



November 1, 2021

Submitted via email to Stormwater2020@floridadep.gov

Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

Re: Comments for Section 5 of Chapter 2020-150, L.O.F. Stormwater Technical Advisory Committee

To Whom it May Concern,

Over the last year, our organization and colleagues followed the work of the Clean Waterways Act Stormwater Rulemaking Technical Advisory Committee (TAC) by attending virtual meetings and providing public comment. The TAC's work has adhered to its mission in providing "a forum for identifying and constructively outlining recommendations to the department and water management districts for strengthening the stormwater design and operation regulations..." However, we are concerned that several TAC member recommendations and suggestions made by the public through comment submissions and testimony during meetings have not been substantially included in the most recent Fourth Version of the TAC Summary Report. In order to make meaningful improvement in Florida's stormwater design and operation regulations that reflect the advances in our technological and scientific understanding of hydrologic and climate systems, the following topics should be included in the Department of Environmental Protection's draft stormwater rule:

Reclaimed water and nutrient loading

Concerns of reclaimed water usage and the resulting nutrient loading have not been adequately included in the TAC Summary Report. While the need for utilizing reclaimed water in the state as a water conservation measure is well understood, documented nutrient issues do exist and must be clearly addressed as a parameter of concern. State standards for reclaimed water do not adequately reduce nitrogen and phosphorus loads which add excess nutrients to a watershed. While Advanced Wastewater Treatment (AWT) provides lower levels of nutrients, these facilities can still contribute nutrients to waterways via runoff from irrigation.

Furthermore, many systems across the state do not treat to AWT standards, resulting in even higher nutrient loading. The additional nutrient loading from land application of reclaimed water, particularly where no fertilizer reduction ordinance is in place, should be clearly incorporated into loading calculations in these rules.

Defining “predevelopment” and “long standing use”

TAC members spent considerable time during meetings discussing the implications of the definition for predevelopment for stormwater regulation and water quality. However, our organizations are concerned with the definition of predevelopment as the “long standing use” of the site, which in turn is loosely defined as “the land use and activities of a site five years prior to the application of the permit.” Continuing to use existing and recent conditions as a benchmark will result in locking in current, human-caused water quality issues thus failing to address pollutant loading in the stormwater system design. While case law currently sets parameters around what is considered “predevelopment” we encourage the TAC and rulemaking to explore more comprehensive ways to adequately limit the volume of loading allowed from a property. Adherence to a five year previous time horizon fails to address the state’s growing water quality problems.

Existing stormwater systems

There are more than 76,000 stormwater systems in Florida. Studies suggest that many are likely failing to function properly. The TAC’s first charge was to provide recommended changes “for improving existing stormwater operation regulations.” While the TAC Summary Report suggests streamlining inspection and additional monitoring requirements for new permits, the stormwater rule should scrutinize and account for aging existing systems, including enforcement of water quality standards for failing systems. If the new stormwater rules only address new development and redevelopment, there will still be a net increase in nutrient loading.

Post-construction monitoring and compliance

The presumption of compliance for stormwater systems has failed to protect our waterways, as evidenced by the rampant nutrient impairments across our state. The TAC Summary Report calls for additional monitoring and maintenance requirements but does not require retrofitting of existing systems and includes inadequate recommendations regarding the need for post-construction monitoring and compliance. The current recommendation on monitoring does not have language for ongoing monitoring and maintenance of both existing and new stormwater systems which are key to ensuring a successful stormwater program.

Additionally, the rule should clearly articulate a process for rebutting the presumption of compliance for a system that is suspected of failing to function properly. Many stormwater systems are located on private property, making it difficult or impossible for concerned stakeholders to access the system to obtain water samples. Currently, WMD and FDEP staff have no procedure in place for conducting a site visits and assessments to ensure that a system is functioning properly. A clear process is necessary to ground-truth potentially faulty systems instead of presumed compliance.

Identifying best management practices for sea level rise and climate change

Florida is particularly vulnerable to the myriad effects of climate change, particularly in our coastal, low-lying, and flood-prone areas. While the TAC's vote to update rainfall data to the *NOAA Atlas 14* data set was a step towards identifying additional informational needs for stormwater design criteria and as a data point to develop best management practices, we advocate for more aggressive and proactive consideration for sea level rise data and climate change. Additionally, the present recommendations do not have a timeline for periodically updating the data sets and we recommend implementing a structure to ensure the most recent data is used and reviewed regularly is in place.

Include all Waterbody IDs

We support the TAC's move to hear recommendations to apply the regulatory lens to more than just Impaired Waterbody IDs (WBIDs) by including all WBIDs as noted in the current draft's Appendix C. This inclusion of all WBIDs in scope is key to ensuring that water quality standards and improvements are made in Florida.

Redevelopment

The TAC has rightly noted that redevelopment and retrofitting should be incentivized while keeping the same regulatory standards for redevelopment as new development. Moving forward we encourage the rulemaking to address this with an eye towards incentive programs that take into consideration the benefits of redevelopment versus new development while ensuring these programs don't come at the expense of water quality.

In conclusion, we appreciate TAC members and FDEP staff committing to the stormwater rulemaking process and believe all stakeholders understand the urgency with which we must act to develop meaningful policy to protect all Florida waters from urban, agricultural, and industrial runoff. The stormwater regulatory system should achieve the highest possible reduction of pollutants entering our waters and we cannot wait another twenty years before revisiting and updating the stormwater rule. We remain committed to engaging in the rule

development process and welcome FDEP staff to contact our organizations for additional information about our recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Bloom", with a stylized flourish extending to the right.

Justin Bloom
Board Vice-Chair
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