

More toxic chemicals allowed in Florida waterways

HIGHLIGHTS

State environmental regulators vote 3-2 in favor of new rules

This is the first update to state water standards in 24 years

The number of regulated chemicals will increase from 54 to 92



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TALLAHASSEE —

TALLAHASSEE Florida regulators voted to approve new water quality standards Tuesday that will increase the amount of cancer-causing toxins allowed in Florida's rivers and streams under a plan the state says will protect more Floridians than current standards.

The Environmental Regulation Commission voted 3-2 to approve a proposal drafted by state regulators that would impose new standards on 39 chemicals not currently regulated by the state and revise the regulations on 43 other toxins, most of which are carcinogens.

“We have not updated these parameters since 1992. It is more good than harm,” said Cari Roth, a Tallahassee lawyer who represents developers on the commission and serves as its chair. “The practical effect is, it is not going to increase the amount of toxins going into our waters.”

But the proposal, based on a one-of-a-kind scientific method developed by the Florida Department of Environmental Protection and nicknamed “Monte Carlo,” is being vigorously criticized by environmental groups. They warn the new standard will allow polluters to dump dangerous amounts of chemicals in high concentrations into Florida waters before they trigger the limits of the new rule, and allow Florida to adhere to standards that are weaker than federal guidelines.

“Monte Carlo gambling with our children's safety is unacceptable,” said Marty Baum of Indian Riverkeeper, an environmental group based in Indian River County.

Under the proposal, the acceptable levels of toxins will be increased for more than two dozen known carcinogens and decreased for 13 currently regulated chemicals. DEP, however, touted the part of the plan that will impose new rules on 39 other chemicals that are not currently regulated, including two carcinogens.

“The department has left no stone unturned to develop science-based and legally defensible criteria,” said Tom Frick, director of the DEP division of environmental management and restoration, at the daylong meeting.

The federal Environmental Protection Agency must now approve the rules, which are required under the federal Clean Water Act, before they take effect. After the narrow vote, several members of Florida's congressional delegation sent a letter to the head of the EPA, voicing their concerns and asking for a public comment period for them to carefully evaluate each proposed human health criteria “to ensure the utmost protection for our population, environment, and economy.”

Linda Young, executive director of Clean Water Network, which led the opposition to the rule, said her group will urge EPA to reject the rule but, if it is approved, “then absolutely we will file suit,” she said.

DEP aggressively defended its proposal, saying it has been developing the criteria for more than a decade and was forced to develop a consistent model that could be defended in court. Drew Bartlett, assistant secretary at DEP, said one of the most frequent questions is why the state can’t retain the current levels relating to carcinogens while adopting new levels for all the other compounds.

“What would be wrong with keeping the current levels?” he said. “We’re charged with implementing state law and federal law, and those two laws don’t make room for not basing the criteria on a scientific process because they have to be based on logic and facts.”

Agency officials also defended the use of the Monte Carlo scientific method — also known as “probabilistic analysis” — saying it is more responsive to Florida variables by shielding people who consume large amounts of fish from the buildup of dangerous toxins.

The approach creates thousands of variables to calculate the health effects of being exposed to a lifetime of toxic chemicals by taking into consideration average body weight, drinking water consumption rate, fish and shellfish consumption rate, and the fat content of fish — important because fat absorbs most of the toxins in seafood.

During the hearing, more than three dozen people representing the Miccosukee Tribe, the Conservancy of Southwest Florida, Broward County, Martin County, Physicians for Social Responsibility and others raised concerns. Many of them argued that 80 percent to 90 percent less protective for most chemicals than the federal EPA recommendations.

“We want this to happen but we’d like this to happen in a way that is actually going to protect human health in Florida,” said Linda Young, executive director of the Florida Clean Water Network.

Commissioner Adam Gelber of Miami, a senior scientist who represents science and technical interests on the commission, opposed the rule. He commended the department but said he was not confident that the information was based on Florida data.

“I fear there is a fatal flaw,” Gelber said. He questioned the decision by DEP to increase the allowed levels of benzene, a known carcinogen.

DEP initially proposed raising the standard from 1.18 parts per billion in Florida’s drinking water sources to 3 parts per billion but, after public outcry, the agency revised its criteria and reduced the level to 2 parts per billion. The federal standard is 1.14 parts per billion.

“If we went back and adjusted the models, how would the other criteria drop?” he asked. “... It would appear to me there are some tweaks in the system that could be made across the board.”

Environmentalists say they are suspicious that DEP has increased the levels of benzene, which is found in the wastewater of oil and gas hydraulic fracturing operations, in an effort to pave the way for fracking in Florida.

DEP officials, however, said that the science of benzene has changed in recent years resulting in the higher limits.

Also voting against the proposal was Commissioner Joe Joyce of Gainesville, who represents agricultural interests on the commission. He also raised questions about the unexplained rise in benzene levels and asked Bartlett if there was “any correlation between this rule and benzene and fracking?”

“We don’t see a connection between this rule and fracking,” Bartlett responded. The the audience jeered.

Commissioner Craig Varn, a lawyer from Tallahassee who was the DEP general counsel a year ago, supported the rule, saying the decision came down to whether was going to accept the new modeling method or not.

“I’m erring on the side of human health,” he said. “Is it perfect? No.”

In an interview with the Herald/Times, Varn said he could not recall being involved in the development of the rule while he was general counsel.

Broward County’s top environmental scientist was among those who urged the commission to reject the new rule, warning that it will lead to dangerous concentrations of chemicals that may not be detected by testing.

DEP’s documents acknowledge that permits can be allowed to require companies to meet the water quality standard in a water body after the discharge has passed through what is known as “mixing zones,” thereby allowing for dilution and diffusion of the pollution beyond the point of discharge before it’s tested, said Jennifer Jurado, director of Broward County environmental planning and community resilience division.

By contrast, she said, Broward County water quality criteria imposes a stricter standard, imposing water quality testing at the end of the pipe where the chemicals are discharged into a water body.

“So there is a lot of flexibility, depending on how they choose to apply the standard, that creates an exposure,” she said.

The commission was scolded for not having its full complement of members while agreeing to reschedule the vote on the controversial rules from September to July.

As the commission was about to take a vote, John Moran, who identified himself as a graduate student from Stanford University, walked to the dais and sat in an open chair.

“The governor has spat on our decision process by keeping these seats vacant for over a year,” he said. DEP security escorted him out, and the commission voted.

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WHAT COMES NEXT?

- The state must submit the rule to the federal Environmental Protection Agency.
- EPA must approve it and may agree to conduct public hearings.
- Environmental groups will ask EPA to reject the rule or, if approved, may challenge it in court.