fishing and drinking water.

The DEP has vehemently denied the assertions as false, stating the new rules strengthen, not weaken, public protections. In July of this year, the Environmental Regulation Commission approved the organization's new guidelines by a 3-2 vote.

The EPA still has to approve the new standards before they go into effect, and the Florida Clean Water Network filed its lawsuit in federal court Wednesday in hopes of compelling the EPA to discard the DEP's standards and create new regulations internally.

Human Health Criteria

Human Health Criteria are water-quality standards set by the EPA and DEP to ensure public safety by capping the allowable concentrations of toxins and carcinogens in rivers, streams, lakes and estuaries.

Until the DEP drafted its new regulations, Florida's human health criteria had not been updated since 1992.

In a written statement issued in July, DEP Secretary Jon Steverson said the new DEP standards "are consistent with EPA's recommendations, set stringent and protective criteria for 39 chemicals that currently have no limits, and also update 43 chemicals whose criteria are more than 20 years old."

However, environmental groups say the new regulations loosen restrictions on roughly half of the previously regulated chemicals. For example, the new criteria would allow for slightly higher concentrations of benzene, a chemical that causes cancer and anemia and is used in the production of rubber, paint and pesticides.

Benzene has also been found in fracking fluid, and some critics allege the DEP's new regulations were designed to help accommodate the fracking industry's attempts to push into Florida. DEP officials have strongly denied those allegations.

The DEP said its criteria are based on a new "probabilistic" methodology that better accounts for variability in citizens' age, body weight and health than the EPA's "deterministic" calculation model. Florida is the first state to adopt the probabilistic model in determining human health criteria.

Mary Christman, an environmental statistician at MCC Statistical Consulting LLC, said she reviewed documents the DEP published explaining its methodology and found it lacked information required for other scientists to replicate

the organization's results. When Christman asked the DEP for clarification on their methodology, the DEP refused to answer her questions citing open litigation, she said.



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In this October 2015 file photo, Ryan Deen fishes from the pier as the sun sets at Maritime Park in Pensacola. (Photo: Gregg Pachkowski/gregg@pnj.com)

Christman noted under the new method, the limits on approximately 23 chemicals had been relaxed compared to what they were before. She said David Ludden, a Tallahassee environmental attorney representing Florida Clean Water Network, found that the allowable concentrations for "a significant fraction" of the newly regulated chemicals were higher than they would have been under EPA's regulations.

Christman said there was nothing inherently wrong with the probabilistic method, but there were concerns the DEP had implemented it without enough outside review.

"A very big issue in the scientific community now is the ability to be able to reproduce someone's work," Christman said. "If you haven't provided enough information for your work to be replicated, you have fallen down on describing your approach and conclusions."

Florida Clean Water Network has helped spearhead the resistance of the new criteria, but others who've voiced concern include numerous conservation groups, the Seminole Tribe of Florida, representatives of the city of Miami and Martin County, and numerous other municipalities and individuals.

In July, nine members of Florida's Democratic congressional delegation sent a letter to EPA Administrator Gina McCarthy expressing their misgivings about the new regulations.

"While we support efforts to update the standards that were last approved in 1992, we are deeply concerned that the state is proposing to raise the allowable levels for dozens of chemicals, including more than half of the most

dangerous cancer-causing chemicals in the proposal," the letter said. "In several instances, these proposed levels exceed EPA's recommendations."

Florida Clean Water Network v. EPA

Numerous scientific studies conducted since 1992 have indicated, among others things, that Floridians consume seafood at rates between two and seven times what had been previously calculated. Florida Clean Water Network argues that health standards must be adjusted accordingly to protect human health, but that the DEP has failed to do so effectively.

The recent lawsuit is in essence an effort to circumvent the DEP entirely.

"My organization has been pushing the state to update these regulations since the 1990s," Young said. "We've been very patient, but the state's not doing what we need to move forward."

In 2009, the Florida Clean Water Network directly petitioned the EPA to create new water quality standards for Florida, and threatened to file suit in 2011 when the agency didn't respond. The two groups sat down at the table together and avoided a lawsuit, but the EPA never took action on Florida Clean Water Network's petition.

With the DEP's regulations now looming, the Florida Clean Water Network is again pushing the EPA for a response.

Ludden said the DEP missed numerous critical federal deadlines including: failing to comply with the Clean Water Act by updating water quality standards every three years, failing to give adequate prior public notice of the Environmental Regulation Commission's vote July 26, and failing to submit the new criteria to the EPA for review and approval within 30 days.

Ludden said in light of the violations, "We think the EPA has to disapprove (DEP's criteria), and in absence of these rules, the EPA should promulgate their own."

Young, who often traverses Florida's waterways with her own young grandchildren, expressed that protecting the health of millions of Florida families should not be put off any longer.

"DEP just went to sleep, and for EPA to tell us, 'We're not going to do anything about it. We're just going to see what happens,' well, that's what they've been doing for the past 25 years," Young said. "Meanwhile, our water just gets more and more toxic."

Department of Environmental Protection

The DEP's responses to common questions about the new Human Health Criteria can be found here: <https://depnewsroom.files.wordpress.com/2016/06/human-health-criteria-faq-0725161.pdf>