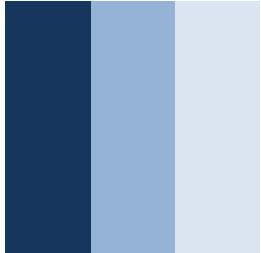


# FLORIDA WATER ENVIRONMENT ASSOCIATION UTILITY COUNCIL



2012  
ANNUAL REPORT



# PRESIDENT'S MESSAGE

The Florida Water Environment Association Utility Council (“Utility Council”) has received exceptionally strong membership support in the past several years, allowing the UC to be present and make a difference in a variety of venues for the membership in this extended time of regulatory development and economic uncertainty.

The numeric nutrient criteria (“NNC”) issue remains a leading topic for the Utility Council. To date, the U.S. Environmental Protection Agency (“EPA”) rulemaking has been focused on freshwaters in Florida, which affects a relative minority of our members. The Florida Department of Environmental Protection’s (“FDEP”) proposed alternative nutrient rules addressed Florida freshwaters and a number of state estuaries.

Our involvement receives a tremendous amount of national attention as other states and utilities watch how this issue develops in Florida. The Utility Council has been effective in conveying the exorbitant costs and environmental shortcomings of EPA’s streams criteria, and in supporting the development and passage of a State alternative rule. The Florida Legislature unanimously approved legislation endorsing the state rule and directing FDEP to send the rule to EPA for review. If EPA declines to accept the state rule and instead moves forward with plans to promulgate criteria for all of Florida’s coastal waters and estuaries, then the impact to Florida’s utility community will likely be significant. We have previously estimated that nearly 80 percent of utilities statewide are regulated by those pending marine/estuarine standards.

As we move forward, there remains significant work in finalizing implementation strategies for our members who will be subjected later this year to either EPA’s or the State’s nutrient rules, and in advocating on behalf of members in future nutrient criteria rulemakings.

The Utility Council has been equally involved in reclaimed water policy development through the reclaimed water workgroup. This group formed as a regularly convening workgroup as a result of discussions between then FDEP Secretary Sole and our Board at the January 2009 Utility Council “DEP Day”. The work product of that group became one of the final bills passed on the last day of this year’s legislative season. The reclaimed water bill incorporated provisions for incentivizing utilities expansion of reclaimed water systems by protecting and crediting allocations, and clarifying regulatory authority to reduce the dual regulation utilities face between agencies as we manage our reclaimed water as both a disposal, and a water resource. This bill received support from FDEP, the water management districts, and utilities, as well as from other interested groups such as the Audubon Society.

We are pleased to have Representative Dana Young as our guest speaker at this year’s Utility Council Annual Meeting at the Florida Water Resource Conference. Representative Young has shown a strong interest in environmental policy, and has emerged as a leader in the state house on these issues. We will need the support of her and her colleagues as we move forward to ensure that our utility investments are well targeted to meet our communities’ needs.

The Utility Council had a number of audiences with senior FDEP leaders in the new administration last year, and we are pleased to see a number of regulatory streamlining efforts underway. At last year’s Utility Council Annual Meeting, featured guest Melissa Meeker (then Deputy Secretary of FDEP for water policy), set the groundwork for a number of significant regulatory streamlining initiatives between FDEP and the Districts. Following her subsequent

# PRESIDENT'S MESSAGE

move to the Executive Director position at South Florida Water Management District, her successors in Tallahassee, Deputy Secretary Gregory Munson and Office of Water Policy Director Dr. Ann Shortelle, have continued to build on that initial framework, most recently releasing six guidance memoranda through the FDEP Secretary aimed at improving consistency and effectiveness of various elements of the water supply planning and permitting processes. We are in the process now of setting up the annual FDEP day, expected for early summer, and look forward to productive dialogue on these and other issues.

More detail on some of the specific issues we focused on this year is provided in the following sections. I think you will agree that the Utility Council has been extremely active this year. Please make sure you check the members' only website on a regular basis: updates on Utility Council activities are posted there weekly, and it is your best source for timely updates.

