

Associated Industries of Florida
CF Industries Holdings, Inc.
Florida Farm Bureau
Florida Water Quality Coalition

January 6, 2011

The Honorable Darrell Issa
Chairman of the Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Re: EPA Nutrient Rulemaking Poised to Stymie Job Growth in Florida

Dear Chairman Issa:

We were pleased to learn of the Committee on Oversight and Government Reform's plans to examine existing and proposed regulations that negatively impact the economy and jobs. We ask that your evaluation include consideration of a critically important issue to Florida businesses, industry, agriculture, and local governments: the U.S. Environmental Protection Agency's (EPA's) unprecedented numeric nutrient (i.e., nitrogen and phosphorus) water quality standards rulemaking. As explained in this letter and the attached materials, this EPA rulemaking is an unwarranted federal takeover of the state's nutrient water quality program. This rule will choke job growth in Florida and Floridians need your help.

Florida Cannot Afford this Litigation-Driven, Multibillion Dollar EPA Rulemaking

EPA's decision to promulgate federal nutrient mandates for Florida's lakes, rivers, streams, and estuaries is in response to litigation initiated by environmental special interest groups. The schedule for imposing the federal standards was set by a bilateral settlement agreement between EPA and those environmental litigants. On August 2, 2010 a bipartisan letter from 21 members of the Florida Congressional Delegation requested that EPA delay this rulemaking schedule until the rulemaking's economic impacts and scientific underpinnings were reviewed independently.¹ EPA declined to honor that request² and, in accordance with its agreement with the environmental litigants, EPA finalized the first phase of its nutrient rules for Florida freshwaters on November 14, 2010. Phase two of the rulemaking for Florida's marine waters will conclude on August 15, 2012.

Although EPA refused to commission an independent review of its nutrient rulemaking, various Florida governmental and private entities have performed economic analyses. The results are astounding. One privately funded independent economic analysis concludes that in the "most likely scenario," the first phase of the EPA rulemaking will impose statewide costs

¹ Rep. Adam Putnam, et al, Letter to EPA Administrator Lisa Jackson (August 2, 2010).

² Pete Silva, Letter from EPA to the Florida Congressional Delegation (September 2, 2010); *see also*, FWEA Utility Council, Letter to Members of the Florida Delegation regarding EPA's Denial of Request for Review of its NNC Rule (October 7, 2010).

ranging from \$3.1 to \$8.4 billion per year for the next 30 years.³ Another study by the Florida Department of Environmental Protection (FDEP) estimates that the EPA mandates will in part impose \$21 billion in capital costs on municipal wastewater treatment and storm water utilities.⁴ And yet another study by the Florida Department of Agriculture and Consumer Services concludes that Florida's agricultural community will lose 14,545 full-time and part-time jobs and lose \$1.148 billion annually.⁵ For the phosphate fertilizer industry alone, compliance with EPA's nutrient criteria is estimated to require \$1.6 billion in capital costs and \$59 million in annual operating and maintenance expenses.⁶ Despite the economic projections of Florida professional economists and engineers, EPA internally calculated and published a total economic impact of \$135.5- \$206.1 million per year on the state's economy.⁷ The EPA projection is over an order of magnitude lower than that provided to EPA by state experts. This disparity underscores the need for Congressional oversight of EPA's nutrient rulemaking.

Another factor supporting Congressional oversight is the precedent set by this nutrient rulemaking. Recent developments indicate that Florida is likely the first in a long line of states that will be subject to EPA nutrient rulemaking initiatives. In an August 2009 EPA publication, the agency identifies the promulgation of nutrient rules in various states as a national priority, and the document specifically identifies "EPA determinations to establish numeric standards in response to litigation" as an agency strategy for developing nutrient policies.⁸ Apparently taking this cue, environmental groups have already filed notices of intent to sue EPA to force the establishment of similar nutrient rules in Kansas and Wisconsin.⁹ This innovative approach by EPA of using special interest litigation to advance a regulatory agenda is the antithesis of how a transparent and fair regulatory process should be conducted.

EPA's Litigation-Based Nutrient Rules are Divorced from Science and Disrupt Successful State Programs

EPA's nutrient mandates are not only extraordinarily costly, but they also lack the sound scientific underpinnings necessary to create environmental benefits. EPA has continued to rely on a scientifically flawed methodology that is not site specific for Florida's waters. EPA's own Science Advisory Board has criticized EPA's method for developing rivers and streams nutrient standards.¹⁰ The result is a set of standards that are well below reasonable and natural conditions

³ Cardno-ENTRIX, *Economic Analysis of the Proposed Federal Numeric Nutrient Criteria for Florida* (Nov. 2010).

