



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.
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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

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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