Message

From: Gordon, Lisa Perras [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9AC77737B6D43759B069E24466BA077-GORDON, LISA]
Sent: 9/18/2018 3:27:31 PM
To: Cooper, Jamal [cooper.jamal@epa.gov]
Subject: RE: Distinguishing GA from FL/AL and national

Jamal,

This is fantastic and definitely the level of rigor and review that the RA would find compelling. The summary on Florida is great. I thought the Fenhollaway might still be in V, but good to know that nothing is in there.

On Alabama, do you mean all waters rather than all uses? (See highlight) My read was that it only applies to aesthetic use, not F&W or other uses. Is that correct?

Also, for the national response, perhaps we can quote the FR I sent yesterday, that virtually all states had these approved in the 1960's. The level of rigor for a review is different now than it was then.

Nice job!

Lisa

From: Cooper, Jamal
Sent: Tuesday, September 18, 2018 10:55 AM
To: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>
Subject: Distinguishing GA from FL/AL and national

Lisa,

For Alabama,

The narrative standard is meant to protect against unreasonable or adverse affects to the aesthetic value for the protection of any use under the F&W use classification or OAW, PWS, S or SH supplemental use classification.

For Florida,

- This narrative only applies to Class V waters. These waters were part of Florida's historical approach to Water Quality for waters that did not meet the basic Fishable/Swimmable goals of the Clean Water Act. Over 20 years ago, the State removed this designation from the last remaining water it applied to and no longer places waters in this category. It is anticipated that no other waters would be added.
- Additionally, the original approval of Class V waters was finalized on February 1, 1973 during the initial submittal by the state. At the time of its approval the Endangered Species Act (1973) was yet to be in effect nor the requirement to consult with the Services under the ESA.

There is also the reg below that came up when up when searched for "unreasonably."
"Nuisance species" shall mean species of flora or fauna whose noxious characteristics or presence in sufficient number, biomass, or areal extent may reasonably be expected to prevent, or unreasonably interfere with, a designated use of those waters. However, you can find a lot of information on nuisance growth, nuisance

mats, etc. where we made them define what nuisance conditions meant for those types of things for use of those terms in the nutrient criteria revisions.

The key takeaway: is there is proof we recently made a state quantify/give examples to define their use of generic terms, including how different pieces are weighed to make decisions on use support.

National Analysis

Lauren, posed the question, "Have any of you had an instance where the description of a designated use (or the narrative that goes with it) was changed in a way that lessened the expectation for the use? If so, how did it play out?"

Region 6:

State's here in Region 6 have tended to leave their use descriptions alone, leaving broad use descriptions that don't mean much. It's been a while back, but the closest thing was New Mexico's defining additional uses based primarily on temperature to better describe the nuanced differences, but these new use descriptions didn't lessen the expectation of the original uses – more of a tiering of uses.

Region 8:

We have seen site-specific issues in Colorado regarding agriculture uses. E.g., segments where "agriculture" was designated, and then an entity successfully shows that there are stock watering uses but no irrigation uses, and no need to protect potential/future irrigation uses. In a few cases like that, Colorado has adjusted the WQS to protect stock watering but not irrigation (some of the criteria are relaxed).

Region 1:

None

Region 2:

NY has a situation that is similar but yet a little bit different than described. NY added, "water quality shall be suitable for primary contact recreation" to a couple water classes within the Designated use section of their stds for these classes. EPA approved this as a use change to now support primary contact recreation on May 9, 2016. However a year later and while under litigation, NY sent EPA a letter stating that they did not actually change the use of these waters to primary contact recreation and that they are still secondary (Since in addition to the suitability language they have the best use of these waters as secondary contact recreation). However, they did not mention what the suitability language then means if the waters are not actually set to be suitable for primary contact recreation. This is still on-going, and we are still working to resolve this with NY. EPA disapproved on March 7, 2018.

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