Every two years we select a new President, and thus the annual meeting represents my final meeting as President of the Utility Council. It has been a great honor for me to represent the interests of our organization during this time. The efforts of the organization and our members are more important than ever, and I thank you for your outstanding response to our calls for service, and for the opportunity I have had to serve the membership.

Best,



Paul Steinbrecher, PE  
President, FWEA Utility Council

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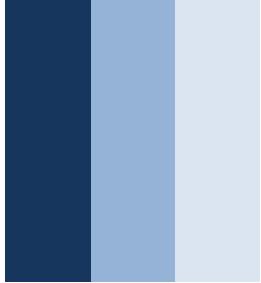
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# NUMERIC NUTRIENT CRITERIA

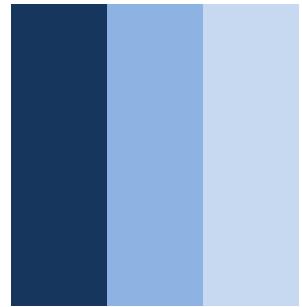
Three years have passed since the EPA settled an environmental stakeholder lawsuit in Florida by issuing a controversial “need determination”, stating that Florida’s surface waters need numeric nutrient criteria to comply with the Clean Water Act. This decision set into motion contentious litigation; federal and state rulemaking processes; bipartisan federal and state political interventions; a National Research Council economic review; and attempts by the State of Florida to regain control of its nutrient water quality standards program.

Every step of the way, the Utility Council has been involved, advocating on behalf of Florida’s domestic wastewater treatment utility community. A sampling of the Utility Council’s activities over the past year demonstrates our significant involvement:

- The Utility Council pursued federal legal challenges against EPA’s nutrient criteria rules. The federal court agreed with the Utility Council that EPA’s streams criteria are arbitrary and capricious, but the court upheld the validity of EPA’s lakes and springs criteria as well as EPA’s decision that Florida needs numeric nutrient criteria.
- Paul Steinbrecher (JEA) and David Richardson (GRU) testified at a hearing of the U.S. House of Representatives Subcommittee on Government Oversight and Accountability regarding the impact of EPA’s nutrient criteria rules on their utilities’ environmental restoration projects.
- Rod Reardon (Carollo Engineers) and Paul Steinbrecher testified before a panel of the National Research Council regarding the federal rule’s compliance costs for utilities. The NRC panel ultimately found that EPA did not avail itself of the wide range of actual wastewater facility cost data that are available in Florida, made unreasonable assumptions in calculating compliance costs and expressed a high degree of uncertainty regarding EPA’s estimates for all sectors evaluated in Florida (municipal WWTPs, Industrial, Agricultural, Urban Stormwater, Septic, Government).
- The Florida Environmental Regulation Commission unanimously approved the Utility Council’s key amendments to the FDEP’s proposed nutrient criteria rules. The Florida Legislature then unanimously directed FDEP to submit its amended nutrient criteria rules to EPA for review as a replacement for EPA’s federal rules.

After this year of intense activity, the Utility Council has arrived at a momentary break in the action. But the break will not last for long.

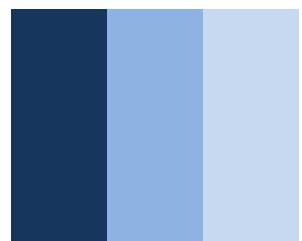
# NUMERIC NUTRIENT CRITERIA



EPA must address the flaws in its streams criteria by May 21, 2012, and EPA still remains under court order to propose criteria for Florida's estuaries, marine waters, and canals on that same date. EPA can satisfy these requirements and obviate the need for the federal rules by approving FDEP's nutrient criteria rules in their entirety. EPA's consideration of the alternative state rules, however, has been held up by an administrative challenge by a handful of environmental advocacy groups. EPA will not be able to act on the state rules until the Florida administrative law judge issues a final order upholding the state rules. (As of the date of this article, an order has not yet been issued.)

Regardless of what twists and turns lay ahead, Utility Council members should be assured that the Utility Council will continue to advocate for scientifically valid and economically responsible nutrient water quality standards.

