

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Division: Water Resource Management

Rule Number: Chapter 62-330, F.A.C.

Rule Description: Environmental Resource Permit

Contact Person: John Coates

Please remember to analyze the impact of the rule, NOT the statute, when completing this form.

A. Is the rule likely to, **directly or indirectly**, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

- | | | |
|--|------------------------------|--|
| 1. Is the rule likely to reduce personal income? | ☐ Yes | ☒ No |
| 2. Is the rule likely to reduce total non-farm employment? | ☐ Yes | ☒ No |
| 3. Is the rule likely to reduce private housing starts? | ☐ Yes | ☒ No |
| 4. Is the rule likely to reduce visitors to Florida? | ☐ Yes | ☒ No |
| 5. Is the rule likely to reduce wages or salaries? | ☐ Yes | ☒ No |
| 6. Is the rule likely to reduce property income? | ☐ Yes | ☒ No |

Explanation:

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

- | | | |
|---|------------------------------|--|
| 1. Is the rule likely to raise the price of goods or services provided by Florida business? | ☐ Yes | ☒ No |
| 2. Is the rule likely to add regulation that is not present in other states or markets? | ☐ Yes | ☒ No |

Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)

3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?

☐ Yes ☒ No

4. Is the rule likely to cause Florida businesses to reduce workforces?

☐ Yes ☒ No

5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?

☐ Yes ☒ No

6. Is the rule likely to make illegal any product or service that is currently legal?

☐ Yes ☒ No

Explanation:

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule?

The good faith cost estimate (prior to the receipt of the lower cost regulatory alternatives) is calculated from the projected increase to the cost of stormwater treatment required by the proposed stormwater treatment performance standards, which would increase nutrient removal in accordance with ss. 373.4141(6) and 373.418, Florida Statutes (F.S.). Current costs for developing stormwater infrastructure and providing the currently required levels of stormwater treatment are estimated to be about \$12.6 billion in the aggregate over a five-year period. Stormwater treatment costs, in accordance with the direct good faith cost projections for stormwater treatment costs for the proposed rule revisions are expected to increase current costs by approximately \$1.44 billion within a five-year period from implementation. This cost increase would correspond to a relative cost increase of approximately 11%, compared to the estimated five-year aggregate costs for the currently required treatment levels. These increased treatment costs based on modeled cost scenarios, would average to a cost increase of approximately \$3,100 per acre developed over current development cost.

In addition to the increased treatment cost estimate, the good faith cost estimate includes additional direct transactional costs that would be required on a per project basis for: 1.) the additional time for design of the new or altered stormwater treatment systems, 2.) new dam systems permitting information and safety requirements, 3.) new operation and maintenance permitting requirements, and 4.) strengthened

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

stormwater inspection and reporting obligations. With the additional direct transactional per project costs, the increased costs increase to a total of \$1.486 billion for the total number of projected ERP projects statewide within five years of rule implementation, or approximately \$297.2 million per year.

Approximately 14,032 entities are likely to be required to comply with the revised rule within five years after the implementation of the rule; however, for dam systems information and safety requirements, 29 total projects are expected to be affected over the five-year period. The affected entities are expected to include private and public entities ordinarily involved in construction or development of residential, commercial, and light industrial properties. These persons are currently required to apply for Environmental Resource Permits, pursuant to Part IV, Chapter 373, F.S., for construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems in conjunction with their projects. The proposed rule would require increased stormwater treatment, and increased operation and maintenance obligations to ensure those systems continue to perform in perpetuity as originally designed and permitted.

The following provides a summary of the good faith cost estimates for the proposed rule amendments (prior to the receipt of the lower cost regulatory alternatives):

<u>Regulatory Revision, Per Project</u>	<u>Estimated Cost</u>
1. Increased Stormwater Treatment Requirement	\$ 102,755
2. Additional Treatment System Design	\$ 1,004
3. New Operation and Maintenance Permitting	\$ 1,631
4. Strengthened Inspection and Reporting (5-year recurring costs per project)	\$ 443
5. Total Per Project Items (Add lines 1-4), \$ / project	\$ 105,833
6. Number Projects, 5 years from implementation	14,032
7. Total Per Project Cost, Stormwater Treatment, O&M, Inspections and Reporting (multiply lines 5 x 6)	\$ 1,485,050,000
8. Dam System Information and Safety	\$ 21,386
9. Number Dam Projects, 5 years from implementation	29
10. Total Dam System Cost (multiply lines 8 x 9)	\$ 620,200
12. Total Proposed Rule Revisions (Add lines 7 & 10)	\$ 1,485,670,000

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule.
The number of individual ERP projects that would be subject to the increased regulatory and transactional costs is estimated to be approximately 14,032 in the aggregate over the first five years of implementation of the proposed rule.
2. A general description of the types of individuals likely to be affected by the rule.
All entities that are required to receive an individual ERP permit for construction or alteration projects that require stormwater management systems will be affected by the rule.

E. Good faith estimates (costs):

1. Cost to the department of implementing the proposed rule:
☒ None. The department intends to implement the proposed rule within its current workload, with existing staff.
☐ Minimal.
☐ Other.
2. Cost to any other state and local government entities of implementing the proposed rule:
☒ None. This proposed rule will only affect the department.
☐ Minimal.
☐ Other.
3. Cost to the department of enforcing the proposed rule:
☒ None. The department intends to enforce the proposed rule within its current workload with existing staff.
☐ Minimal.
☐ Other.

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

4. Cost to any other state and local government of enforcing the proposed rule:

☒ None. This proposed rule will only affect the department.

☐ Minimal.

☐ Other.

F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule.

☐ None. This proposed rule will only affect the department.

☐ Minimal.

☒ Other. The following are key regulatory areas with expected increased estimated costs related to the primary rule revisions:

1. Increased Stormwater Treatment Requirements
2. Additional Treatment System Design
3. New Operation and Maintenance Permitting
4. Strengthened Inspection and Reporting
5. Dam Systems Information and Safety

Additional information on the good faith cost estimate, the underlying assumptions, and example development costs for stormwater management systems are provided in the Clean Waterways Act Stormwater Rulemaking SERC Summary Report.

1. Increased Stormwater Treatment Requirements: The new design and permitting requirements establish minimum stormwater treatment design performance criteria for new or altered stormwater management systems. Construction costs will increase to accommodate the additional treatment necessary for increased stormwater treatment requirements. The table below shows the estimated current cost of a sample project, including all conveyance and stormwater treatment devices, compared to estimated costs of a stormwater treatment's design under the new rule requirements.

Change in Typical Land Development Costs Which Include Inlets, Conveyance and Stormwater Treatment from Current Standard to Proposed Over Five Years (prior to the receipt of the lower cost regulatory alternatives):

Current \$/acre	Proposed \$/Acre	Difference/Acre	Current \$	Project Increased Treatment Cost \$	Relative Cost Increase, %
\$31,626	\$35,501	\$3,875	\$12,625,786,909	\$1,441,867,660	11%

Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)

2. Additional Treatment System Design: In order to evaluate a proposed stormwater treatment system design, applicants would have to provide increased design review and calculations.

Average Cost of Additional Stormwater Treatment System Design:

Applications for 5 years	Expected Increased design review and calculation time	Avg. Hourly Rate	Avg. Total cost for all applications	Avg. cost per application
14,032	8 hours	~\$125	\$14,082,421	\$1,004

3. New Operation and Maintenance Permitting: The existing rules require the applicant to submit a letter of intent or statement from the proposed long-term maintenance entity with Form 62-330.301(26), "Certification of Financial Capability for Perpetual Operations and Maintenance Entities." The new rule will require applicants to submit this Form, along with a one-time cost estimate for the perpetual operation and maintenance of the new or altered stormwater management system, at the time of application. The written operation and maintenance plan (O&M Plan) will be prepared and certified by a registered professional to specifically identify the requirements for proper operation, maintenance, and inspections needed to ensure the stormwater management system functions as designed and permitted in perpetuity.

Average Cost of Additional Stormwater Treatment System O&M Documentation Requirements:

Applications for 5 years	Activity	Expected time	Avg. hourly rate	Avg. total cost for all applications	Avg. cost per application
14,032	Certification of Financial Capability	1 hour	~\$125	\$1,760,303	\$125
14,032	Development of O&M Plan	8 hours	~\$125	\$14,082,421	\$1,004
14,032	Development of O&M Plan Cost Estimate	4 hours	~\$125	\$7,041,210	\$502
Total	-	-	-	\$22,883,934	\$1,631

4. Strengthened Inspection and Reporting: Proposed updates require all operation and maintenance entities, other than MS4 entities, to conduct and report inspections as needed to ensure that the stormwater management system, and each component thereof, continues to function as designed and permitted. Minimum required inspection frequencies will be specified permit conditions in each individual ERP. Recommended inspection frequencies are specified in AH Vol I or may be proposed by the applicant;

Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)

applicants (and permittees) will be able to plan for these costs based on these inspection frequency requirements. Proposed updates require operation and maintenance entities, other than an MS4 Entity, to submit an inspection report to the agency describing and certifying the results of the inspection within 30 days of the date of the inspection. The estimated cost for implementing project specific inspection frequencies is \$6,210,400, over the first five years of rule implementation, or approximately \$443 per ERP project.

Average Cost of Additional Inspection Reporting Time:

Applications for 5 years	Expected time	Avg. hourly rate	Avg. total cost for all applications	Avg. cost per application
14,032	1 hour	~\$87	\$1,218,262	\$87

5. Dam Systems Information and Safety: The four new permitting criteria for new or altered dam systems would require the applicant to: 1) provide dam system information for collection in a repository maintained by the Department, 2) establish a Downstream Hazard Potential that indicates the potential adverse impact on the downstream areas should the dam or its appurtenant structures fail or be mis-operated, 3) develop an Emergency Action Plan for the owner of a High Hazard Potential or Significant Hazard Potential dam, and 4) provide a Condition Assessment Report for each existing High Hazard Potential or Significant Hazard Potential dam. The transactional cost over the first five years of rule implementation for preparation and submittal of the four new permitting requirements for new or altered dam systems is estimated to be \$620,200 for an expected universe of 29 dam systems related projects.

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S.

The estimated number of small businesses that would be subject to the rule:

- ☐ 1-99 ☐ 100-499 ☐ 500-999
☐ 1,000-4,999 ☐ More than 5,000
☒ Unknown, please explain: The rule will impact all sizes of businesses and counties similarly across the board; small businesses and counties are reasonably expected to make up part of the regulated/affected community.

☒ Analysis of the impact on small business:

☐ There is no small county or small city that will be impacted by this proposed rule.

☐ A small county or small city will be impacted. Analysis:

☐ Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)

The rule will impact all sizes of businesses and counties similarly across the board; small businesses and counties are reasonably expected to make up part of the regulated community.

These proposed changes will increase compliance with water quality criteria in the state of Florida. The previous rule presumed criteria that has been found to have been insufficient in meeting existing rule. This rule update will ensure that systems are meeting water quality requirements and will reduce future need for remediation. The update will streamline MS4 and ERP requirements to be more efficient.

Newly constructed or redeveloped business properties would have minor impacts in the way of increased stormwater treatment requirements and inspection requirements for their property.

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."

A small county is defined in Section 120.52(19), F.S., as "any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census." And, a small city is defined in Section 120.52(18), F.S., as "any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census."

Small businesses will be required to hire an inspector to inspect and certify their stormwater system at a minimum of once every five years.

Some engineering/consulting firms are classified as small businesses; this rule will increase demand for their services.

Some applicants are classified as small businesses or small counties; this rule initially will increase their application cost by requiring additional calculations. It will also increase the cost of operation and maintenance by increasing frequency and reporting requirements for inspections.

Costs may constitute a larger proportion of small business and county budgets compared to large business and county budgets. The impact will vary widely due to project- and site-specific conditions, such as project type, project area size, BMP type, required treatment efficiency, and other factors.

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

H. Any additional information that the agency determines may be useful.

☐ None.

☒ Additional.

Implementation of these proposed rule revisions will result in a reduction of nutrients and other pollution from stormwater system discharges. While cost estimates for the anticipated environmental benefits are difficult to quantify, the reduction of nutrient loading into Florida's water would reduce the economic and direct environmental restoration costs associated with excess nutrient loading and harmful algal blooms. Estimates of nutrient reductions have been calculated using the same methods used to estimate the increased regulatory costs of increased stormwater treatment. Over the first five years of rule implementation, it is reasonably expected that the rule will reduce total phosphorous (TP) by an estimated 927,037 kg (or 2,039,482 lbs.) and total nitrogen (TN) by an estimated 4,500,434 kg (or 9,900,954 lbs.).

Anticipated beneficial impacts include avoided adverse economic impacts to Floridians and the economy and avoided potential nutrient restoration costs for receiving waterbodies in Florida is difficult to quantify.

All initial lower cost alternatives have been incorporated into the new rule. A lower level of treatment is required for redevelopment sites. Inspection reports may be conducted by a qualified inspector rather than only a registered professional. MS4 permit holders will be required to follow only their MS4 standard operating procedures. All of these alternatives provide for a lower regulatory cost.

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

☐ No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

☒ See attachment "A".