⁴ Florida Department of Environmental Protection, *FDEP Review of EPA's "Preliminary Estimate of Potential Compliance Costs and Benefits Associated with EPA's Proposed Numeric Nutrient Criteria for Florida"* (April 2010); compare with FWEA Utility Council, *Costs for Utilities and their Ratepayers to Comply with EPA Numeric Nutrient Criteria for Freshwater Discharges* (November 1, 2010) (engineering analysis that calculates capital and operating costs projections for Florida's wastewater treatment utilities that are on par with FDEP's cost projections).

⁵ Richard Budell, *Economic Impacts and Compliance Costs of Proposed EPA Water Quality Standards for the State of Florida's Lakes and Florida Waters*, FDACS (2010).

⁶ Environ International Corporation, *Assessment of Financial Impact on Phosphate Mining and Mineral Processing: Complying with EPA's Proposed Nutrient Water Quality Standards for Florida* (April 2010).

⁷ EPA, *Economic Analysis of Final Water Quality Standards for Nutrients for Lakes and Flowing Waters in Florida* (November 2010).

⁸ State-EPA Nutrient Innovations Task Group, *An Urgent Call to Action: Report of the State-EPA Nutrient Innovations Task Group*, 30 (August 2009).

⁹ The notices of intent to sue were filed on November 23, 2009 in Wisconsin and on June 2, 2010 in Kansas.

¹⁰ EPA, Science Advisory Board, Processes and Effects Committee Advisory Report, *SAB Review of Empirical Approaches for Nutrient Criteria Derivation* (April 27, 2010).

for many water bodies in Florida which will require utilities, local governments, agriculture, and industry to attempt to reduce nutrient concentrations below needed -- and even natural -- conditions. In the words of former FDEP Secretary Mike Sole, "Compliance [with the standards] will force an investment of billions of dollars without environmental benefit."¹¹ The Florida Attorney General recently filed a lawsuit against EPA's new nutrient rules. This complaint similarly focuses on the absence of demonstrated environmental benefits and the rule's unwarranted disruption of successful state nutrient water quality programs.¹² The State of Florida's concerns are shared by numerous private and public entities and associations that filed extensive comments expressing concerns about the scientific validity and negative policy consequences of EPA's nutrient mandates.¹³

EPA thus far has ignored or discounted these concerns. Despite the voluminous public comments that were filed when the proposed rules were first announced, EPA's nutrient rules finalized in November 2010 look almost identical to EPA's initial rule proposals.

Florida Needs Your Help

The threat this rulemaking presents to Florida cannot be overstated. These rules are poised to create regulatory barriers and avenues of litigation for a broad spectrum of job-creating projects. We respectfully ask that the Committee on Oversight and Government Reform use its oversight powers to examine this rule in detail. Among other things, EPA should explain to the Committee the purported urgency of its takeover of Florida's program; why EPA continues to use scientific methods that have been criticized by its own Science Advisory Board; why EPA calculated a compliance cost projection that assumes widespread variances and exceptions from its rule; why EPA acquiesced to the demands of special interest environmental litigants while discounting the input of other affected parties; and why this rulemaking could not be delayed to allow the independent review requested by Florida Congressional Delegation members.

We would be happy to provide further information on this rulemaking process. For further information, please do not hesitate to contact Rosemary O'Brien, Vice President, Public Affairs, CF Industries, at 1401 Eye Street N.W. Suite 340, Washington, D.C. 20005 (202) 371-9279 or robrien@cfindustries.com.

Sincerely yours,

Barney Bishop, President, Associated Industries of Florida
Stephen R. Wilson, Chairman, President & Chief Executive Officer, CF Industries Holdings, Inc.
(a major Florida phosphate fertilizer producer)
John Hoblick, President, Florida Farm Bureau
Jim Spratt, President, Florida Water Quality Coalition

¹¹ FDEP Secretary Sole, Presentation before the Florida House Agriculture & Natural Resources Policy Committee, (Feb. 3, 2010).

¹² Florida Attorney General Bill McCollum, Press Release, *Florida Officials File Lawsuit Against EPA Over Federal Intrusion into State's Clean Water Program* (Dec. 7, 2010).

¹³ See EPA, Docket Folder containing Technical Support Documents & Public Comments, available at <http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OW-2009-0596>.

cc: Florida Congressional Delegation
Paul Steinbrecher, President, FWEA Utility Council

Enclosures: Rep. Adam Putnam, et al, Letter to EPA Administrator Lisa Jackson (August 2, 2010); Pete Silva, Letter from EPA to the Florida Congressional Delegation (September 2, 2010); FWEA Utility Council, Letter to Members of the Florida Delegation regarding EPA's Denial of Request for Review of its NNC Rule (October 7, 2010); Summary of Economic Findings; List of Entities Expressing Concerns Regarding EPA's Freshwater Nutrient Rule