## UIC / ASR

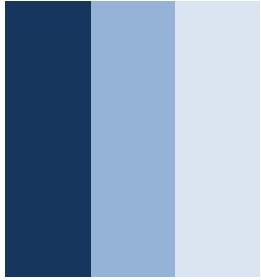


The potential release of arsenic in underground formations resulting from injected water (although the injected water does not contain arsenic above the drinking water standard) has created Underground Injection Control (UIC) permitting problems for ASR systems. FDEP recognizes this issue is a regulatory one, not a technical one. In June 2011, FDEP indicated to us their interest in working with EPA on developing a non-endangerment approach relying on institutional controls to address this issue. The Utility Council offered its assistance to FDEP in support of FDEP's approach. A resolution of this arsenic issue is particularly critical in Florida where ASR represents a cost effective alternative water supply option and soils are very amenable to formation of arsenic. Unless this issue is resolved in a workable manner, ASR will continue to be stymied in Florida.

Issues continue to surface with the ASR program especially related to reclaimed water projects. Many conflicts between UIC regulations and wastewater plant permitting are at issue and the number seems to be growing as experience is gained by utilities. FDEP staff understands this issue and its significance and continues to explore options to resolve this problem while maintaining public safety.

The Utility Council will continue to work with FDEP on this issue. There is an opportunity now for members to offer ASR projects as test subjects to assist FDEP in developing workable options to resolve this problem.





# OCEAN OUTFALL

On July 1, 2008, SB 1302, “Ocean Outfall Bill”, was adopted into law and contained the objective to increase the use of reclaimed water to offset the use of traditional urban water supplies and thereby reducing the amount of nutrients entering the near shore waters of the southeast coast and in southeast Florida through the following statutory requirements:

- Prohibits the new construction or expansion of wastewater ocean outfalls and limits the discharge of wastewater through ocean outfalls by 2025.
- Requires that discharge of domestic wastewater through ocean outfalls meet advanced wastewater treatment and management requirements by 2018 or that an equivalent nutrient load reduction be achieved by 2025.
- Contains a provision for meeting advanced wastewater treatment and management requirements for those facilities that achieve 100% reuse by 2018.
- Requires facilities achieve 60% reuse of baseline annual outfall flow by Dec. 31, 2025 and allows discharges beyond that date that meet the advanced wastewater and treatment requirements and are a backup to a functioning reuse system.

The five southeast Florida utilities that were impacted by SB 1302 serve over 30% of the state’s total population. The impacted utilities include: Miami-Dade Water & Sewer Department, City of Hollywood, Broward County and the City of Boca Raton.

Although this is a regional issue in the state, the southeast Florida utilities have routinely conferred with the Utility Council on this effort and specifically asked for Utility Council support. As in 2011, during the 2012 legislative session the Utility Council unsuccessfully supported the passing of HB 989 and SB 724 which clarified certain statutory language and incorporated some common-sense provisions to substantially improve the cost/benefit of the law:

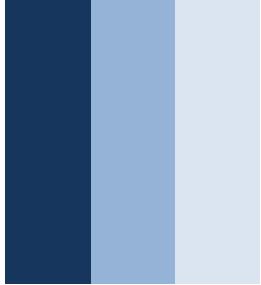
- The cost of compliance with the current outfall requirements. These costs will be in the billions of dollars for Miami-Dade County, and millions for Broward County and the City of Hollywood. These costs can be substantially reduced without endangering the environment by managing wet condition peak sewage flows more cost-effectively and by allowing utilities to achieve compliance by accounting for their entire reuse program instead of reuse from outfalls alone.

# OCEAN OUTFALL

- Also by allowing up to five percent of peak to be discharged during wet season peak events and exempting that five percent of peak flows from AWT standards if they meet statutory requirements and the FDEP rules on effluent limitations, the savings on capital costs will be \$142 million for the City of Hollywood, \$300 million for Broward County, and \$862 million for Miami-Dade. That money saved is desperately needed for replacing aging infrastructure that poses a much greater public health and environmental threat in the coming years.
- The outfall statute authorized state funding to support compliance with the outfall requirements, however, no state funding support has been appropriated since the statute was adopted, and under current conditions, the likelihood of any state funding support is extremely remote.
- The current economic downturn and conservation efforts have simultaneously reduced water needs, water revenues, the ability of utilities and local governments to borrow to finance large capital projects, and the inclination of elected officials to increase rates, fees, and taxes on their economically stressed constituents.