Florida Engineering Society (FES) submitted a LCRA on March 5, 2023, then submitted a follow-up letter reiterating those suggestions and expanding upon them on March 17, 2023. Both letters encompass the same ideas and originate from the same organization.

☐ Adopted in entirety.

☒ Adopted / rejected in part.

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

The Department is partially rejecting the proposed removal of the 80 percent and 95 percent performance criteria and rejecting the use of only a performance standard based on the comparison of pre development conditions with post development conditions. The department will continue to use a two prong approach which considers a percent performance standard or the comparison of the pre development condition with the post development condition. In consideration for the difficulties of achieving an 80 percent reduction of total nitrogen in areas of the state with a high ground water table the Department has lowered the design performance standard to 55 percent and 80 percent for all sites not within impaired waters. The lowering of the performance standard for nitrogen from 80 percent to 55 percent will have a lower regulatory cost. This lower cost will predominantly affect redevelopment sites and will lower the cost of the stormwater treatment for the projected scenarios by approximately 16% from the original proposed estimated cost, or a cost decrease on the order of \$407 million.

The Department is rejecting the suggestion to remove AH Vol I sections 8.3.5 and 8.3.6, which set Alternative Performance Standards and an Exemption from Minimum Performance Standards for Redevelopment. These standards will remain in place to provide incentive for redevelopment in the form of more economically achievable lower performance standards.

☐ Rejected in entirety

☒ See attachment "B".

US Capital Alliance, LLC, submitted a LCRA which is attached as Attachment B.

☐ Adopted in entirety.

☒ Adopted / rejected in part.

The Department adopted the suggested language clarifying the "grandfathered" status of conceptual approval permits. A subsection was added in section 3.1.2(e) of Applicant's Handbook, Volume I, stating that applications for general and individual permits issued in accordance with a conceptual approval permit which was issued under the previous rules would be governed by the same requirements of that conceptual approval permit. The Department also restated the existing rules describing which permit modifications would be considered "major" and would trigger the new requirements.

The portions of the suggested alternative language which the Department adopted align with the Department's intent as to the applicability of updated permitting requirements. The Department recognizes the need for certainty in the long-term planning process for larger projects which utilize conceptual approval permits. The Department also recognizes that, if a permittee modifies a project such that a major

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

permit modification is required, the permittee should then be subject to the updated requirements for treatment, operation and maintenance, and inspections.

☐ Rejected in entirety.

☒ See attachment "C".

Florida H2O Coalition, Inc, submitted a LCRA which is attached as Attachment C.

☐ Adopted in entirety.

☒ Adopted / rejected in part.

The Department adopted the suggested language clarifying the "grandfathered" status of conceptual approval permits. A subsection was added in section 3.1.2(e) of Applicant's Handbook, Volume I, stating that applications for general and individual permits issued in accordance with a conceptual approval permit which was issued under the previous rules would be governed by the same requirements of that conceptual approval permit. The Department also restated the existing rules describing which permit modifications would be considered "major" and would trigger the new requirements. The Department also moved language previously in section 8 of Applicant's Handbook Volume I to section 3.2.1(e) stating that applications of general or individual permits deemed complete before 12 months after the effective date of the rule will be exempt from the new rule amendments.

The portions of the suggested alternative language which the Department adopted align with the Department's intent as to the applicability of updated permitting requirements. The Department recognizes the need for certainty in the long-term planning process for larger projects which utilize conceptual approval permits. The Department also recognizes that, if a permittee modifies a project such that a major permit modification is required, the permittee should then be subject to the updated requirements for treatment, operation and maintenance, and inspections. The movement of language provides a consistent location for applicants to find exemptions that are applicable this rule.

☐ Rejected in entirety.

☒ See attachment "D".

Associated Industries of Florida (AIF) submitted a LCRA which is attached as Attachment D.

☐ Adopted in entirety.

☒ Adopted / rejected in part.

Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)

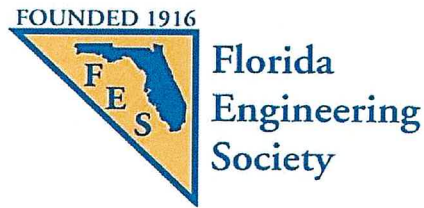
The Department adopted the suggested language clarifying the “grandfathered” status of conceptual approval permits. A subsection was added in section 3.1.2(e) of Applicant’s Handbook, Volume I, stating that applications for general and individual permits issued in accordance with a conceptual approval permit which was issued under the previous rules would be governed by the same requirements of that conceptual approval permit. The Department also restated the existing rules describing which permit modifications would be considered “major” and would trigger the new requirements. The Department also moved language previously in section 8.3 of Applicant’s Handbook Volume I to section 3.2.1(e) stating that applications of general or individual permits deemed complete before 12 months after the effective date of the rule will be exempt from the new rule amendments. Department also adopted suggested language to not include new construction of or major modification of existing dam systems within the exemption. The department rejected the suggestion to directly state that permit transfers to a construction permit shall not use the new adopted forms, and instead has clarified within the exemption that permits converted to the operation phase after the date of rule implementation will be required to meet the inspection requirements of the new rule.

The portions of the suggested alternative language which the Department adopted align with the Department’s intent as to the applicability of updated permitting requirements. The Department recognizes the need for certainty in the long-term planning process for larger projects which utilize conceptual approval permits. The Department also recognizes that, if a permittee modifies a project such that a major permit modification is required, the permittee should then be subject to the updated requirements for treatment, operation and maintenance, and inspections. The movement of language provides a consistent location for applicants to find exemption cases to this rule. Dams are critical infrastructure and excluding them from the exemption language will ensure that new or modified existing dams will be recorded and assessed properly.

☐ Rejected in entirety.

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Attachment A



Via Email

March 5, 2023

John Coates, PE
Program Management Director
Division of Water Resource Management
Florida Department of Environmental Protection

Re: SUBMISSION OF LOWER REGULATORY COST ALTERNATIVE

Ladies and Gentlemen,

The Florida Engineering Society (FES) submits to the Department a proposed lower regulatory cost alternative to the Department's statement of estimated regulatory costs (SERC). This letter supplements our letter of February 13, 2023. This lower regulatory cost alternative is submitted pursuant to Section 120.541, F.S.

FES supports measures, within the statutory authority granted to the Department, to maintain existing water quality and to improve the quality of Florida's Outstanding Florida Waters and impaired waters. However, the post development percentage reductions required in Part 8 will significantly increase the costs of all development in Florida, beyond what is necessary to meet the Department's objectives.

In order to avoid unnecessary negative impacts to development, including affordable housing, in Florida, FES submits the following lower regulatory cost alternatives. The following language not only is a lower cost alternative, but is also consistent with the statutory authority granted to the Department.

Lower Regulatory Cost Alternative to 8.3.2 Minimum Performance Standards for all sites

8.3.2 Minimum Performance Standards for all sites

Except as described in 8.3.4 through 8.3.6 below, all stormwater management ~~treatment~~ systems shall provide a level of treatment sufficient to demonstrate the post-development average annual loading of nutrients does not exceed the predevelopment nutrient loading condition.

Lower Regulatory Cost Alternative to 8.3.3 Minimum Performance Standards for OFWs

8.3.3 Minimum Performance Standards for Outstanding Florida Waters (OFWs)

Stormwater management ~~treatment~~ systems located within a HUC 12 subwatershed containing an OFW and upstream of the OFW, shall provide a level of treatment sufficient to demonstrate a net improvement of the water quality in the receiving body

of total phosphorus (TP) and total nitrogen (TN), compared to the predevelopment nutrient loading condition.

Lower Regulatory Cost Alternative to 8.3.4 Minimum Performance Standards for Impaired Waters

8.3.4 Minimum Performance Standards for Impaired Waters

(a) Stormwater management systems located within a HUC 12 sub-watershed which contains an impaired water, and located upstream of that impaired water, shall provide a level of treatment sufficient to demonstrate a reduction below the predevelopment condition, which shall be determined utilizing a site-specific model acceptable to the Department and based on basin-specific data, such as those collected by the Department during the Impaired Waters listing process.

Remove 8.3.5 and 8.3.6

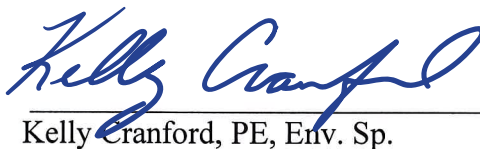
Since the above provisions are based on net improvement compared to pre-development conditions, we recommend that the Department delete the Alternative Performance Standards and Exemption from Minimum Performance Standards for Redevelopment. The associated definitions can also be deleted.

Thank you for your consideration of this lower regulatory cost alternative. We request a meeting to discuss these proposed alternatives.

Sincerely,



Robert W. Higgins, PE
FES Stormwater Subcommittee Chair
On behalf of Florida Engineering Society



Kelly Cranford, PE, Env. Sp.
FES President
On behalf of Florida Engineering Society

cc: FES Stormwater Subcommittee
Allen Douglas

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Attachment B

March 16, 2023

Via email: stormwater2020@floridadep.gov

John A. Coates, P.E.
Program Management Director
Division of Water Resource Management
Florida Department of Environmental Protection
2,600 Blair Stone Road
Tallahassee, FL

Re: Lower Cost Regulatory Alternative to Proposed Amendments to Chapter 62-330,
Florida Administrative Code

Dear John,

I represent US Capital Alliance, LLC (Capital Alliance). Capital Alliance is developing the Hunter's Ridge Development of Regional Impact (DRI) in Flagler County, Florida. The Hunter's Ridge DRI is a 5.037-acre residential development.

The St. Johns River Water Management District (SJRWMD) issued Capital Alliance Conceptual Environmental Resource Permit No. 22838-7 on March 20, 2017. Among other things, that conceptual permit approved a Conceptual Stormwater Plan mandating stormwater system design requirements for the Hunter's Ridge DRI. Among other things, this Conceptual Stormwater Plan requires rehydration of onsite wetlands. Capital Alliance has relied on this conceptual permit and the Conceptual Stormwater Plan approved in that permit to design the overall Hunter's Ridge DRI and to obtain various construction Environmental Resource Permits (ERPs) implementing various phases or areas of the Hunter's Ridge DRI.

The Hunter's Ridge DRI will take many years to permit for construction and build out. Capital Alliance obtained this conceptual permit so that it could rely on the overall project and stormwater management system design approved in the conceptual permit when obtaining construction ERPs to build out this project.

The Department's proposed stormwater treatment rules set forth in the Notice of Proposed Rule published in the Florida Register on February 24, 2023, would upend Capital Alliance's long-term reliance on the conceptual permit for the Hunter's Ridge DRI. This is because these rules would impose drastically new stormwater treatment requirements that would require a complete redesign of the Conceptual Stormwater Plan approved in the conceptual permit. That stormwater redesign would, in turn, require a reworking of the overall Hunter Ridge DRI project which would be expensive and time consuming. As such, the proposed rules would negate the entire purpose of obtaining this conceptual permit.

Due to this costly and inequitable outcome, Capital Alliance is substantially affected by these proposed rules. To remedy this outcome, Capital Alliance proposes a lower cost regulatory alternative consisting of the following proposed amendment to Volume I of the ERP Applicant's Handbook (changes shown in strike-through and underline):

Section 3.1.2

(a) – (d) No change.

(b)

(e) Stormwater criteria throughout Volume I and Volume II was updated effective [date]. The updated requirements are applicable to project applications as indicated in the respective updated sections, and as described below:

1. When public transportation projects have received an individual permit prior to [effective date], such activities will remain subject to the rules in effect at the time of issuance, including any associated modifications necessary to accommodate design changes solely for the purposes of public safety or design changes that do not increase the overall impervious surface area by more than 10 percent.
2. For permit modifications, submitted no later than five years from [effective date], for permitted public transportation projects which include stormwater ponds that were sized and permitted to collect stormwater from future public transportation projects, such projects shall be subject to the rules in existence at the time the stormwater management pond was permitted, so long as the treatment capacity for future public transportation projects was specified in the application materials submitted to the agency at the time of the original permit application.
3. For projects and activities not covered by subparagraphs 1. and 2. above, those projects and activities that were approved by a conceptual, general or individual Environmental Resource Permit, Management and Storage of Surface Waters Permit, or Surface Water Management Permit issued prior to [effective date] shall be exempt from the amendments to Chapter 62-330, F.A.C., and Volume I adopted on [effective date], and the related amendments to Volume II as later adopted by DEP or the water management districts. This exemption shall also apply to any modification of such permit that is not a substantial modification. For the purposes of this Section 3.1.2, a substantial modification is one that is reasonably expected to lead to a substantially different water quality impact, substantially increases the project's total impervious surface, or substantially increases the project boundary. This exemption shall apply to any modification of the plans, terms, and conditions of the permit, including new activities, within the permit boundary provided the impervious area does not substantially increase. This exemption shall also apply to any modification which lessens the impact to water quality. A modification of the permit qualifying for this exemption shall be reviewed under the rules in effect at the time the permit was originally issued, unless the applicant elects to have such modification reviewed under the rules adopted on [effective date]. This exemption also applies to transfers of such permits or conversion of such permits to the operational phase.

