

March 17, 2023



John Coates
Program Management Director
Division of Water Resource Management
Florida Department of Environmental Protection
Submitted via Email to: john.coates@floridadep.gov & Stormwater2020@FloridaDEP.gov

Re: Stormwater Rulemaking Revisions to Applicant's Handbook Volume I

Mr. Coates,

We appreciate your effort and the efforts of staff at the Department of Environmental Protection (FDEP) to develop proposed amendments to the state's stormwater regulations. While we recognize that much stronger regulations are needed to adequately protect our waterways from pollution from stormwater runoff, FDEP's proposed rule language as posted in the Florida Administrative Register on February 24, 2023, represents a step in the right direction. On behalf of Waterkeepers Florida - the collective of the 15 independent Waterkeeper organizations working in the state of Florida to protect and restore our water resources – **we urge you to move forward with ratification of the rules in their current form.**

Chapter 2020-150, Laws of Florida, codified at section 373.4131(6), F.S., required FDEP to initiate rulemaking to update the stormwater design and operation regulations and the Environmental Resource Permit Applicant's Handbook using the most recent scientific information available. As noted by the Blue-Green Algae Task Force in their 2019 recommendations, "available data suggest that a substantial number of stormwater treatment systems throughout the state fail to achieve their presumed performance standards." This assertion was confirmed by an [FDEP study](#) back in 2007. FDEP's proposed rules would help to remedy this deficiency by requiring applicants to provide nutrient load reduction calculations in their application to show that performance standards will be met.

It has come to our attention that several organizations have requested that FDEP revise the draft rule to offer weaker protections for our state's waterways. The performance standards in FDEP's proposed rule (an 80 percent reduction of the average annual load of pollutants for most stormwater systems and a 95 percent reduction for Outstanding Florida Waters) are the same standards that have existed in Florida's stormwater regulations for decades (see F.A.C 62-40.432). The proposed rule changes would merely provide better assurance that these standards will actually be achieved. Furthermore, despite a notable lack of regular participation during the 13 Technical Advisory Committee meetings and six rulemaking workshops spanning over two years, these organizations have requested that the ratification of this rule be delayed. The adoption of stronger stormwater regulations has already been delayed for over ten years since the draft 2010 rules were never adopted. Each year that these outdated rules remain on the books means more pollution in our waterways. Weakening or delaying the ratification of these rules would fly in the face of several of the state's top environmental priorities including the Governor's Executive Order 23-06, the Blue-Green Algae Task Force's 2019 recommendations, the 'Clean Waterways Act' Stormwater Rulemaking Technical Advisory Committee's recommendations, and the 2020 'Clean Waterways Act' itself.

As you are aware, section 120.541 F.S. allows a substantially affected person to submit a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The alternative provided by the Florida Engineering Society (FES) will not substantially accomplish the objectives of section 373.4131(6), F.S. FES proposes eliminating the numeric performance standards and instead relying on a 'net improvement' standard. However, the 'net improvement' standard has been a source of confusion for many years and FES's alternative did not provide any definition to ameliorate this issue. Specific, quantifiable numeric performance standards are critical to a successful stormwater regulation program. Eliminating these standards would increase confusion and, in many cases, result in a net increase of pollution to our state's waterways. The shortcomings of the 'net improvement' standard are evidenced by the multitude of stormwater systems that are failing to meet the required pollution reduction goals and underscored by the need to update the stormwater regulations as required by the 'Clean Waterways Act.' Similarly, lowering the numeric performance standards would result in more stormwater pollution degrading our waterways. We understand that there will be a cost associated with these updated rules, but weakening the standards or delaying implementation means that more pollution will enter our waterways as well as MS4s managed by local governments, and ultimately that taxpayers will be saddled with the cost of remediating this pollution.

For these reasons, we urge FDEP to reject the proposed lower cost regulatory alternative and to move forward with ratification of the proposed stormwater rules in their current form during the 2023 legislative session.



A handwritten signature in blue ink, which appears to read "Jen Lomberg". The signature is fluid and cursive, written over the printed name.

Respectfully,
Jen Lomberg, Esq.
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