Therefore, five changes were proposed to the Outfall requirements:

1. Provides that peak flow discharges from other wastewater management systems may not cumulatively exceed 5% of a facility's baseline flow, measured as a 5-year rolling average and exempts that 5% from AWT standards;
2. Provides that for utilities operating more than one facility, a "functioning reuse system" means a system that provides a minimum of 60% of a facility's baseline flow or, for utilities operating more than one facility, 60% of the utility's entire wastewater system flow on an annual basis on December 31, 2025;
3. Updates requirements for the detailed plans that utilities must develop to be submitted by October 2014 instead of July 2013;
4. Postpones the date by which domestic wastewater facilities must meet more stringent treatment and management requirements from December 31, 2018, to December 31, 2020; and
5. Requires FDEP, South Florida Water Management District, and affected utilities to evaluate the detailed plans and report to the Legislature recommended changes, if necessary, to the reuse requirements by February 15, 2015.



# 2012 LEGISLATIVE SESSION

As expected, two issues dominated the 2012 Legislative Session: the state's \$1.8 billion budget shortfall and redistricting. As a result, only 292 of the 2,052 bills filed during the 2012 legislative session ultimately passed (i.e. less than a 15% passage rate). However, the Utility Council's top two legislative priorities – numeric nutrient criteria rule ratification and reclaimed water regulation – both received favorable legislative action.

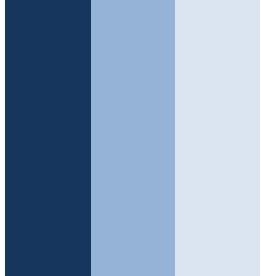
The following table summarizes the key environmental bills that passed this session.

<b>Reclaimed Water Regulation</b> House Bill 639 (by Rep. Young)	Gives reclaimed water utilities more control over reclaimed water. Prohibits water management districts from requiring a permit for the use of reclaimed water, although they are authorized to require reclaimed water under certain circumstances. Prohibits water management districts from requiring or restricting services provided by reuse facilities. Requires FDEP and water management districts to initiate rulemaking on "impact offsets" and "substitution credits" and to adopt revisions to the water resource implementation of the rule. Authorizes the regulation of the use of surface water or groundwater to supplement a reclaimed water system.
<b>Numeric Nutrient Criteria Rule Ratification</b> House Bill 7051 (by Rep. Caldwell)	Exempts FDEP's proposed numeric nutrient criteria rules from the legislative ratification requirement in current law. Provides that, after adoption of the FDEP numeric nutrient rule, any subsequent rule or amendment altering the effect of that rule must obtain legislative ratification prior to taking effect. Allows FDEP to adopt the proposed final rules and directs FDEP to submit its rules to the EPA for review under the Clean Water Act.
<b>Water Management District Budgets</b> Senate Bill 1986 (by Budget Committee)	Requires each water management district to submit a preliminary budget for legislative review. Mandates a review and approval by the Governor for any budget amendment greater than \$1 million. Authorizes the Legislature to set the maximum millage rate for each district. Removes property tax revenue caps at each water management district. Allows the Legislative Budget Commission to reject certain water management district budget proposals. Removes the maximum revenue limitation for the 2011-2012 fiscal year. Requires that a five-year water resource development work program describe the district's implementation strategy and funding plan on water resource, water supply, and alternative water supply development components of each approved regional water supply plan.