This lower cost regulatory approval for exempting projects and activities previously approved in conceptual, general and individual ERPs is supported by precedent. When the original ERP rules were adopted, nearly identical language was amended into subsection 373.414(12)(a), Florida Statutes (F.S.), grandfathering projects and activities approved in conceptual permits from the new ERP rules. Similar language was also amended into subsection 373.4145(5)(b), F.S., when the ERP program was expanded to the Northwest Florida Water Management District.

Capital Alliance seeks similar grandfathering treatment for the Department's proposed ERP rule revisions relating to stormwater treatment as has been done for other ERP rule amendments in the past. To this end we note that subsection 120.54(1)(d), F.S. provides that when adopting rules, an agency must choose the alternative that does not impose regulatory costs on regulated entities that could be reduced by adopting less costly alternatives that substantially accomplish the statutory objectives.

If you have any questions about this lower cost regulatory alternative, please contact me. Thank you for considering our proposal.

Sincerely,



Eric T. Olsen

cc: John Coates via john.coates@dep.state.fl.us
Tim Rach via timothy.rach@dep.state.fl.us
Ann Prescott via ann.prescott@floridadep.gov

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Attachment C



CORPORATE OFFICE
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MAILING ADDRESS
516 North Adams Street
Tallahassee, Florida 32301

March 17, 2023

John Coates, P.E.
Program Management Director
Division of Water Resource Management
Florida Department of Environmental Protection
2600 Blair Stone Rd., MS 3595
Tallahassee, FL 32399
Via email: John.Coates@dep.state.fl.us; Stormwater2020@floridadep.gov

RE: Notice of Proposed Rule Amendments to Rule 62-330 FAC, Applicant's Handbook and Documents Incorporated by Reference Lower Cost Regulatory Alternative Proposal

Dear Mr. Coates,

The Florida H2O Coalition, Inc. ("Coalition") submits the following Lower Cost Regulatory Alternative ("LCRA") and comments to the Florida Department of Environmental Protection's ("DEP") proposed amendments to Chapter 62-300, F.A.C., contained in the Notice of Proposed Rule published in the Florida Register on February 24, 2023 ("Stormwater Rules").

The Coalition was formed for the specific purpose of bringing a broad spectrum of stakeholders together to comprehensively address state and federal water policy issues. The Coalition membership consists of a broad and diverse group of stakeholders from sectors including agricultural, industrial, manufacturing, power generation, home building, county and municipal governments. The Coalition has engaged with the state and federal governments making updates in the early and mid-2000s to federal Numeric Nutrient Criteria and supporting delegation of federal wetland permitting to the Florida Department of Environmental Protection. The Coalition also provided significant input on the federal 2015 Clean Water Rule, including an independent economic impact analysis, and the 2020 Navigable Waters Protection Rule. The core of the Coalition's mission includes participation and advocacy for key state water issues and solutions that are science-based, economically and technically feasible, and which balance the needs of Florida's businesses, residents, and our environment. The Coalition has been following the rulemaking workshops for the Stormwater Rules in person or remotely. The Coalition also supports dedicated sources of funding for water quality and quantity projects.

The Coalition contains members who must obtain Environmental Resource Permits (“ERPs”) to develop and otherwise use real property. The Stormwater Rules would impact the ability of the Coalition’s members to obtain these required ERPs by increasing the cost of developing information needed to meet the new permitting criteria contained in the Stormwater Rules and by increasing the land area needed for stormwater treatment systems to perform the treatment required by the Stormwater Rules. As such, the Stormwater Rules would substantially affect a substantial number of the Coalitions’ members. As demonstrated by previous paragraph, proposing changes to the Stormwater Rules is within the Coalition’s general scope and activity and the modifications proposed in the LCRA is relief appropriate for the Coalition to receive on behalf of its members.

Lower Cost Regulatory Alternative

Sections 3.1.2(e) and 8.3 of the proposed amendments to Volume I of the ERP Applicant’s Handbook (“A.H.”) appear to exempt from the Stormwater Rules public transportation projects previously permitted under an individual ERP and projects or activities that have a construction ERP application completed within 12 months after the Stormwater Rule’s effective date. However, many larger long-term projects and activities in Florida that require long term planning approvals to successfully implement are covered by conceptual ERPs. These conceptual ERP approvals are missing from the Stormwater Rules’ exemption provisions referenced above.

Entities undertaking these long term projects or activities obtain conceptual ERPs to provide needed certainty and predictability. The need to use conceptual ERPs for this type of long-term planning is repeatedly recognized in the Florida Statutes (F.S.) as illustrated by the following examples:

- Subsection 373.114(1)(d), F.S., preventing an appellant to the Florida Land and Water Adjudicatory Commission from raising an issue in an appeal of an individual ERP that was issued pursuant to a conceptual ERP that could have been raised by appealing the conceptual.
- Subsection 373.4131(b), F.S., authorizing the use of conceptual ERPs to help plan local government urban infill and redevelopment areas.
- Section 373.4133, F.S., allowing the use of conceptual ERPs for port development planning.

Relatedly, when the ERP rules have changed over time, there have been multiple statutory and rule recognitions of the fact that such rule changes could undermine or even negate the entire intent and purpose of obtaining a conceptual permit if the new rules were to apply to projects or activities covered by the conceptual permit because complying with the new rules might require a project redesign. To prevent this inequity and to maintain the effectiveness and purpose of conceptual ERPs, projects covered by conceptual ERPs have been exempted or “grandfathered” from the new ERP rules¹.

¹ See e.g. §373.414(12)(a) and 373.4145(5)(a), *Fla. Stat.*, and subsection 3.1.2 (c)3. of the ERP Applicant’s Handbook, Volume I.

To ensure similar treatment for projects and activities permitted by conceptual ERPs (and individual construction ERPs issued pursuant to those conceptual ERPs), the Coalition proposes the following amendment to section 3.1.2. of Volume I A.H. in the Stormwater Rules as a LCRA:

Amendment to section 3.1.2

(a) – (d) No change.

(e) Stormwater criteria throughout Volume I and Volume II was updated effective [date]. The updated requirements are applicable to project applications as indicated in the respective updated sections, and as described below:

1. When public transportation projects have received an individual permit prior to [effective date], such activities will remain subject to the rules in effect at the time of issuance, including any associated modifications necessary to accommodate design changes solely for the purposes of public safety or design changes that do not increase the overall impervious surface area by more than 10 percent.

2. For permit modifications, submitted no later than five years from [effective date], for permitted public transportation projects which include stormwater ponds that were sized and permitted to collect stormwater from future public transportation projects, such projects shall be subject to the rules in existence at the time the stormwater management pond was permitted, so long as the treatment capacity for future public transportation projects was specified in the application materials submitted to the agency at the time of the original permit application.

3. For projects and activities not covered by subparagraphs 1. and 2. above, those projects and activities that were approved by a conceptual, general or individual Environmental Resource Permit, Management and Storage of Surface Waters Permit, or Surface Water Management Permit issued prior to [effective date] shall be exempt from the amendments to Chapter 62-330, F.A.C. and Volume I adopted on [effective date], and the corresponding amendments Volume II as later adopted by DEP or the water management districts. This exemption shall also apply to any modification of such permit that is not a substantial modification. For the purposes of Section 3.1.2, a substantial modification is one that is reasonably expected to lead to a substantially different water quality impact, substantially increases the project's total impervious surface, or substantially increases the project boundary. This exemption shall apply to any modification of the plans, terms, and conditions of the permit, including new activities, within the permit boundary provided the impervious area does not substantially increase. This exemption shall also apply to any modification which lessens the impact to water quality. A modification of the permit qualifying for this exemption shall be reviewed under the rules in effect at the time the permit was originally issued, unless the applicant elects to have such modification reviewed under the rules adopted on [effective date]. This exemption also applies to transfers of such permits or conversion of such permits to the operational phase.

4. In addition to the foregoing, projects or activities that are the subject of a conceptual, general or individual permit application that is deemed complete before or on [effective date + 12 months] shall be exempt from the amendments to Chapter 62-330, F.A.C., and Volume I adopted on [effective date] and the corresponding amendments to Volume II as later

adopted by DEP or the water management districts. For the purposes of this paragraph, permit applications shall be deemed complete 60 days after receipt of the original application, 60 days after the last items of timely requested additional material, or the applicant's written request to begin processing the permit application, as provided in section 5.5.4.2.

Comments

BMP Definition Constitutes Invalid Exercise of Delegated Legislative Authority

Proposed section 9.1 of Volume I, A.H., mandates that ERP applicants provide nutrient load reduction calculations in their permit application. Section 9.1 further mandates that applicants undertake 5 steps to show this nutrient load reduction calculation. Step 5 requires applicants to “[d]etermine which BMPs will be used to meet the required TN and TP load reductions.” Step 5 further provides that “[i]nformation on how to calculate nutrient load reduction for BMPs Treatment Train is found in Section 9.5....”

As to what constitutes a BMP for this fifth step, Volume I section 2.0(a) 15. defines a BMP as:

‘Best Management Practice (BMP) for stormwater treatment’ means a practice or combination of practices *determined by the district, in cooperation with the department*, [emphasis added] based on research, field-testing, and expert review, to be the most effective and practicable, including economic and technological considerations, of improving water quality by reducing excess nutrients and other pollutant loads in water.

The italicized language in the above referenced BMP definition constitutes an invalid exercise of delegated legislative authority as defined in section 120.52(8)(d), F.S., because this language fails to establish adequate standards for agency decisions and vests unbridled discretion in the agency. In essence, this part of the Stormwater Rules empowers the water management districts and DEP to decide on a permit application by application basis what constitutes a BMP depending upon how the agencies feel any given practice will be in reducing excess nutrients and other pollutant loads in water. While a list of BMPs is provided in Appendix O of the Stormwater Rules, the above referenced BMP definition makes this Appendix O list non-inclusive. Thus, the Stormwater Rules provide no constraints on how the DEP and water management districts will make this determination of whether a practice or combination of practices qualifies as a BMP under the above definition.

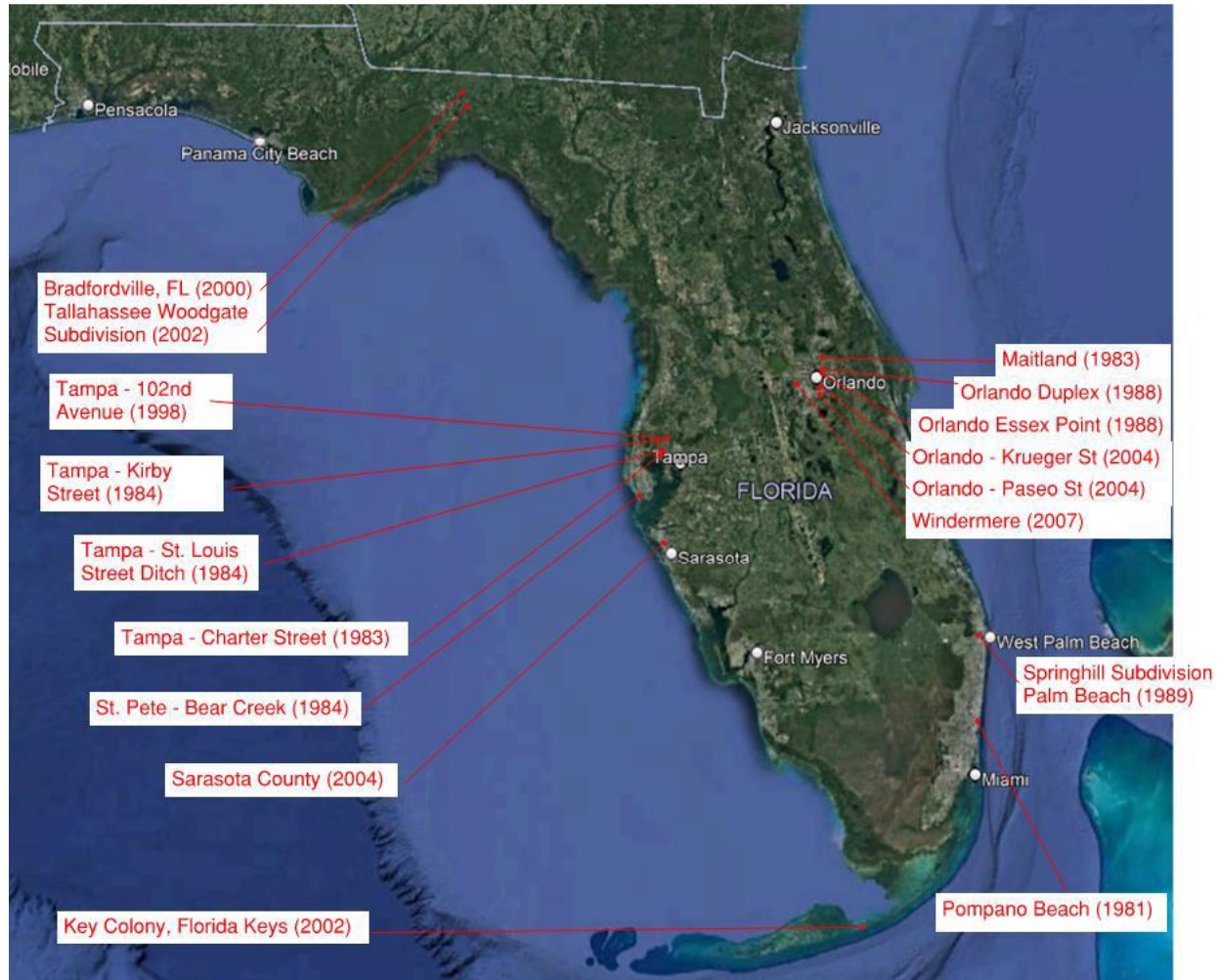
DEP should revise the BMP definition in the Stormwater Rules so that it does not constitute an invalidated exercise of delegated legislative authority.

