



**DATE:** September 30, 2020

**TO:** Deputy Secretary John Truitt  
Florida Department of Environmental Protection  
*Submitted Electronically:* [John.Truitt@dep.state.fl.us](mailto:John.Truitt@dep.state.fl.us)

**FROM:** Florida Engineering Society's Conservation and Environmental Quality Committee and American Council of Engineering Companies of Florida's Water Resources Committee and Land Development Committee

**RE:** Recommendations for Proposed Stormwater Rulemaking Stemming from the 2020 Clean Waterways Act

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The Florida Engineering Society (FES), through its Conservation and Environmental Quality (CEQ) Committee, and the American Council of Engineering Companies of Florida (ACEC-FL), through its Water Resources Committee (WRC) and Land Development Committee (LDC), has enjoyed a long history of working closely with FDEP during rulemaking, and, we believe our mutual interests are best served when we can share the expertise and experience of our members with FDEP as it develops new rules and rule revisions. The committees have been following the preliminary rulemaking process stemming from the Clean Waterways Act of 2020. We appreciate FDEP hosting two introductory webinars and providing valuable background information on this upcoming rule making. Representatives of our committees participated in each of the webinars and many have had one-on-one discussions with your staff regarding this upcoming rulemaking. We appreciate FDEP's availability and willingness to communicate with our stakeholders throughout this process.

The FES CEQ and the ACEC-FL WRC and LDC supports FDEP's efforts in reaching out for recommendations to consider as they initiate rule-making to update their stormwater regulations. We continue to support your commitment to a science-based approach to regulating stormwater in an effort to reduce nutrient impacts to Florida's waterbodies. We believe any rule-making process should include use of the best available information and technology and the effective use of cost/benefit analyses to determine the appropriate level of regulation.

We strongly urge the formation of a Technical Advisory Committee (TAC) to help with rulemaking and implementation of the rules. The TAC should include, among others, members with a strong background in BMP development, the design of stormwater management systems or stormwater research in Florida.

FES CEQ and ACEC-FL WRC and LDC offers the following recommendations to the Department as they prepare to initiate rule-making to update the stormwater regulations.

- 1) The March 2010 Draft Design Requirements for Stormwater Treatment Systems in Florida was developed over many months with the assistance of a Technical Advisory Committee and would be a good basis for beginning this update. Rule 62-330 would need to be updated with new standards as well as each Applicant Handbooks to be as consistent as possible realizing the differences across water management districts (e.g, karst topography, direct surface and groundwater connections, varying topography and rainfall).
- 2) Wetlands – The new rule should address how to evaluate them as a potential BMP within a restoration framework and how to evaluate them as a land use (are they a source or sink and for which parameters?).
- 3) Pre-development needs to be defined and consistently applied across the state (is it current condition - day before construction, pre-ERP permitting, or a natural condition - pre-Columbian?)
- 4) Need to define net improvement, how (water budget terms, multiple design storms, water quality parameters), and where measured (surface water, groundwater).
- 5) Net improvement should apply only if the project discharges to an impaired waterbody. However, there are cases in which upgradient stormwater management will not have an impact on the water quality of a receiving impaired water due to the location of the facility in the basin. There should be consideration of this in an updated rule.
- 6) Retrofit projects need to be given flexibility. Section 20.1 of the 2010 Draft Applicant's Handbook excluded new development and redevelopment from retrofit projects. The exclusion could be a barrier for a new development or redevelopment to participate in or sponsor a retrofit project. New development and redevelopment projects could actually be part of solving water quality (and quantity) problems. Accordingly, the rules should be a framework for solving water quality (and quantity) problems on a watershed scale by allowing this flexibility.
- 7) Nutrients should be managed on a watershed basis and there should be nutrient credit (i.e. compensating treatment) options and guidance. Net improvement/benefit requirements could be applied to ensure credits result in forward progress on improving water quality on a watershed scale.
- 8) Some local governments have clearing requirements but keeping natural areas and buffers can significantly reduce runoff. Natural buffers and overland treatment should be encouraged.
- 9) Runoff volume can be a huge concern in flood prone areas. Updated criteria should encourage or, where possible, require BMPs that reduce runoff volume and promote groundwater recharge.
- 10) A volume-time method may be appropriate to consider for flood control. In some instances, like closed basins, annual performance may be more appropriate than single event models. Also, different factors that contribute to runoff patterns (urbanization, climate change) have changed over time and we now have the ability to refine rainfall models based on spatial trends in rainfall patterns on a micro level, where data is available. The updated rule should allow for these considerations.
- 11) Any update should consider updating the prescribed rainfall curves to the NOAA Atlas 14 precipitation data and should provide consistency across water management districts as to the frequency and duration of storms required to be analyzed.

- 12) In some areas, dissolved nutrients have a groundwater pathway to a surface water. This may require buffers or setbacks from impaired waterbodies for certain BMPs in certain soil types.
- 13) This rule development should consider boosting operation and maintenance requirements for new, existing ERP, and legacy facilities especially in impaired watersheds. Legacy Chapter 17-25 F.A.C. and MSSW/ERP ponds are often owned by HOAs, are generally not part of an MS4, and are often not maintained properly; therefore, their presumptive performance is likely not as permitted. These facilities need maintenance to bring them back to permitted performance standards. Operation and maintenance requirements need to be specified as part of the permitting process and should be enforced as on-going permit responsibilities. Some municipalities are writing ordinances allowing them to inspect on poor performing private stormwater systems. How can we incentivize/require continuing maintenance?
- 14) There needs to be a defined and streamlined way to review and adopt BMPs and BMP efficiencies to promote development of new BMPs. We recommend using other NGOs' or communities' databases as a basis of provisional acceptance to encourage implementation and better long-term data collection. Florida also needs to be receptive to the use of BMP technologies proven in other states. There has been a significant amount of work done to statistically evaluate the effectiveness of BMPs and cost ratios (see <http://www.bmpdatabase.org/>).
- 15) Stormwater harvesting opportunities should be encouraged consistent with WMD water use regulations. Part of the encouragement should be credit for the nutrient reduction in the stormwater discharge.
- 16) The applicant handbooks should be expanded to include standard methods for performing calculations for net improvement with various examples covering a wide variety of scenarios.

On behalf of the FES CEQ and the ACEC-FL WRC and LDC committees, we appreciate the opportunity to provide the above recommendations. If you have any questions or need any assistance from the committees, please feel free to contact our Legislative Environmental Consultant, Mark Thomasson, PE at [mark@littlejohnmann.com](mailto:mark@littlejohnmann.com) or 850-510-2226.

Sincerely,



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