# 2012 LEGISLATIVE SESSION

<b>Environmental Regulation</b> House Bill 503 (by Rep. Patronis)	Reduces the time allowed for permit decisions from 90 days to 60 days. Expands eligibility for reduced or waived permit processing fees. Prohibits municipalities from requiring an applicant to obtain a state or federal permit prior to the issuance of a local permit. Authorizes FDEP to issue a coastal construction permit in advance of the issuance of any incidental take authorization. Exempts injection wells authorized under State Underground Injection Control Program from permitting under Part III of Chapter 373, F.S. Directs FDEP to seek an expanded State Programmatic General Permit (SPGP) or regional general permits from the Corps. Grants a 2-year extension for certain development approvals with specific expiration dates. Provides that a holder of a valid permit or authorization is not required to make a payment to the authorizing agency for use of the 2-year extensions granted under Section 73 or 79 of the Community Planning Act or the new extension provided by this bill. Revises the voluntary site cleanup program by raising priority ranking scores from 10 or less to 29 or less to increase qualifying sites. Expands the use of Internet-based, self-certification services and general permits. Creates a general ERP for stormwater management systems serving upland projects with a total area of up to ten acres. Revises provisions related to solid waste disposal and management. Adjusts the state recycling goal waste-to-energy rate. Expands the state renewable fuel standard to include other alternative fuels.
<b>Department of Health &amp; Septic Tanks</b> House Bill 1263 (by Rep. Hudson)	Reorganizes the Department of health. Repeals the 2010 mandate for septic tank inspections statewide in favor of an inspection program that is limited to counties and municipalities that contain a first magnitude spring. Narrows definition of a failing septic tank system. Prohibits inspection requirements when a home is sold. Prohibits new local ordinances requiring advanced "performance-based" septic tanks until a Department of Health study regarding "passive" treatment systems is completed.

With the 2012 Legislative Session now behind us, the Utility Council is preparing for next year's session, which begins March 5, 2013. In the interim, it is important that all Utility Council members meet with their local Senators and Representatives and inform them of the issues that matter to Florida domestic wastewater treatment utility community.



# RECLAIMED WATER WORKGROUP

In January 2009, representatives of FDEP, the water management districts, the Utility Council, Florida League of Cities, individual local government utilities, and environmental consulting firms convened in Orlando to discuss how state regulatory policies could better optimize the reuse of reclaimed water. This initial meeting kicked off a three-year long Reclaimed Water Policy Workgroup (“Workgroup”) stakeholder process, which is set to conclude at the Workgroup’s May 2012 meeting.

Since its inception, the Workgroup has focused on building consensus-based policies designed to optimize the use and continued development of reclaimed water as an alternative water supply. Two Utility Council members have chaired the Workgroup during its tenure: Alan Oyler with the City of Orlando and David Richardson with Gainesville Regional Utilities.

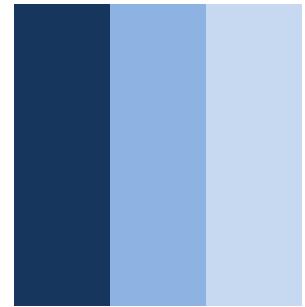
Much of the Workgroup’s discussions over the past year focused on the respective regulatory responsibilities of the water management districts and FDEP. This discussion focused on ways to eliminate conflicting, duplicative, or unnecessary reviews. The workgroup agreed that due to the variety and range of circumstances which influence the development and operation of reclaimed water systems across the state, individual utilities must have the latitude and flexibility to plan, develop, operate, and manage its reclaimed water system tailored to best suit its individual circumstances. While a water management district should continue to require the use of reclaimed water when available and feasible, a district should not require a permit solely for the use of reclaimed water; restrict the use of reclaimed water in a water shortage order; limit irrigation with reclaimed water; or specify a user to whom the utility must provide reclaimed water.

The Workgroup’s discussion of FDEP’s authority was generally limited to FDEP’s draft changes to its reuse feasibility study guidelines. The utilities’ comments are under consideration by FDEP. The Workgroup did not recommend any changes to the FDEP’s statutory authority over reclaimed water.

The 2012 Florida Legislature passed legislation incorporating the workgroup’s recommended revisions to the scope of water management district authority over reclaimed water. See House Bill 639 (2012). This legislation also included prior Workgroup recommendations to incentivize the use of reclaimed water through the use of impact offsets and substitution credits. “Impact offsets” are the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other groundwater or surface water withdrawals. “Substitution credits” are the use of reclaimed water to replace part or all of an existing permitted use of resource-limited groundwater or surface water, allowing a different user (or use) to increase its withdrawal from the same resource-limited groundwater or surface water source provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net positive impact.