Not Employing Most Recent Accurate Scientific Information Available

Subsection 373.4131(6), F.S., directed DEP to update the ERP stormwater regulations using the most recent scientific information available. According to the information DEP presented at the rule development workshops for the Stormwater Rules, much of the Stormwater Rules' foundation was based on a 2007 report DEP commissioned Dr. Harvey Harper to perform (2007 Harper Report). The Coalition submits that for many ways in which the 2007 Harper Report was used as the foundation for the Stormwater Rules, the 2007 Harper Report did not constitute the most recent scientific information available. These include the following:

- The 2007 Harper Report took studies of varying, in some cases unknown sizes, and weighted them the same. In some cases, it appears these studies came from the same research project. Additionally, in this report, an approximately 70-acre research project was published with a 50-acre portion and with another separate 20-acre portion. Both parcels were given the same weight in averaging as another 200-acre research project. This form of averaging does not take the mean of total measured data, but instead adds a publication or interpretation variable to the data allowing for a potential unintended variance.
- The Stormwater Rules' EMC values for single-family residential, multi-family, light-industrial, and high-intensity commercial are the same TN and TP values in the 2007 Harper Report. The same concerns that have been raised in the past by others still apply to those values and the fact that no new research has been implemented to adjust these extremely important coefficients in the past 15 years is concerning. After reviewing the multifamily data, there is only one study included in the EMC averaging that was undertaken within the last forty years.
- There have been other studies, such as the *Determination of Nitrogen and Phosphorus Non-point Source Loads for Urban Stormwater Jurisdictions of the Lower St. Johns River Basin* (hereinafter labeled "Hendrickson report"), put forth under the same research funding that were submitted on behalf of the DEP to the United States Environmental Protection Agency (EPA) that should be acknowledged and potentially included.
- Some of the information referenced in the Harper 2007 report is taken from unpublished data (from the report's own admission), which makes it impossible to inspect and verify the same and, as such, should not be accepted.
- Much of the Harper 2007 report appears as a continuation of the Harper 1994 report titled "Stormwater Loading Rate Parameters for Central and South Florida." For the single-family residential calculations, over 70 percent of the data is from one region, the I-4 corridor. Further this study only looks at two test sites north of Orlando and three test sites south of Tampa. This does not reflect an accurate statewide value with potentially outdated data still being used in its calculation. The map below highlights regions that use wet detention are

massively excluded from this analysis.



- In the Stormwater Rules' modified rational method, the runoff coefficient was derived from the 2007 Harper Report. From that report, though it is not clear, it appears in the manner which it is used is as a modified rational coefficient. Modified rational limitations are well documented, most notably the size of site, and we would recommend stating clearly that volume calculations be allowed using Soil Conservation Service (SCS), which is a standard engineering practice and is already derived when setting up the initial formula. With SCS already derived, the Stormwater Rules should clearly allow SCS to continue to be used for the volume. However, if the Stormwater Rules will keep the modified rational coefficient values, good practice would be to make sure that they do not conflict with other sections referencing modified rational coefficients.

To address these technical shortcomings, the Coalition recommends that DEP either withdraw the Stormwater Rule and restart the rulemaking process after reviewing and addressing these technical deficiencies or postponing the rule by continuing the public workshop until these deficiencies are resolved.

If you have any questions about the LCRA or comments contained in this letter, please contact me. Thank you for your consideration of these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Bevis', with a stylized, cursive script.

Brewster B. Bevis
President
Florida H2O Coalition, Inc.

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Attachment D



ASSOCIATED INDUSTRIES OF FLORIDA

The Voice of Florida Business Since 1920

March 17, 2023

John Coates, P.E.
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Division of Water Resource Management
Florida Department of Environmental Protection
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Tallahassee, Florida 32399
Email: John.Coates@dep.state.fl.us; Stormwater2020@floridadep.gov

Dear Mr. Coates,

On behalf of Associated Industries of Florida (“AIF”), thank you for the opportunity to submit this lower cost regulatory alternative (“LCRA”) to the Department in response to the Department’s February 24, 2023, Notice of Proposed Rule for the Department’s proposed revisions to Chapter 62-330, Fla. Admin. Code, and the ERP Applicant’s Handbooks under Part IV, Chapter 373, Fla. Stat. (“Proposed Rule”). AIF supports and appreciates the need for updated stormwater regulations in the Proposed Rule and supported the Clean Waterways Act of 2020 that triggered the Department’s rulemaking. We also appreciate that the Department has undertaken a lengthy and transparent rulemaking process with numerous opportunities for public comment.

AIF is the voice of Florida business and has represented the principles of prosperity and free enterprise before the three branches of state government since 1920. AIF is the largest association of business, trade, commercial and professional organizations in Florida. It represents the interests of over 7,500 corporations, professional associations, partnerships, and proprietorships. AIF is a non-profit corporation organized and existing under the laws of Florida.

A substantial number of AIF’s members are substantially affected by the Proposed Rule. A substantial number of AIF’s members currently hold Environmental Resource Permits, Management and Storage of Surface Water Permits, or Surface Water Management Permits issued pursuant to Chapter 62-330, Fla. Admin. Code, or prior versions of the rules implementing the Part IV, Chapter 373, F.S., permitting program (collectively, “ERPs”). A substantial number of AIF’s members also anticipate modifying projects that were authorized by existing ERPs and/or seeking future ERPs. The Proposed Rule will govern future ERPs and, most pertinently in light of AIF’s LCRA, the Proposed Rule’s grandfathering provisions will affect modification of existing ERP projects. AIF’s members could be required to expend significant sums to alter existing, permitted facilities in order to effect only minor modifications or risk penalties for failure to comply with the Proposed Rule.

The Proposed Rule is within AIF’s general scope and activity. AIF’s purpose is to represent the business community before elected and appointed officials of state government on those issues of interest to the business community and foster an economic climate in Florida conducive to growth, development, and welfare of industry and business and the people of the state. This purpose includes ensuring the burden placed on its members by government regulation is reasonable. In the past, AIF has been actively involved in rulemaking by the Department, including rules related to numeric nutrient criteria and



pollution notification, and has provided extensive comments regarding Florida's interest in the federal rulemaking defining waters of the United States. AIF has participated in the rulemaking process for the Proposed Rule, including participation in the public workshops regarding the Proposed Rule. The modifications proposed in the LCRA is relief appropriate for AIF to receive on behalf of its members.

The Department's February 3, 2023, proposed language, in context with the publication draft, raised questions relating to permit modifications and did not include standard grandfathering language. This LCRA is thus directed to changes related to the first two new paragraphs of that section. Specifically:

Section 8.3 Stormwater Quality Nutrient Permitting Requirements

Stormwater Quality Nutrient Permitting Requirements, as set forth in this section, shall apply to all applications for construction permits deemed complete on or after [effective date + 12 months]. Applications shall be deemed complete 60 days after receipt of the original application, 60 days after the last item of timely requested additional material, or the applicant's written request to begin processing the permit application, as provided in **section 5.5.4.2**, above.

For a permit modification requested for an existing stormwater management system, permitted before [effective date], where the purpose of the modification is solely to bring the system into compliance with applicable design and performance criteria at the time of the current permit's issuance, such modification will not require the system to comply with the performance criteria listed in **sections 8.3.2 through 8.3.5** of this volume.

The above-quoted language as worded is vague and requires clarification to avoid conflict between: 1) existing grandfathering provisions in Sections 373.414(11) – (16), Fla. Stat., and Section 62-330.020 Fla. Admin. Code; and 2) amendments related to the proposed stormwater quality nutrient permitting requirements, their supporting documentation within Sections 8 and 9 of the Applicant's Handbook, and the new inspection certification requirements.

The attached revisions provide clarification consistent with our understanding that the proposed rule applies to new projects. Including the second paragraph stating that only those modifications required "solely to bring the system into compliance with applicable design and performance criteria" subjects the regulated community to uncertainty with other permit modifications which do not substantially alter the stormwater system. These modifications include replacement structures and internal drainage changes which do not alter the percentage of impervious project area, add new land or increase the discharge from the site. They are not substantial but may be different from the permitted design criteria due to a change in material, design standards or a slight change in location.

Placing the applicability provisions in Section 8.3 rather than in Section 3.2.1 leads to questions as to whether the proposed inspection checklist will apply to existing projects, modified projects or transferred projects. This creates a greater burden on the regulated community as some of the inspection provisions impose maintenance requirements on the project that are not included in the existing permit conditions.

The proposed rule was not drafted to require total retrofit of all existing stormwater systems as evidenced by the deference to the local governments with NPDES permits. The LCRA provides that same protection to other owner/operators. This is particularly important since those changes would not cause different water resource impacts. Similarly, effective dates should be placed on the proposed forms to tie them to the rules under which they were adopted as was done when the Statewide Environmental Resource Permitting rules were adopted.



The attached LCRA takes the approach of exempting from the new rules activities and projects that are already permitted through conceptual, general and individual ERPs and modifications to those permits, except for modifications that are substantial modifications.

This “grandfathering” approach is supported by precedent. In the original ERP rulemaking, projects that were already permitted and non-substantial modifications to those permits were grandfathered. See §373.414(12)(a), Fla. Stat. Also, when the ERP rules were expanded into the Northwest Florida Water Management District’s jurisdiction, similar grandfathering was employed for existing permitted projects and activities. See §373.4145(5)(a), Fla. Stat. Finally, when the statewide ERP rules were adopted, grandfathering along these lines was adopted into subsection 3.1.2 (c)3. of the ERP Applicant’s Handbook, Volume I.

In each prior case when the ERP rules underwent substantial revision, the Legislature, Department, and water management districts recognized the potential impact of those rule revisions on existing permitted projects and activities and the equity in ensuring that such activities, and non-substantial modifications of such activities, were not subject to the new rules so that permittees could reasonably rely on entitlements they had obtained. We merely request the similar treatment with the Department’s current proposed ERP stormwater rule revisions.

Thank you for your attention to our request. We would be pleased to meet with the Department to any address any questions related to this LCRA.

Sincerely,

Adam Basford
Vice President, Governmental Affairs

Grandfathering Amendment to Section 3.1.2 of ERP Applicant's Handbook Volume I

(e) Stormwater criteria throughout Volume I and Volume II was updated effective [date]. The updated requirements are applicable to project applications as indicated in the respective updated sections, and as described below:

1. When public transportation projects have received an individual permit prior to [effective date], such activities will remain subject to the rules in effect at the time of issuance, including any associated modifications necessary to accommodate design changes solely for the purposes of public safety or design changes that do not increase the overall impervious surface area by more than 10 percent.

2. For permit modifications, submitted no later than five years from [effective date], for permitted public transportation projects which include stormwater ponds that were sized and permitted to collect stormwater from future public transportation projects, such projects shall be subject to the rules in existence at the time the stormwater management pond was permitted, so long as the treatment capacity for future public transportation projects was specified in the application materials submitted to the agency at the time of the original permit application.

3. For projects and activities not covered by subparagraphs 1. and 2. above, those projects and activities that were approved by a conceptual, general or individual Environmental Resource Permit, Management and Storage of Surface Waters Permit, or Surface Water Management Permit issued prior to [effective date] shall be exempt from the amendments to Chapter 62-330, F.A.C. and Volume I adopted on [effective date], and the corresponding amendments Volume II as later adopted by DEP or the water management districts. This exemption shall also apply to any modification of such permit that is not a substantial modification. For the purposes of Section 3.1.2, a substantial modification is one that is reasonably expected to lead to a substantially different water quality impact, substantially increases the project's total impervious surface, or substantially increases the project boundary. This exemption shall apply to any modification of the plans, terms, and conditions of the permit, including new activities, within the permit boundary provided the impervious area does not substantially increase. This exemption shall also apply to any modification which lessens the impact to water quality. A modification of the permit qualifying for this exemption shall be reviewed under the rules in effect at the time the permit was originally issued, unless the applicant elects to have such modification reviewed under the rules adopted on [effective date]. This exemption also applies to transfers of such permits or conversion of such permits to the operational phase. However, notwithstanding the foregoing, any modification of such permit for the construction of a new dam or significant alteration of an existing dam, as defined in paragraph 2.0(a)27 shall be subject to the criteria of sections 8.4.5 and Appendix L if applicable to such permit modification.

4. In addition to the foregoing, projects or activities that are the subject of a conceptual, general or individual permit application that is deemed complete before or on [effective date + 12 months] shall be exempt from the amendments to Chapter 62-330, F.A.C., and Volume I adopted on [effective date] and the corresponding amendments to Volume II as later adopted by DEP or the water management districts. For the purposes of this paragraph, permit applications shall be deemed complete 60 days after receipt of the original application, 60 days after the last items of timely requested additional material, or the applicant's written request to begin processing the permit application, as provided in section 5.5.4.2.

