

3/21/2023

John Coates

Florida Department of Environmental Protection

Submitted Electronically to: Stormwater2020@floridadep.gov

RE: Concern and Considerations Related to Proposed Stormwater Rule Making

Mr. Coates,

We appreciate the opportunity to provide additional feedback to FLDEP on the proposed stormwater rulemaking that is currently underway. We previously sent feedback in June 2021 during the TAC process, but we're disappointed that there was no acknowledgement or follow-up dialog regarding the issues raised in our previous comments prior to the announcement of this rulemaking. We have re-attached those concerns to this correspondence for reconsideration given that they remain unresolved based on the information made available ahead of the rulemaking process. Our hope is that you will carefully consider these issues in the upcoming rulemaking process. Additionally, we have highlighted several additional issues herein that we feel need careful consideration prior to adoption of a final rule.

- **Compliance feasibility:** We applaud FLDEP for establishing a high bar for stormwater pollutant removal in hopes of restoring and protecting receiving waters. However, we are very concerned that the proposed levels of pollutant reduction for phosphorus and nitrogen are not going to be technically feasible on many sites using best available practices and methods for stormwater management. More specifically, there are very few stormwater control measures capable of consistently achieving Total Phosphorus (TP) loads by 80% or more. Additionally, there are virtually no stormwater control measures capable of consistently removing 80% of the Total Nitrogen load. This concern is readily supported by nearly all available research on stormwater control measure performance. We strongly encourage FLDEP not to establish performance requirements that can't be met by the vast majority of the available tools for treating and managing stormwater runoff. Prior to adoption of the final rule we strongly recommend that FLDEP carefully review available performance data on common stormwater control measures using resources such as the International BMP Database in order to gain further understanding of what is feasible. <https://bmpdatabase.org/>. It is critical that FLDEP not assign levels of expected pollutant removal to stormwater control measures that are not supported by the available science.
- As highlighted in our previous comment letter, we feel it is of critical importance that a single and credible method be applied to assign the pollutant removal capability to all stormwater control measure be it now or in the future to ensure equity as well as a reasonable expectation of compliance with pollutant removal requirements.
- Also noted in our previous comments was the need for a robust process to evaluate new/innovative stormwater control measures not yet included in your guidance. We feel that field testing under a highly respected protocol such as the TAPE field protocol provides the best means of establishing long term pollutant removal capability for pollutants such as TP and TN. We feel a well-defined process for

vetting and accepting new technologies and approaches should be in place along with an established list of technologies and approaches that have already been evaluated. Vetting new methods and technologies at the project level will undoubtedly lead to inequity in the process and varying levels of underperformance in the field.

We appreciate your careful consideration of these issues and encourage you to contact me at your convenience to discuss in more detail.

Respectfully,

A handwritten signature in black ink, appearing to read 'D. Berg', with a stylized, flowing script.

Derek M. Berg

Director- Stormwater Regulatory Management - East

CONTECH Engineered Solutions LLC

71 US Route 1, Suite F | Scarborough, ME 04074

T: 207.885.6174 F: 207.885.9825

DBerg@conteches.com

www.ContechES.com