With the passage of House Bill 639, the Workgroup has now accomplished the majority of its objectives. All that remains is the issuance of a final report that will memorialize the Workgroup’s activities and recommendations. Then the attention of the Utility Council and Workgroup members will turn towards the continued implementation of the Workgroup’s policy recommendations.

# NACWA COORDINATION



Nationally, the Utility Council maintains a relationship with the National Association of Clean Water Agencies (“NACWA”), a group that is a recognized leader in environmental policy and viewed as a key stakeholder in both the federal legislative and regulatory arenas. NACWA has established credible, collaborative relationships with members of Congress, Presidential administrations and the EPA, that have benefited groups such as this Utility Council. Brian Wheeler/TOHO Water Authority has been serving as the Utility Council’s NACWA liaison. Suzanne Goss/JEA moves into the NACWA President’s seat this year, and will serve as liaison this upcoming year.

NACWA has several key areas of focus, all of which touch our members in many ways:

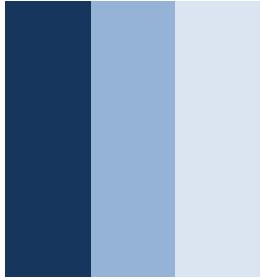
- Affordability, Regulatory Prioritization and Infrastructure Funding – encouraging flexibility and innovation as critical components to meet the goals of the Clean Water Act in a sustainable manner. This is exemplified through its Money Matters Campaign.
- Biosolids Management, Energy Recovery and Air Emissions – continuing to focus on maintaining management options and preserving local choices when it comes to disposal options and becoming more engaged in the energy-water nexus as these two issues become more integrated in the legislative and regulatory arena.
- Stormwater and Wet Weather Issues – pursuing further clarification of the regulatory status of sanitary sewer overflows, including advocacy efforts with EPA to develop some form of national policy.
- Watershed Management, Nutrients and Nonpoint Source Control – pursuing a vision of a holistic watershed approach to deal with water quality issues by all stakeholders.

NACWA continues to be a partner in supporting the Utility Council’s legal effort in opposing EPA’s numeric nutrient criteria rule. Their engagement in the Florida case has increased the awareness of nutrient issues nationally.

The Utility Council receives NACWA’s Clean Water Exchange (and Action Alerts) at no cost. This communication tool, designed to keep members of state & regional clean water organizations informed of critical national issues, provides opportunities for our members to stay engaged and to have their voice heard in Washington, DC.

This past April, the Utility Council was recognized as a supporting organization at the 2012 National Environmental Policy Forum, held in Washington, DC. The Utility Council will continue to seek opportunities to partner with NACWA on regional and national issues.





# WATER CONSERVATION

As potable water resources become limited in the State of Florida, various strategies are being used to expand and/or conserve water resources. Water Conservation is an Alternative Water Supply strategy that will extend groundwater supplies, and reclaimed water is used to avoid the use of higher quality groundwater. Because utilities in Florida frequently have the responsibility of providing water service, wastewater service, and reclaimed water service, it is crucial to coordinate those services to meet common objectives. Utility Council members worked closely with Florida Section of the American Water Works Association (“FSAWWAUC”) members to develop principles for developing water conservation policies. In September 2010, FSAWWAUC members adopted and the Utility Council endorsed eight Guiding Principles for Establishing State Water Conservation Policy.

The Utility Council has continued to coordinate with FSAWWAUC in promoting the eight principles to regulatory agencies. To that end representatives of the Utility Council board met with representatives of FDEP in Tallahassee last summer and advocated a collaborative approach between utilities and FDEP to develop a statewide water conservation policy that incentivizes conservation. A key component of such a policy would be either a regulatory or statutory assurance to provide for extending a utility's permit duration when demand is reduced through conservation and the utility has demonstrated future demand. FDEP has continued to promote the development and use of CONSERVE FLORIDA for implementing goal based conservation programs consistently. The Utility Council has committed to work with FDEP on evaluating the CONSERVE program and engaging the agency on other water conservation initiatives.

As regulatory authorities and public water supply utilities work together to stretch groundwater supplies by expanding conservation initiatives, it has become increasingly important that the efforts be coordinated. The most cost effective and feasible options should be implemented first to so that limited public funds are used wisely.