5. For the purpose of this paragraph, transfers of exempt permits or conversion of construction permits issued before [effective date] shall use the applicable forms adopted prior to the effective date of this rule.

Stormwater Quality Nutrient Permitting Requirement Amendment to Section 8.3 of ERP Applicant's Handbook Volume I

8.3 Stormwater Quality Nutrient Permitting Requirements

~~Stormwater Quality Nutrient Permitting Requirements, as set forth in this section, shall apply to all applications for construction permits deemed complete on or after [effective date + 12 months]. Applications shall be deemed complete 60 days after receipt of the original application, 60 days after the last item of timely requested additional material, or the applicant's written request to begin processing the permit application, as provided in section 5.5.4.2, above.~~

This section applies to projects that are not governed by Section 3.1.2.e. For a permit modification requested for an existing stormwater management system, permitted before [effective date], where the purpose of the modification is solely to bring the system into compliance with applicable design and performance criteria at the time of the current permit's issuance, such modification will not require the system to comply with the performance criteria listed in sections 8.3.2 through 8.3.5 of this volume.

12.5 Inspections

(a) All operation and maintenance entities, (other than MS4 Entities, permittees regulated pursuant to Rule 40E-63, F.A.C., and operations implementing suitable interim measures, best management practices, or other measures adopted by the Department of Agriculture and Consumer Services pursuant to Section 403.067(7)(c)2., FS) shall conduct and report inspections in accordance with this section. An operation and maintenance entity for a stormwater management system shall conduct inspections as needed to ensure that the stormwater management system, and each component thereof, continues to function as designed and permitted. Minimum inspection frequencies are specified in table 12.1, or as proposed by the applicant pursuant to subsection (h) below. If a system is found to be out of compliance, then the inspection frequency may be increased to be greater than that which was originally permitted, per rule 62-330.311 F.A.C. The operation and maintenance entity shall employ a qualified registered professional, or a qualified inspector as described in subsection (c) below, to inspect the stormwater treatment system. The inspector shall submit a report to the Agency describing and certifying the results within 30 days of the inspection. The inspector shall certify in the report that the stormwater treatment system is operating as designed and permitted. The results of required inspections shall be filed with the Agency using Form 62-330.311(1), "Operation and Maintenance Inspection Certification."

Stormwater Facility Inspection Checklist

Instructions

This checklist is to be used only for new facilities permitted after _____. (effective date) Prior to the inspection, the Inspector should review the permit for the facility and the design or as-built drawing for the facility. Terminology and treatment facilities have changed over time. Items that are included in the stormwater treatment calculations shall be evaluated for this inspection.

This inspection checklist is required for the documentation of the annual inspection of all permitted stormwater systems pursuant to Applicant's Handbook Section 12. Complete all parts of the general data section for the project site. Attach any additional required documentation, if necessary. In the "All Technologies" category, mark all items as "satisfactory" or "unsatisfactory." For all other categories, either select "N/A" and minimize the category or mark all inspection items as "satisfactory" or "unsatisfactory." If the system described does not contain a component that is listed for inspection mark that item as "N/A"

For any item marked unsatisfactory, provide a comment below the BMP technology describing maintenance action needed to bring the system back into compliance. Within 30 days of any failure of a stormwater management system or if any components of the constructed system are found to be not in substantial conformance with the permitted system, a report shall be submitted by the permittee or their authorized representative to the Agency using Form 62-330.311(1), "Operation and Maintenance Inspection Certification," ({effective date}), as per 62-330.331(2) F.A.C., describing the remedial actions taken to resolve the failure or deviation.

Inspection reports will be submitted by the permittee or their authorized representative to the applicable permitting agency. Each inspection report must be signed by a certified inspector or a registered professional to certify its authenticity.

Inspection Checklist

General Data

Inspection Date

Project Name

Location

Permit Number

Time since last storm event ☐ <24 hours ☐ 24-48 hours ☐ 48-72 hours ☐ >72 hours

Permit Holder

Permit Effective Date

Inspector Name

Inspector Contact Information

Multiple BMP types in the system No ☐ Yes ☐ List All: _____

Permit drawings have been reviewed No ☐ Yes ☐Additional Photos Attached ☐ N/A ☐Compliance Activity Record Attached ☐ N/A ☐

All (or other unlisted) Technologies

Items for inspection	Satisfactory	Unsatisfactory
General		
BMPs and treatment facilities are in good repair and operational	☐	☐
BMPs and treatment facilities are free from debris buildup that may impair function	☐	☐
Berms, embankments, curbing, or other methods used to impound, divert, and direct discharges are adequate and in good condition	☐	☐
The discharge (if any) is free of floating man-made materials, visible oil sheen, discoloration, turbidity, odor, foam, or any other signs of contamination	☐	☐
Vegetation (areas used for treatment)		
Mowing done when needed	☐	☐
Grass clippings removed	☐	☐
No evidence of erosion	☐	☐
Inlets		
Good condition, no need for repair	☐	☐
No evidence of erosion*	☐	☐
Outlets/overflow spillway		
Good condition, no need for repair	☐	☐
No evidence of erosion*	☐	☐

Comments: _____

Traditional BMPs

Swales (areas used for treatment) N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Swales and contributing areas clear of debris*	☐	☐
Vegetation		
No evidence of erosion*	☐	☐
No weeds or invasive plants present	☐	☐
No evidence of nutrient deficiency	☐	☐
No evidence of disease	☐	☐
Grasses/sod are not in need of replanting/resodding	☐	☐
No signs of drought stress	☐	☐
No signs of plant overgrowth	☐	☐
Recovery		
Swale recovers between storms within permitted timeframe	☐	☐
Swale clean of sediments		
Good condition, no need for repair	☐	☐
No areas of sediment buildup*	☐	☐
No evidence of erosion*	☐	☐
Inlet Structure / Pretreatment:		
Good condition, no need for repair	☐	☐
No trash/debris/sediment in or around inlet structures*	☐	☐
No evidence that runoff is short-circuiting the inlet	☐	☐

Emergency Overflow / Outlet Structure		
Good condition, no need for repair	☐	☐
No evidence of accumulation of trash, debris, or sediment in or around outlet structure(s)*	☐	☐
No evidence of erosion, or flooding around structures*	☐	☐
Swale Blocks N/A ☐		
If swale blocks or other structures are present, there is no evidence of erosion at downstream toe of structure*	☐	☐

Comments: _____

Wet Pond N/A ☐

Type of wet pond _____

Items for inspection (when required by the permit)	Satisfactory	Unsatisfactory
Vegetation		
No signs of damage from animal activity	☐	☐
No signs of stress or disease	☐	☐
No emergent invasive plant life	☐	☐
No areas need replanting	☐	☐
Dead plant material is removed, if necessary	☐	☐
Upland banks are maintained		
Structural		
Embankment condition	☐	☐
Side slopes are stable	☐	☐
Fences/access repairs		
Fence(s) condition	☐	☐
Lock(s) and gate(s) function are adequate	☐	☐
Inlets		
Inlet(s) condition	☐	☐
Runoff is not short-circuiting the inlet	☐	☐
No evidence of trash/debris/sediment in or around inlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet *	☐	☐
Outlets/overflow spillway/ drain gate		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around outlet *	☐	☐
Weir System: drawdown and overflow weir		
Weir system condition	☐	☐
No evidence of clogging *	☐	☐
Clear of debris*	☐	☐

Comments: _____

Dry Pond N/A ☐

Type of dry pond _____

Items for inspection (when required by the permit)	Satisfactory	Unsatisfactory
Debris Cleanout		
Basin bottom clear of debris*	☐	☐
Emergency spillway clear of debris*	☐	☐
Recovery		
Pond recovers between storms	☐	☐
Vegetation		
No signs of damage from animal activity	☐	☐
No signs of stress or disease	☐	☐
No emergent invasive plant life	☐	☐
Does not need replanting	☐	☐
Not overgrown	☐	☐
Sediment cleanout of pond		
No evidence of sedimentation in pond	☐	☐
No evidence of erosion at downstream toe	☐	☐
Structural		
Embankment condition	☐	☐
Side slopes are stable	☐	☐
Fences/access repairs		
Fence(s) condition	☐	☐
Lock(s) and gate(s) function adequate	☐	☐
Underdrain/side bank Filters		
Cleanout caps present and in good condition	☐	☐
No evidence of clogging	☐	☐
No evidence of erosion over or adjacent to filter*	☐	☐
Inlets		
Inlet(s) condition	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet*	☐	☐
Outlets/overflow spillway		
Outlet(s) condition	☐	☐
No evidence of erosion, gullies, rills, or flooding around outlet*	☐	☐

Comments: _____

Exfiltration Trench N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Trench surface clear of debris*	☐	☐
Inlet areas clear of debris*	☐	☐
Inflow pipes clear of debris*	☐	☐
Overflow spillway clear of debris*	☐	☐
Sediment traps or forebays		
Sufficiently trapping sediment	☐	☐
Has additional storage capacity available until next maintenance action	☐	☐
Sediment buildup has been removed	☐	☐
Vegetation		

Water does not stand on vegetative surface	☐	☐
Good vegetative cover exists	☐	☐
Recovery		
Trench recovers between storms	☐	☐
Sediment cleanout of trench		
No evidence of sedimentation in trench*	☐	☐
Inlets		
Inlet intake(s) functioning adequately	☐	☐
Inlet(s) condition	☐	☐
No evidence of flooding around inlet	☐	☐
Outlets/overflow spillway		
Outlet(s) condition	☐	☐
No evidence of flooding around outlet	☐	☐
Structural		
Embankment condition	☐	☐
Side slopes are stable	☐	☐
Aggregate repairs		
Surface of aggregate clean	☐	☐
Top layer of stone does not need replacement	☐	☐
Trench does not need rehabilitation	☐	☐

Comments: _____

Pervious Pavers/Pavement N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Paving area clean of debris*	☐	☐
Site Area		
Drainage area contains stable soil that will not clog pavers	☐	☐
Vegetation on site healthy and glass clippings removed	☐	☐
Runoff is not short-circuiting the pavers	☐	☐
No evidence of erosion, gullies, or rills around site	☐	☐
Infiltration		
Infiltration Test meets requirements	☐	☐
Recovery		
Pervious paving recovers between storms	☐	☐
No evidence of clogging or standing water	☐	☐
Sediments		
Pavement area clean of sediments	☐	☐
Area vacuum swept on a periodic basis	☐	☐
Structural Integrity		
No evidence of surface deterioration	☐	☐
No evidence of rutting or spalling	☐	☐
No evidence of pavement settling	☐	☐
No evidence of missing aggregate between pavers	☐	☐

Outlets		
Outlet(s) condition	☐	☐
No evidence of clogging	☐	☐
Clean out caps present if included	☐	☐
Vegetation cells N/A ☐		
Vegetation healthy	☐	☐
Vegetation not overgrown	☐	☐
No grass clippings present *	☐	☐

Comments: _____

Stormwater Vaults or Tanks N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Paving area clean of debris*	☐	☐
Recovery		
Recovers between storms	☐	☐
No evidence of standing water	☐	☐
No nuisance flooding evident	☐	☐
Sediments		
Clear of sediments*	☐	☐
Structural Integrity		
No evidence of surface deterioration	☐	☐
No evidence of cracking	☐	☐
No evidence of rutting or spalling	☐	☐
Safety		
Ladders functioning and in good repair	☐	☐
Adequate venting for access	☐	☐
Contains primary and secondary access	☐	☐
Inlets		
Inlet(s) condition	☐	☐
No evidence of scouring	☐	☐
Outlets		
Outlet(s) condition	☐	☐
No evidence of erosion *	☐	☐
No evidence of clogging	☐	☐

Comments: _____

Constructed Marsh System N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Marsh System clear of debris*	☐	☐
Vegetation		
Appears healthy	☐	☐

No emergent invasive plant life	☐	☐
No signs of damage from animal activity	☐	☐
No signs of stress or disease	☐	☐
No areas need replanting	☐	☐
Dead plant material removed, as necessary	☐	☐
Upland banks are maintained	☐	☐
Flow		
No signs of channeling or erosion *	☐	☐
Maintains minimum permitted water elevation	☐	☐
No signs of drought or short-circuiting	☐	☐
Inlets		
Inlet(s) condition	☐	☐
Runoff is not short-circuiting the inlet	☐	☐
No evidence of trash/debris/sediment in or around inlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet *	☐	☐
Vegetation around inlet in good condition	☐	☐
Outlets/emergency outflow N/A ☐		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around outlet *	☐	☐
Weir System or Level Spreader N/A ☐		
Weir system condition	☐	☐
No evidence of clogging	☐	☐
Clear of debris*	☐	☐

Comments: _____

Vegetative Natural Buffers N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Buffer clear of debris*	☐	☐
Vegetation		
Vegetation healthy	☐	☐
No emergent invasive plant life	☐	☐
No signs of damage from animal activity	☐	☐
No signs of stress or disease	☐	☐
No areas need replanting	☐	☐
Dead plant material removed, as necessary	☐	☐
Upland banks are maintained	☐	☐
Flow		
No signs of channeling or erosion *	☐	☐
Maintain minimum permitted water elevation	☐	☐
No signs of drought or prolonged ponding	☐	☐
Inlets		
Inlet(s) condition	☐	☐
Runoff is not short Circuiting the inlet	☐	☐

