

October 1, 2020

John Truitt
Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
John.Truitt@dep.state.fl.us

RE: Stakeholder Input on Stormwater 2020 Process

Mr. Truitt:

Bio Clean Environmental is a national manufacturer of post-construction stormwater best management practices (BMPs). These are commonly referred to as manufactured treatment devices (MTDs). We want to thank the Florida Department of Environmental Protection (DEP) for the opportunity to provide comments on the publicly provided introductory presentation prior to the agency initiating its proposed statewide stormwater rulemaking.

Bio Clean supports the development of strong stormwater management strategies and regulations that protect local and State water quality while incorporating new advances in stormwater science and allowing for innovative techniques and technologies to be incorporated outside of formalized rulemaking efforts. Indeed, we feel the successful efforts of other states in developing programs to recognize new stormwater BMPs outside of a rulemaking process is a necessary component of an adaptive regulatory program. At this time, DEP does not have a process for the evaluation of innovation stormwater BMPs, leaving water management districts and localities without a reliable source of information to use for their individual decision making process.

Bio Clean also has concerns that specific academic institutions are providing both regulatory tools used by agencies and selling a proprietary BMP commercially that has preference in that regulatory tool, resulting in a potential conflict of interest. The consequence is stifling marketplace innovations and BMP options available to the regulated community. This matter requires further investigation and resolution to ensure there is equal access to all stormwater technology providers – be they developed via academic & private entities, or even through public-private partnerships.

Bio Clean offers the following comments for DEP's consideration:

- 1) Bio Clean believes all stormwater BMPs should be evaluated via a robust, clearly defined standard, in order to ensure comparability across the BMP categories and provide all stakeholders there is reasonable assurance water quality standards can be both maintained and achieved. A sound stormwater BMP evaluation program should also include an understandable and consistent process for the evaluation of new BMPs and encourage acceptance of those that

meet or exceed applicable performance standards so as to drive new innovations within stormwater management.

- 2) We request FL DEP utilizes the New Jersey Department of Environmental Protection's laboratory monitoring protocol and the Washington State Department of Ecology's Technology Assessment Protocol-Ecology (TAPE) field monitoring protocol for the purposes of stormwater BMP pollutant removal performance studies and evaluation. These stormwater testing protocols are widely accepted across the nation as a regulatory standard. The NJDEP and TAPE protocols also form the foundation for a proposed national performance verification program, known as the Stormwater Testing and Evaluation for Products and Practices (STEPP), which is designed to help standardize performance testing methods across the country and reduce uncertainty surrounding the use of all stormwater BMPs.
- 3) Specifically, we note the WA TAPE program allows for the monitoring and analysis of nutrients, which are pollutants of concern for DEP and the Watershed Districts.
- 4) We encourage DEP consider requiring stormwater BMPs – both public domain and proprietary based – designed to remove nutrients to be field tested in Florida.
- 5) Ensure that any existing evaluation tools referenced in the new regulation are commensurate with either NJDEP and/or TAPE. This will serve to create a process where stormwater BMPs of all types are easily compared. Doing so allows for greater flexibility to implement effective post-construction stormwater management in Florida.
- 6) Avoid permanently grandfathering approval of MTDs and proprietary based BMPs (i.e those that use proprietary based filtering media) in use today. Instead, include a sunset provision so that all BMPs transition to new standards at the same time. This will reduce inequities in the types of data reviewed, create approval process efficiencies, and eliminate a multi-tiered approval program.
- 7) We recommend all media used for bioretention systems undergo toxicity testing to ensure there are no unintended consequences. We have observed instances where some media use recycled tires. Tires are a known source of metals and other toxics that could result in localized impairments and fish kills if the concentrations are too high. Toxicity testing can help prevent such situation from occurring prior to a product being introduced to the Florida marketplace.
- 8) Bio Clean supports the unification of BMP standards across the entire state in order to prevent the past confusions and issues with BMP standards being designed at the individual District level. A unified approach simplifies the regulatory atmosphere.
- 9) Regarding BMP TRAINS, Bio Clean requests a process be developed to allow technologies outside of those currently included to be incorporated into the program. As we currently understand, it is up to others to create guidance on how different technologies can be used within BMP TRAINS. This creates confusion for designers during their site design evaluation process. Developing a single process for incorporation into the program will eliminate this uncertainty. We also request that BMPs currently included are required to be monitored under



the same testing protocols as any new post-construction BMPs so all are evaluated using a baseline standard.

Lastly, Bio Clean respectfully requests it be included in any future meetings regarding the proposed stormwater rule. We ask that we can participate in both workshops and any technical/stakeholder advisory committees DEP holds in the future. Please direct your correspondence regarding these future meetings to Ed Coccari (ed.coccari@forterrbp.com) and Chris French (chris.french@forterrabp.com).

Please do not hesitate to contact us should you have any questions or concerns regarding these comments.

Sincerely,

A handwritten signature of Chris French in black ink, written on a light blue rectangular background.

Chris French

National Regulatory Manager

Cc. James Landini, Florida DEP
stormwater2020@floridadep.gov