

Questions for TOC Policy Makers

(revised 6/26/06)

The TOC requests that the Principals provide guidance in answering the following questions. We request any additional guidance that might help the TOC direct its technical analysis and focus.

N. Aumen

1. When making the comparison, are we comparing to the standard, the criterion, or the level?
2. Are we to make this same comparison for the Park?

M. Harwell

1. Does the determination result in one of the tests being used (after December 2006) forever, or do we make that determination at some interval (monthly basis, yearly, every 5 years, etc.) as new information becomes available and as new projects and changes to water management occur?

F. Nearhoof

1. Do the Principals agree lower is synonymous with more protective?

M. Waldon

1. Appendix B states in part:

If the lower of the Class III or long-term levels is not met by December 31, 2006 and the 50 ppb maximum annual discharge limit is being met at all inflow structures into the Refuge from the EAA, the TOC will recommend a lower maximum annual discharge limit for the structures to be enforced by DER. Additional actions, such as regulatory measures and increased STA acreage, as appropriate from the empirical data on performance of each program, will be required by either DER or the District to meet the lower discharge limit.

- 1.a Do we need to decide if the 50 ppb discharge annual maximum is being met by December 31, 2006? If yes, when do we need to decide? If it is not being met, do we need to later identify when it is being met?
- 1.b When does the TOC need to decide, if ever, that the lower of the levels is not being met? Do we need to decide in December 2006, January 2007, after the first excursion of the long-term levels after 2006, after the 50 ppb discharge is achieved, or at some other time or following some other event?

2. After Dec 2006 if the TOC selects a Class III criteria as lower, who will determine violations of the Consent Decree and how will they be determined?

G. Redfield

1. What is the role of the determination made by the USEPA indicating that the Appendix B approach or equation is not protective of the Refuge?
2. Is it sufficient to show that the compliance levels required by the Phosphorus Rule are lower than the compliance levels of Appendix B.?