No evidence of trash/debris/sediment in or around inlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet *	☐	☐
Vegetation around inlet in good condition	☐	☐
Outlets/emergency outflow N/A ☐		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around outlet *	☐	☐

Comments: _____

Green Roof N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Vegetated area clear of debris*	☐	☐
Dewatering		
Recovers between storms	☐	☐
No evidence of ponding or inundation	☐	☐
Structural		
Constructed elements condition	☐	☐
No evidence of roof leaks	☐	☐
No evidence of exposed or actively eroding areas	☐	☐
Dispersal system/sprinkler N/A ☐		
Dispersal system/sprinkler functioning as intended	☐	☐
Piping in good repair	☐	☐
Pumps functioning as intended	☐	☐
Cistern tank functioning as intended	☐	☐
Overflow functioning as intended	☐	☐
Vegetation		
Vegetation healthy	☐	☐
No emergent invasive plant life	☐	☐
No signs of nutrient deficiency/disease	☐	☐
No areas need replanting	☐	☐
Inlets/Catchments		
Inlet(s) condition	☐	☐
No evidence of erosion*	☐	☐
No evidence of clogging	☐	☐
Outlets		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet*	☐	☐
No evidence of erosion or flooding *	☐	☐
No evidence of bypassing	☐	☐

Comments: _____

Cistern N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Site area		

No evidence of clogging flow paths or pipes *	☐	☐
Structural		
Constructed elements condition	☐	☐
Condition of foundation if above ground	☐	☐
No evidence of leaks	☐	☐
No evidence of algal growth in cistern	☐	☐
No evidence of prolonged storage	☐	☐
Vegetation		
Trees appear healthy	☐	☐
Trees do not need replacing or pruning	☐	☐
No emergent invasive plant life	☐	☐
Inlets		
Inlet(s) condition	☐	☐
Runoff is not bypassing the inlet(s)	☐	☐
No evidence of trash/debris/sediment in or around inlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet *	☐	☐
Screen and/or trap is secured and functioning properly	☐	☐
Screen and/or trap is clear of debris build up *	☐	☐
First flush collector (if present) clear of debris and properly functioning	☐	☐
Outlets/emergency overflow		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet*	☐	☐
No evidence of erosion or flooding *	☐	☐
Pump N/A ☐		
Float switch functional	☐	☐
Pump functional	☐	☐
Healthy vegetation, if used for irrigation	☐	☐

Comments: _____

Tree Box or Tree Well N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Site area		
Area clear of excess debris*	☐	☐
No evidence of erosion*	☐	☐
Structural		
Constructed elements condition	☐	☐
Device dewater between storms	☐	☐
No evidence of inundation	☐	☐
No evidence of sediment build up *	☐	☐
Vegetation		
Tree(s) appears healthy	☐	☐
Tree(s) do not need replacing or pruning	☐	☐
No emergent invasive plant life	☐	☐

Inlets		
Inlet(s) condition	☐	☐
Runoff is not bypassing the inlet	☐	☐
No evidence of trash/debris/sediment in or around inlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet *	☐	☐
Outlets/emergency overflow		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet*	☐	☐
No evidence of erosion or flooding *	☐	☐
Underdrain, if installed		
All cleanouts clear from clogging or blockages *	☐	☐
Cleanouts in good condition	☐	☐

Comments: _____

Bioswale or Raingarden N/A ☐

Type of LID(s)

Items for inspection	Satisfactory	Unsatisfactory
Site area		
Area clear of excess debris*	☐	☐
No evidence of erosion or sedimentation *	☐	☐
Dewatering		
Ponding dewaterers between storms	☐	☐
No evidence of inundation	☐	☐
Sediment cleanout		
No evidence of sedimentation	☐	☐
Structural		
Constructed elements condition	☐	☐
Mulch depth at least 2 inches	☐	☐
No evidence of damage from wildlife	☐	☐
No evidence of erosion*	☐	☐
No sediment build-up*	☐	☐
Vegetation		
Vegetation healthy	☐	☐
No emergent invasive plant life	☐	☐
No areas need replanting	☐	☐
Not overgrown	☐	☐
Inlets		
Inlet(s) condition	☐	☐
Runoff is not short-circuiting the inlet area	☐	☐
No evidence of trash/debris/sediment in or around inlet area*	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet area*	☐	☐
Plant life around inlets condition	☐	☐
Outlets/overflow spillway		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet*	☐	☐

No evidence of erosion or flooding *	☐	☐
Underdrain N/A ☐		
All cleanouts clear from clogging or blockages	☐	☐
Cleanouts in good condition	☐	☐

Comments: _____

Non-Traditional BMPs

Other Manufactured BMPs N/A ☐

Type of System _____

Items for inspection	Satisfactory	Unsatisfactory
Functioning based on permit and manufacturer specifications	☐	☐
No evidence of damage or clogging	☐	☐

Comments: _____

Monitoring Devices and Adaptive Controls N/A ☐

Type of Monitoring Device(s) _____

Items for inspection	Satisfactory	Unsatisfactory
Computer components		
Functioning as intended	☐	☐
Recording data at permitted intervals	☐	☐
No signs of rusting, corrosion, or other weather damage	☐	☐

Comments: _____

* That May Impair Function

Signature

Inspector Name:

Signature of Inspector:

Florida Registration Number:

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Attachment E



ASSOCIATED INDUSTRIES OF FLORIDA

The Voice of Florida Business Since 1920

March 17, 2023

John Coates, P.E.
Program Management Director
Division of Water Resource Management
Florida Department of Environmental Protection
2600 Blair Stone Road, M.S. 3500
Tallahassee, Florida 32399
Email: John.Coates@dep.state.fl.us; Stormwater2020@floridadep.gov

Dear Mr. Coates,

On behalf of Associated Industries of Florida (“AIF”), thank you for the opportunity to submit this lower cost regulatory alternative (“LCRA”) to the Department in response to the Department’s February 24, 2023, Notice of Proposed Rule for the Department’s proposed revisions to Chapter 62-330, Fla. Admin. Code, and the ERP Applicant’s Handbooks under Part IV, Chapter 373, Fla. Stat. (“Proposed Rule”). AIF supports and appreciates the need for updated stormwater regulations in the Proposed Rule and supported the Clean Waterways Act of 2020 that triggered the Department’s rulemaking. We also appreciate that the Department has undertaken a lengthy and transparent rulemaking process with numerous opportunities for public comment.

AIF is the voice of Florida business and has represented the principles of prosperity and free enterprise before the three branches of state government since 1920. AIF is the largest association of business, trade, commercial and professional organizations in Florida. It represents the interests of over 7,500 corporations, professional associations, partnerships, and proprietorships. AIF is a non-profit corporation organized and existing under the laws of Florida.

A substantial number of AIF’s members are substantially affected by the Proposed Rule. A substantial number of AIF’s members currently hold Environmental Resource Permits, Management and Storage of Surface Water Permits, or Surface Water Management Permits issued pursuant to Chapter 62-330, Fla. Admin. Code, or prior versions of the rules implementing the Part IV, Chapter 373, F.S., permitting program (collectively, “ERPs”). A substantial number of AIF’s members also anticipate modifying projects that were authorized by existing ERPs and/or seeking future ERPs. The Proposed Rule will govern future ERPs and, most pertinently in light of AIF’s LCRA, the Proposed Rule’s grandfathering provisions will affect modification of existing ERP projects. AIF’s members could be required to expend significant sums to alter existing, permitted facilities in order to effect only minor modifications or risk penalties for failure to comply with the Proposed Rule.

The Proposed Rule is within AIF’s general scope and activity. AIF’s purpose is to represent the business community before elected and appointed officials of state government on those issues of interest to the business community and foster an economic climate in Florida conducive to growth, development, and welfare of industry and business and the people of the state. This purpose includes ensuring the burden placed on its members by government regulation is reasonable. In the past, AIF has been actively involved in rulemaking by the Department, including rules related to numeric nutrient criteria and



pollution notification, and has provided extensive comments regarding Florida's interest in the federal rulemaking defining waters of the United States. AIF has participated in the rulemaking process for the Proposed Rule, including participation in the public workshops regarding the Proposed Rule. The modifications proposed in the LCRA is relief appropriate for AIF to receive on behalf of its members.

The Department's February 3, 2023, proposed language, in context with the publication draft, raised questions relating to permit modifications and did not include standard grandfathering language. This LCRA is thus directed to changes related to the first two new paragraphs of that section. Specifically:

Section 8.3 Stormwater Quality Nutrient Permitting Requirements

Stormwater Quality Nutrient Permitting Requirements, as set forth in this section, shall apply to all applications for construction permits deemed complete on or after [effective date + 12 months]. Applications shall be deemed complete 60 days after receipt of the original application, 60 days after the last item of timely requested additional material, or the applicant's written request to begin processing the permit application, as provided in **section 5.5.4.2**, above.

For a permit modification requested for an existing stormwater management system, permitted before [effective date], where the purpose of the modification is solely to bring the system into compliance with applicable design and performance criteria at the time of the current permit's issuance, such modification will not require the system to comply with the performance criteria listed in **sections 8.3.2 through 8.3.5** of this volume.

The above-quoted language as worded is vague and requires clarification to avoid conflict between: 1) existing grandfathering provisions in Sections 373.414(11) – (16), Fla. Stat., and Section 62-330.020 Fla. Admin. Code; and 2) amendments related to the proposed stormwater quality nutrient permitting requirements, their supporting documentation within Sections 8 and 9 of the Applicant's Handbook, and the new inspection certification requirements.

The attached revisions provide clarification consistent with our understanding that the proposed rule applies to new projects. Including the second paragraph stating that only those modifications required "solely to bring the system into compliance with applicable design and performance criteria" subjects the regulated community to uncertainty with other permit modifications which do not substantially alter the stormwater system. These modifications include replacement structures and internal drainage changes which do not alter the percentage of impervious project area, add new land or increase the discharge from the site. They are not substantial but may be different from the permitted design criteria due to a change in material, design standards or a slight change in location.

Placing the applicability provisions in Section 8.3 rather than in Section 3.2.1 leads to questions as to whether the proposed inspection checklist will apply to existing projects, modified projects or transferred projects. This creates a greater burden on the regulated community as some of the inspection provisions impose maintenance requirements on the project that are not included in the existing permit conditions.

The proposed rule was not drafted to require total retrofit of all existing stormwater systems as evidenced by the deference to the local governments with NPDES permits. The LCRA provides that same protection to other owner/operators. This is particularly important since those changes would not cause different water resource impacts. Similarly, effective dates should be placed on the proposed forms to tie them to the rules under which they were adopted as was done when the Statewide Environmental Resource Permitting rules were adopted.



The attached LCRA takes the approach of exempting from the new rules activities and projects that are already permitted through conceptual, general and individual ERPs and modifications to those permits, except for modifications that are substantial modifications.

This “grandfathering” approach is supported by precedent. In the original ERP rulemaking, projects that were already permitted and non-substantial modifications to those permits were grandfathered. See §373.414(12)(a), Fla. Stat. Also, when the ERP rules were expanded into the Northwest Florida Water Management District’s jurisdiction, similar grandfathering was employed for existing permitted projects and activities. See §373.4145(5)(a), Fla. Stat. Finally, when the statewide ERP rules were adopted, grandfathering along these lines was adopted into subsection 3.1.2 (c)3. of the ERP Applicant’s Handbook, Volume I.

In each prior case when the ERP rules underwent substantial revision, the Legislature, Department, and water management districts recognized the potential impact of those rule revisions on existing permitted projects and activities and the equity in ensuring that such activities, and non-substantial modifications of such activities, were not subject to the new rules so that permittees could reasonably rely on entitlements they had obtained. We merely request the similar treatment with the Department’s current proposed ERP stormwater rule revisions.

Thank you for your attention to our request. We would be pleased to meet with the Department to any address any questions related to this LCRA.

Sincerely,

Adam Basford
Vice President, Governmental Affairs

Grandfathering Amendment to Section 3.1.2 of ERP Applicant's Handbook Volume I

(e) Stormwater criteria throughout Volume I and Volume II was updated effective [date]. The updated requirements are applicable to project applications as indicated in the respective updated sections, and as described below:

1. When public transportation projects have received an individual permit prior to [effective date], such activities will remain subject to the rules in effect at the time of issuance, including any associated modifications necessary to accommodate design changes solely for the purposes of public safety or design changes that do not increase the overall impervious surface area by more than 10 percent.

2. For permit modifications, submitted no later than five years from [effective date], for permitted public transportation projects which include stormwater ponds that were sized and permitted to collect stormwater from future public transportation projects, such projects shall be subject to the rules in existence at the time the stormwater management pond was permitted, so long as the treatment capacity for future public transportation projects was specified in the application materials submitted to the agency at the time of the original permit application.

