

Lawmakers grill DEP over water pollution limits

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(Photo: Jeff Burlew/Democrat)

Members of the Senate Committee on Environmental Preservation and Conservation grilled Department of Environmental Protection brass Tuesday on its handling of controversial new water pollution limits.

DEP in May proposed to update human health criteria for 43 chemical compounds that are allowed in Florida's rivers, lakes and estuaries and create new limits for 39 others. Under the proposal, limits would become less stringent for roughly half the compounds on the books and more stringent for the rest.

The agency's plan drew intense opposition from environmental groups and others not only over relaxed standards for some of the chemicals but also because of the way the agency rolled out its proposal.

DEP initially said it would take the proposal to the state Environmental Regulation Commission for approval in the fall but moved the meeting up to July. And the ERC, whose seven members are appointed by the governor, voted on the plan while two of its seats set aside for environmental and local government representation were vacant. The ERC in July approved the limits in a 3-2 vote.

Sen. Jack Latvala, R-Clearwater, asked whether the agency factored in the vacancies when it moved up its timeline for ERC approval.

"What was the rush, in other words?" Latvala asked. "Why something that is so important to our people's health, so important to our state — nothing more important than water — why would we accelerate it like that?"

Drew Bartlett, deputy secretary for ecosystem restoration, replied by saying the agency saw no need to wait until the fall. The state, under the Clean Water Act, is supposed to review and possibly update its criteria every three years but hadn't since the early 1990s. An attempt to pass new rules in 2012 failed.

"We just did not have any reason to delay any longer," Bartlett said.

Sen. Gary Farmer Jr., D-Fort Lauderdale, asked Bartlett about agency moves to block legal challenges mounted by the city of Miami, the Seminole Tribe of Florida and others. An administrative law judge ruled against the challenges on the grounds they were filed late; the challenges are currently on appeal.

"I don't understand why the department would invoke a procedural technicality to dismiss a substantive review of something as important as our water quality," Farmer said. "You could have waived that timeliness objection and allowed the appeal to proceed on its merits. Why didn't you do that?"

Bartlett said DEP couldn't waive administrative rules. He also noted the criteria can still be challenged.

Sen. Linda Stewart, D-Orlando, asked whether the standards were lowered to allow for fracking in Florida, something many in the environmental community believe to be the case. Limits on benzene, a carcinogenic fracking ingredient, would be less stringent for fishing and swimming waters under DEP's plan but more stringent for potable waters.

Bartlett said the new limits were based on the Clean Water Act and are "not related to any kind of fracking consideration."

Patricia T. Thomas, a retired Tallahassee social worker who attended the committee meeting, said she doesn't buy DEP's explanation.

"I believe it was pushed through by our governor because he's Republican and he wants fracking," she said. "He's more concerned about short-term jobs than long-term environmental practice."

In other developments, the Florida Clean Water Network, which has led efforts to fight the new water pollution limits, filed a federal lawsuit against the Environmental Protection Agency in late December seeking stronger standards.

The lawsuit, filed in U.S. District Court in Pensacola, demands that the administrator of the EPA approve or deny a petition the group filed in 2009 seeking new water quality criteria.

It alleges DEP failed to comply with Clean Water Act requirements on multiple occasions while revising its limits. DEP didn't give at least 45 days notice before the July hearing and failed to submit its proposal to EPA within 30 days of the plan's approval, the lawsuit says.

Linda Young, executive director of the Florida Clean Water Network, said that if the EPA grants the 2009 petition, the federal agency could come up with its own limits for the state or require DEP to start over with its rule-making. If the EPA denies the petition, it could open the door to a new round of litigation, she said.

"They did it so underhandedly and so dishonestly and it's obvious why," Young said. "It's a bad public policy that they're shoving down our throats."

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