



Indian River Lagoon Basin Management Action Plan January 2010

Inspection and Maintenance of Neighborhood Stormwater Ponds

Issue: *Municipalities in the Indian River Lagoon (IRL) are concerned about their ability to access, inspect, and enforce proper maintenance of stormwater systems managed by homeowners associations (HOAs) or neighborhoods without HOAs. They are questioning whether they should be responsible for the loads from these systems if they do not have the authority to access or enforce proper function of these treatment systems. They are particularly concerned where the permitted legal maintenance entity is an HOA, especially when an HOA has dissolved.*

Stakeholder Questions and Florida Department of Environmental Protection (FDEP) Answers:

Is there enforcement of residential stormwater pond maintenance and by whom?

FDEP Response: If there is an environmental resource permit (ERP), it is enforceable by the applicable water management district (WMD) and we recommend that if the local government identifies a problem with a residential stormwater system, they report the issue to the appropriate WMD and request an inspection be performed. Some of the WMDs (e.g., SJRWMD, SWFWMD) require inspection and recertification of permitted stormwater systems on a periodic basis. If the stormwater system was built before 1982 and does not have an ERP and the system discharges into the municipal separate storm sewer system (MS4), the local government has enforcement authority through its ordinances, which regulates discharges to the MS4.

When are local governments responsible for enforcement?

FDEP Response: Pursuant to their MS4 permit, local governments are responsible for discharges into and out of their MS4. Local governments can take their own enforcement action through their ordinances, or if the system has an ERP, the WMD can be contacted for enforcement action.

When are local governments responsible for maintenance?

FDEP Response: The responsibility for maintenance depends on whether the stormwater system has an ERP, who was identified as the legal maintenance entity, and what the local government's policies and ordinances are with respect to stormwater system maintenance.

What is the relationship between permitted stormwater systems and TMDL load allocations?

FDEP Response: The IRL TMDL model included some stormwater treatment on areas that were developed after 1982 (post-stormwater rule) when the data were available. The load allocations for the BMAP will be calculated using the land uses and any associated stormwater treatment reductions from the TMDL model, which take into account treated versus untreated areas. The allocations will be based on a target load per acre to meet the TMDL.

As required by the Florida Water Resources Act (FWRA), before additional load reductions are required for treated areas, existing areas without stormwater treatment must be brought up to the level of stormwater treatment being provided by permitted stormwater treatment systems. Therefore, untreated areas will be subject to all or most of the reduction requirements, while treated areas will only have further reductions applied if the overall load per acre still exceeds the target load after all

areas are brought to the same level of treatment. This will “level the playing field” and meet the legal requirements to provide equitable allocations and load reductions because starting loads for treated areas will be closer to the target load than areas without treatment. Areas that have an ERP are examples of acreage that already have stormwater treatment.

Urban retrofit projects that were completed in 2000 and later will be eligible for BMAP credit. In order to receive credit for existing projects, the BMPs must be operated and maintained as permitted. The jurisdictions may want to implement local inspection and enforcement programs (similar to those in the City of Tallahassee, Orange County, Indian River County, and Leon County) to ensure that the stormwater infrastructure in their area is meeting permit requirements. These inspections could be a cost-effective way to reduce discharges to the MS4 system.

Summary:

Local governments are in the best position to observe and report problems with stormwater systems that discharge to their MS4 infrastructure, groundwater, or surface waters. The WMDs have enforcement authority for stormwater systems that have ERPs; local governments and citizens should be encouraged to report problems with ERP systems. Additionally, local enhancements to inspection of stormwater systems (e.g., operating permits) could be beneficial to reducing inputs to the local MS4 system and be a cost-effective way of managing potential sources. Local enforcement through a local permit authority is also an option and/or continuous reporting of violations to the appropriate WMD. The BMAP is an opportunity to promote good communication between local jurisdictions and the WMDs so that the WMDs can engage their enforcement authority where ERPs have been issued. The WMDs can still pursue ERP enforcement if the HOA has dissolved, although it is legally more difficult. When ERP permits are not applicable, the local MS4 permit holder still has the authority to control discharges to its conveyance system.