3. For projects and activities not covered by subparagraphs 1. and 2. above, those projects and activities that were approved by a conceptual, general or individual Environmental Resource Permit, Management and Storage of Surface Waters Permit, or Surface Water Management Permit issued prior to [effective date] shall be exempt from the amendments to Chapter 62-330, F.A.C. and Volume I adopted on [effective date], and the corresponding amendments Volume II as later adopted by DEP or the water management districts. This exemption shall also apply to any modification of such permit that is not a substantial modification. For the purposes of Section 3.1.2, a substantial modification is one that is reasonably expected to lead to a substantially different water quality impact, substantially increases the project's total impervious surface, or substantially increases the project boundary. This exemption shall apply to any modification of the plans, terms, and conditions of the permit, including new activities, within the permit boundary provided the impervious area does not substantially increase. This exemption shall also apply to any modification which lessens the impact to water quality. A modification of the permit qualifying for this exemption shall be reviewed under the rules in effect at the time the permit was originally issued, unless the applicant elects to have such modification reviewed under the rules adopted on [effective date]. This exemption also applies to transfers of such permits or conversion of such permits to the operational phase. However, notwithstanding the foregoing, any modification of such permit for the construction of a new dam or significant alteration of an existing dam, as defined in paragraph 2.0(a)27 shall be subject to the criteria of sections 8.4.5 and Appendix L if applicable to such permit modification.

4. In addition to the foregoing, projects or activities that are the subject of a conceptual, general or individual permit application that is deemed complete before or on [effective date + 12 months] shall be exempt from the amendments to Chapter 62-330, F.A.C., and Volume I adopted on [effective date] and the corresponding amendments to Volume II as later adopted by DEP or the water management districts. For the purposes of this paragraph, permit applications shall be deemed complete 60 days after receipt of the original application, 60 days after the last items of timely requested additional material, or the applicant's written request to begin processing the permit application, as provided in section 5.5.4.2.

5. For the purpose of this paragraph, transfers of exempt permits or conversion of construction permits issued before [effective date] shall use the applicable forms adopted prior to the effective date of this rule.

Stormwater Quality Nutrient Permitting Requirement Amendment to Section 8.3 of ERP Applicant's Handbook Volume I

8.3 Stormwater Quality Nutrient Permitting Requirements

~~Stormwater Quality Nutrient Permitting Requirements, as set forth in this section, shall apply to all applications for construction permits deemed complete on or after [effective date + 12 months]. Applications shall be deemed complete 60 days after receipt of the original application, 60 days after the last item of timely requested additional material, or the applicant's written request to begin processing the permit application, as provided in section 5.5.4.2, above.~~

This section applies to projects that are not governed by Section 3.1.2.e. For a permit modification requested for an existing stormwater management system, permitted before [effective date], where the purpose of the modification is solely to bring the system into compliance with applicable design and performance criteria at the time of the current permit's issuance, such modification will not require the system to comply with the performance criteria listed in sections 8.3.2 through 8.3.5 of this volume.

12.5 Inspections

(a) All operation and maintenance entities, (other than MS4 Entities, permittees regulated pursuant to Rule 40E-63, F.A.C., and operations implementing suitable interim measures, best management practices, or other measures adopted by the Department of Agriculture and Consumer Services pursuant to Section 403.067(7)(c)2., FS) shall conduct and report inspections in accordance with this section. An operation and maintenance entity for a stormwater management system shall conduct inspections as needed to ensure that the stormwater management system, and each component thereof, continues to function as designed and permitted. Minimum inspection frequencies are specified in table 12.1, or as proposed by the applicant pursuant to subsection (h) below. If a system is found to be out of compliance, then the inspection frequency may be increased to be greater than that which was originally permitted, per rule 62-330.311 F.A.C. The operation and maintenance entity shall employ a qualified registered professional, or a qualified inspector as described in subsection (c) below, to inspect the stormwater treatment system. The inspector shall submit a report to the Agency describing and certifying the results within 30 days of the inspection. The inspector shall certify in the report that the stormwater treatment system is operating as designed and permitted. The results of required inspections shall be filed with the Agency using Form 62-330.311(1), "Operation and Maintenance Inspection Certification."

Stormwater Facility Inspection Checklist

Instructions

This checklist is to be used only for new facilities permitted after _____. (effective date) Prior to the inspection, the Inspector should review the permit for the facility and the design or as-built drawing for the facility. Terminology and treatment facilities have changed over time. Items that are included in the stormwater treatment calculations shall be evaluated for this inspection.

This inspection checklist is required for the documentation of the annual inspection of all permitted stormwater systems pursuant to Applicant's Handbook Section 12. Complete all parts of the general data section for the project site. Attach any additional required documentation, if necessary. In the "All Technologies" category, mark all items as "satisfactory" or "unsatisfactory." For all other categories, either select "N/A" and minimize the category or mark all inspection items as "satisfactory" or "unsatisfactory." If the system described does not contain a component that is listed for inspection mark that item as "N/A"

For any item marked unsatisfactory, provide a comment below the BMP technology describing maintenance action needed to bring the system back into compliance. Within 30 days of any failure of a stormwater management system or if any components of the constructed system are found to be not in substantial conformance with the permitted system, a report shall be submitted by the permittee or their authorized representative to the Agency using Form 62-330.311(1), "Operation and Maintenance Inspection Certification," ({effective date}), as per 62-330.331(2) F.A.C., describing the remedial actions taken to resolve the failure or deviation.

Inspection reports will be submitted by the permittee or their authorized representative to the applicable permitting agency. Each inspection report must be signed by a certified inspector or a registered professional to certify its authenticity.

Inspection Checklist

General Data

Inspection Date

Project Name

Location

Permit Number

Time since last storm event ☐ <24 hours ☐ 24-48 hours ☐ 48-72 hours ☐ >72 hours

Permit Holder

Permit Effective Date

Inspector Name

Inspector Contact Information

Multiple BMP types in the system No ☐ Yes ☐ List All: _____

Permit drawings have been reviewed No ☐ Yes ☐Additional Photos Attached ☐ N/A ☐Compliance Activity Record Attached ☐ N/A ☐

All (or other unlisted) Technologies

Items for inspection	Satisfactory	Unsatisfactory
General		
BMPs and treatment facilities are in good repair and operational	☐	☐
BMPs and treatment facilities are free from debris buildup that may impair function	☐	☐
Berms, embankments, curbing, or other methods used to impound, divert, and direct discharges are adequate and in good condition	☐	☐
The discharge (if any) is free of floating man-made materials, visible oil sheen, discoloration, turbidity, odor, foam, or any other signs of contamination	☐	☐
Vegetation (areas used for treatment)		
Mowing done when needed	☐	☐
Grass clippings removed	☐	☐
No evidence of erosion	☐	☐
Inlets		
Good condition, no need for repair	☐	☐
No evidence of erosion*	☐	☐
Outlets/overflow spillway		
Good condition, no need for repair	☐	☐
No evidence of erosion*	☐	☐

Comments: _____

Traditional BMPs

Swales (areas used for treatment) N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Swales and contributing areas clear of debris*	☐	☐
Vegetation		
No evidence of erosion*	☐	☐
No weeds or invasive plants present	☐	☐
No evidence of nutrient deficiency	☐	☐
No evidence of disease	☐	☐
Grasses/sod are not in need of replanting/resodding	☐	☐
No signs of drought stress	☐	☐
No signs of plant overgrowth	☐	☐
Recovery		
Swale recovers between storms within permitted timeframe	☐	☐
Swale clean of sediments		
Good condition, no need for repair	☐	☐
No areas of sediment buildup*	☐	☐
No evidence of erosion*	☐	☐
Inlet Structure / Pretreatment:		
Good condition, no need for repair	☐	☐
No trash/debris/sediment in or around inlet structures*	☐	☐
No evidence that runoff is short-circuiting the inlet	☐	☐

Emergency Overflow / Outlet Structure		
Good condition, no need for repair	☐	☐
No evidence of accumulation of trash, debris, or sediment in or around outlet structure(s)*	☐	☐
No evidence of erosion, or flooding around structures*	☐	☐
Swale Blocks N/A ☐		
If swale blocks or other structures are present, there is no evidence of erosion at downstream toe of structure*	☐	☐

Comments: _____

Wet Pond N/A ☐

Type of wet pond _____

Items for inspection (when required by the permit)	Satisfactory	Unsatisfactory
Vegetation		
No signs of damage from animal activity	☐	☐
No signs of stress or disease	☐	☐
No emergent invasive plant life	☐	☐
No areas need replanting	☐	☐
Dead plant material is removed, if necessary	☐	☐
Upland banks are maintained		
Structural		
Embankment condition	☐	☐
Side slopes are stable	☐	☐
Fences/access repairs		
Fence(s) condition	☐	☐
Lock(s) and gate(s) function are adequate	☐	☐
Inlets		
Inlet(s) condition	☐	☐
Runoff is not short-circuiting the inlet	☐	☐
No evidence of trash/debris/sediment in or around inlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet *	☐	☐
Outlets/overflow spillway/ drain gate		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around outlet *	☐	☐
Weir System: drawdown and overflow weir		
Weir system condition	☐	☐
No evidence of clogging *	☐	☐
Clear of debris*	☐	☐

Comments: _____

Dry Pond N/A ☐

Type of dry pond _____

Items for inspection (when required by the permit)	Satisfactory	Unsatisfactory
Debris Cleanout		
Basin bottom clear of debris*	☐	☐
Emergency spillway clear of debris*	☐	☐
Recovery		
Pond recovers between storms	☐	☐
Vegetation		
No signs of damage from animal activity	☐	☐
No signs of stress or disease	☐	☐
No emergent invasive plant life	☐	☐
Does not need replanting	☐	☐
Not overgrown	☐	☐
Sediment cleanout of pond		
No evidence of sedimentation in pond	☐	☐
No evidence of erosion at downstream toe	☐	☐
Structural		
Embankment condition	☐	☐
Side slopes are stable	☐	☐
Fences/access repairs		
Fence(s) condition	☐	☐
Lock(s) and gate(s) function adequate	☐	☐
Underdrain/side bank Filters		
Cleanout caps present and in good condition	☐	☐
No evidence of clogging	☐	☐
No evidence of erosion over or adjacent to filter*	☐	☐
Inlets		
Inlet(s) condition	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet*	☐	☐
Outlets/overflow spillway		
Outlet(s) condition	☐	☐
No evidence of erosion, gullies, rills, or flooding around outlet*	☐	☐

Comments: _____

Exfiltration Trench N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Trench surface clear of debris*	☐	☐
Inlet areas clear of debris*	☐	☐
Inflow pipes clear of debris*	☐	☐
Overflow spillway clear of debris*	☐	☐
Sediment traps or forebays		
Sufficiently trapping sediment	☐	☐
Has additional storage capacity available until next maintenance action	☐	☐
Sediment buildup has been removed	☐	☐
Vegetation		

Water does not stand on vegetative surface	☐	☐
Good vegetative cover exists	☐	☐
Recovery		
Trench recovers between storms	☐	☐
Sediment cleanout of trench		
No evidence of sedimentation in trench*	☐	☐
Inlets		
Inlet intake(s) functioning adequately	☐	☐
Inlet(s) condition	☐	☐
No evidence of flooding around inlet	☐	☐
Outlets/overflow spillway		
Outlet(s) condition	☐	☐
No evidence of flooding around outlet	☐	☐
Structural		
Embankment condition	☐	☐
Side slopes are stable	☐	☐
Aggregate repairs		
Surface of aggregate clean	☐	☐
Top layer of stone does not need replacement	☐	☐
Trench does not need rehabilitation	☐	☐

Comments: _____

Pervious Pavers/Pavement N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Paving area clean of debris*	☐	☐
Site Area		
Drainage area contains stable soil that will not clog pavers	☐	☐
Vegetation on site healthy and glass clippings removed	☐	☐
Runoff is not short-circuiting the pavers	☐	☐
No evidence of erosion, gullies, or rills around site	☐	☐
Infiltration		
Infiltration Test meets requirements	☐	☐
Recovery		
Pervious paving recovers between storms	☐	☐
No evidence of clogging or standing water	☐	☐
Sediments		
Pavement area clean of sediments	☐	☐
Area vacuum swept on a periodic basis	☐	☐
Structural Integrity		
No evidence of surface deterioration	☐	☐
No evidence of rutting or spalling	☐	☐
No evidence of pavement settling	☐	☐
No evidence of missing aggregate between pavers	☐	☐

Outlets		
Outlet(s) condition	☐	☐
No evidence of clogging	☐	☐
Clean out caps present if included	☐	☐
Vegetation cells N/A ☐		
Vegetation healthy	☐	☐
Vegetation not overgrown	☐	☐
No grass clippings present *	☐	☐

Comments: _____

Stormwater Vaults or Tanks N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Paving area clean of debris*	☐	☐
Recovery		
Recovers between storms	☐	☐
No evidence of standing water	☐	☐
No nuisance flooding evident	☐	☐
Sediments		
Clear of sediments*	☐	☐
Structural Integrity		
No evidence of surface deterioration	☐	☐
No evidence of cracking	☐	☐
No evidence of rutting or spalling	☐	☐
Safety		
Ladders functioning and in good repair	☐	☐
Adequate venting for access	☐	☐
Contains primary and secondary access	☐	☐
Inlets		
Inlet(s) condition	☐	☐
No evidence of scouring	☐	☐
Outlets		
Outlet(s) condition	☐	☐
No evidence of erosion *	☐	☐
No evidence of clogging	☐	☐

Comments: _____

Constructed Marsh System N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Marsh System clear of debris*	☐	☐
Vegetation		
Appears healthy	☐	☐

No emergent invasive plant life	☐	☐
No signs of damage from animal activity	☐	☐
No signs of stress or disease	☐	☐
No areas need replanting	☐	☐
Dead plant material removed, as necessary	☐	☐
Upland banks are maintained	☐	☐
Flow		
No signs of channeling or erosion *	☐	☐
Maintains minimum permitted water elevation	☐	☐
No signs of drought or short-circuiting	☐	☐
Inlets		
Inlet(s) condition	☐	☐
Runoff is not short-circuiting the inlet	☐	☐
No evidence of trash/debris/sediment in or around inlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet *	☐	☐
Vegetation around inlet in good condition	☐	☐
Outlets/emergency outflow N/A ☐		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around outlet *	☐	☐
Weir System or Level Spreader N/A ☐		
Weir system condition	☐	☐
No evidence of clogging	☐	☐
Clear of debris*	☐	☐

Comments: _____

Vegetative Natural Buffers N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Buffer clear of debris*	☐	☐
Vegetation		
Vegetation healthy	☐	☐
No emergent invasive plant life	☐	☐
No signs of damage from animal activity	☐	☐
No signs of stress or disease	☐	☐
No areas need replanting	☐	☐
Dead plant material removed, as necessary	☐	☐
Upland banks are maintained	☐	☐
Flow		
No signs of channeling or erosion *	☐	☐
Maintain minimum permitted water elevation	☐	☐
No signs of drought or prolonged ponding	☐	☐
Inlets		
Inlet(s) condition	☐	☐
Runoff is not short Circuiting the inlet	☐	☐

No evidence of trash/debris/sediment in or around inlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet *	☐	☐
Vegetation around inlet in good condition	☐	☐
Outlets/emergency outflow N/A ☐		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around outlet *	☐	☐

Comments: _____

Green Roof N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Debris Cleanout		
Vegetated area clear of debris*	☐	☐
Dewatering		
Recovers between storms	☐	☐
No evidence of ponding or inundation	☐	☐
Structural		
Constructed elements condition	☐	☐
No evidence of roof leaks	☐	☐
No evidence of exposed or actively eroding areas	☐	☐
Dispersal system/sprinkler N/A ☐		
Dispersal system/sprinkler functioning as intended	☐	☐
Piping in good repair	☐	☐
Pumps functioning as intended	☐	☐
Cistern tank functioning as intended	☐	☐
Overflow functioning as intended	☐	☐
Vegetation		
Vegetation healthy	☐	☐
No emergent invasive plant life	☐	☐
No signs of nutrient deficiency/disease	☐	☐
No areas need replanting	☐	☐
Inlets/Catchments		
Inlet(s) condition	☐	☐
No evidence of erosion*	☐	☐
No evidence of clogging	☐	☐
Outlets		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet*	☐	☐
No evidence of erosion or flooding *	☐	☐
No evidence of bypassing	☐	☐

Comments: _____

Cistern N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Site area		

No evidence of clogging flow paths or pipes *	☐	☐
Structural		
Constructed elements condition	☐	☐
Condition of foundation if above ground	☐	☐
No evidence of leaks	☐	☐
No evidence of algal growth in cistern	☐	☐
No evidence of prolonged storage	☐	☐
Vegetation		
Trees appear healthy	☐	☐
Trees do not need replacing or pruning	☐	☐
No emergent invasive plant life	☐	☐
Inlets		
Inlet(s) condition	☐	☐
Runoff is not bypassing the inlet(s)	☐	☐
No evidence of trash/debris/sediment in or around inlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet *	☐	☐
Screen and/or trap is secured and functioning properly	☐	☐
Screen and/or trap is clear of debris build up *	☐	☐
First flush collector (if present) clear of debris and properly functioning	☐	☐
Outlets/emergency overflow		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet*	☐	☐
No evidence of erosion or flooding *	☐	☐
Pump N/A ☐		
Float switch functional	☐	☐
Pump functional	☐	☐
Healthy vegetation, if used for irrigation	☐	☐

Comments: _____

Tree Box or Tree Well N/A ☐

Items for inspection	Satisfactory	Unsatisfactory
Site area		
Area clear of excess debris*	☐	☐
No evidence of erosion*	☐	☐
Structural		
Constructed elements condition	☐	☐
Device dewater between storms	☐	☐
No evidence of inundation	☐	☐
No evidence of sediment build up *	☐	☐
Vegetation		
Tree(s) appears healthy	☐	☐
Tree(s) do not need replacing or pruning	☐	☐
No emergent invasive plant life	☐	☐

Inlets		
Inlet(s) condition	☐	☐
Runoff is not bypassing the inlet	☐	☐
No evidence of trash/debris/sediment in or around inlet *	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet *	☐	☐
Outlets/emergency overflow		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet*	☐	☐
No evidence of erosion or flooding *	☐	☐
Underdrain, if installed		
All cleanouts clear from clogging or blockages *	☐	☐
Cleanouts in good condition	☐	☐

Comments: _____

Bioswale or Raingarden N/A ☐

Type of LID(s)

Items for inspection	Satisfactory	Unsatisfactory
Site area		
Area clear of excess debris*	☐	☐
No evidence of erosion or sedimentation *	☐	☐
Dewatering		
Ponding dewaterers between storms	☐	☐
No evidence of inundation	☐	☐
Sediment cleanout		
No evidence of sedimentation	☐	☐
Structural		
Constructed elements condition	☐	☐
Mulch depth at least 2 inches	☐	☐
No evidence of damage from wildlife	☐	☐
No evidence of erosion*	☐	☐
No sediment build-up*	☐	☐
Vegetation		
Vegetation healthy	☐	☐
No emergent invasive plant life	☐	☐
No areas need replanting	☐	☐
Not overgrown	☐	☐
Inlets		
Inlet(s) condition	☐	☐
Runoff is not short-circuiting the inlet area	☐	☐
No evidence of trash/debris/sediment in or around inlet area*	☐	☐
No evidence of erosion, gullies, rills, or flooding around inlet area*	☐	☐
Plant life around inlets condition	☐	☐
Outlets/overflow spillway		
Outlet(s) condition	☐	☐
No evidence of trash/debris/sediment in or around outlet*	☐	☐

No evidence of erosion or flooding *	☐	☐
Underdrain N/A ☐		
All cleanouts clear from clogging or blockages	☐	☐
Cleanouts in good condition	☐	☐

Comments: _____

Non-Traditional BMPs

Other Manufactured BMPs N/A ☐

Type of System _____

Items for inspection	Satisfactory	Unsatisfactory
Functioning based on permit and manufacturer specifications	☐	☐
No evidence of damage or clogging	☐	☐

Comments: _____

Monitoring Devices and Adaptive Controls N/A ☐

Type of Monitoring Device(s) _____

Items for inspection	Satisfactory	Unsatisfactory
Computer components		
Functioning as intended	☐	☐
Recording data at permitted intervals	☐	☐
No signs of rusting, corrosion, or other weather damage	☐	☐

Comments: _____

* That May Impair Function

Signature

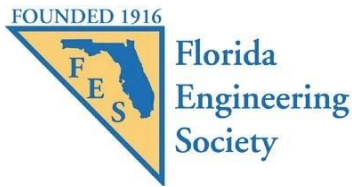
Inspector Name:

Signature of Inspector:

Florida Registration Number:

**Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

#



Via Email

March 17, 2023

John Coates, PE
Program Management Director
Division of Water Resource Management
Florida Department of Environmental Protection

**Re: SUBMISSION OF LOWER REGULATORY COST ALTERNATIVE /
SPECIFIC AREAS OF CONCERN REGARDING PROPOSED AMENDMENTS
TO CH. 62-330, F.A.C. AND APPLICANT'S HANDBOOK VOLUME I**

The Florida Engineering Society (FES) submitted a proposed lower regulatory cost alternative to the Department on March 5, 2023 which supplemented our letter of February 13, 2023. The lower regulatory cost alternative was submitted pursuant to Section 120.541, F.S. and will be discussed at the March 22, 2023 public hearing.

FES supports measures, within the statutory authority granted to the Department, to achieve a net water quality improvement of Florida's Outstanding Florida Waters and impaired waters, and to maintain existing water quality in water bodies that currently meet standards.

However, the 80% / 95% statewide post-development percentage total phosphorus (TP) and total nitrogen (TN) reductions required by Part 8 of the proposed Environment Resources Permit Applicant's Handbook Volume I (AHI) will significantly increase the costs of all development in Florida and go beyond the Department's rule making authority granted by the legislature to:

1. Update current stormwater regulations using most recent scientific information available;
 2. Consider and address low-impact design best management practices (BMPs) and design criteria to increase removal of nutrients from stormwater discharges; and
 3. Incorporate measures for consistent application of the NET IMPROVEMENT performance standard to ensure significant reductions of any pollutant loadings to a water body.
-
1. The proposed 80% / 95% TP and TN reductions are not supported by available scientific information. Although Table 4 of the Technical Advisory Committee (TAC) Summary Report included percentage reductions, the TAC also requested that those percentages be reviewed and altered based on BMP load reduction data. It should be noted that the

suggestion for percentage reductions was not a recommendation of the TAC as a whole, but only some of the participants.

The TAC also was not apparently aware of the Department's regulatory authority being limited to a Net Improvement performance standard as outlined in Section 373.414 F.S.

Our recommendation, as stated in our Lower Regulatory Cost Alternative, is to revise Section 8 of AH I.

If the legislature desires the Department to adopt state-wide percentage reductions of both TP and TN – even in watersheds not impaired for TP or TN – they will amend the Department's directive to specifically include those directions.

2. The Department's proposed regulatory modifications include state-wide maintenance of all BMP components, demonstration of applicant's financial ability to maintain in perpetuity, along with an outlined approach to calculating the nutrient removal calculations will result in stormwater designs which increase the nutrient removal from stormwater discharges.
3. By adopting our proposed Lower Regulatory Cost Alternative, the Department will assure compliance with the Net Improvement standard and significant reduction in nutrient loadings directives from the legislature.

Historically, stormwater systems in Florida were designed to prevent discharge of total suspended solids. By changing the stormwater regulations to focus specifically on nutrient reduction, the Department is requiring more site specific and efficient water quality designs. This will result in a significant reduction in the nutrient loadings from new developments – even if the regulations only require Net Improvement, as allowed by the Legislature.

As discussed with Department staff, we encourage holding meetings with state agency staff and the public so that the new rules are implemented consistently statewide, and within the authority delegated by the Legislature to the Department.

Lower Regulatory Cost Alternative to 8.3.2 Minimum Performance Standards for all sites

8.3.2 Minimum Performance Standards for all sites

Except as described in 8.3.4 through 8.3.6 below, all stormwater management ~~treatment~~ systems shall provide a level of treatment sufficient to demonstrate the post-development average annual loading of nutrients does not exceed the predevelopment nutrient loading condition.

Lower Regulatory Cost Alternative to 8.3.3 Minimum Performance Standards for OFWs

8.3.3 Minimum Performance Standards for Outstanding Florida Waters (OFWs)

Stormwater management ~~treatment~~ systems located within a HUC 12 subwatershed containing an OFW and upstream of the OFW, shall provide a level of treatment

sufficient to demonstrate a net improvement of the water quality in the receiving body of total phosphorus (TP) and total nitrogen (TN), compared to the predevelopment nutrient loading condition.

Lower Regulatory Cost Alternative to 8.3.4 Minimum Performance Standards for Impaired Waters

8.3.4 Minimum Performance Standards for Impaired Waters

(a) Stormwater management systems located within a HUC 12 sub-watershed which contains an impaired water, and located upstream of that impaired water, shall provide a level of treatment sufficient to demonstrate a reduction below the predevelopment condition, which shall be determined utilizing a site-specific model acceptable to the Department and based on basin-specific data, such as those collected by the Department during the Impaired Waters listing process.

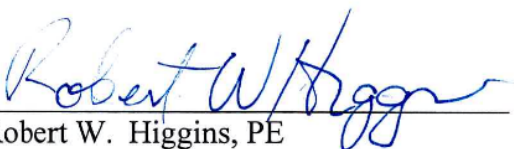
Remove 8.3.5 and 8.3.6

Since the above provisions are based on net improvement compared to pre-development conditions, we recommend that the Department delete the Alternative Performance Standards and Exemption from Minimum Performance Standards for Redevelopment. The associated definitions can also be deleted.

Thank you for your consideration.

The Department's library, contains many design innovations. Many of these are new to both regulatory staff and regulated industries. We look forward to pooling our resources to utilize these innovations to accomplish our joint goal of a net improvement of Florida's impaired waters and OFWs.

Sincerely,


Robert W. Higgins, PE
FES Stormwater Subcommittee Chair
On behalf of Florida Engineering Society


Kelly Cranford, PE, Env. Sp.
FES President
On behalf of Florida Engineering Society

cc: FES Stormwater Subcommittee
Allen Douglas