

Via Email

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RE: Stormwater Technical Advisory Committee Proposed Draft Summary Report  
Dear Tim,

On behalf of WaterReuse Florida (WRFL), an association solely dedicated to advancing laws, policy, funding, and public acceptance of recycled water, please consider this correspondence WRFL's comments on the Florida Department of Environmental Protection (DEP) Stormwater Technical Advisory Committee (TAC) proposed draft Summary Report (Draft Report) and a request that WRFL be allowed to make a presentation to the TAC on reclaimed water. WRFL represents a coalition of utilities that recycle water, businesses that support the development of recycled water projects, and consumers of recycled water. We believe that to meet Florida's future water demands while protecting our natural resources, a variety of alternative water supply options must be instituted to ensure that the right water is used in the right place.

One of WRFL's initiatives was the formation of the Florida Potable Reuse Commission (PRC), which is a coalition of a diverse group of water resource, industry, agricultural, environmental, and health professionals. Created in 2018, the purpose of the PRC was to create a consensus driven partnership to develop the framework for the implementation of potable reuse in Florida. The PRC's Final Report, titled "Framework for the Implementation of Potable Reuse in Florida", dated January 2020, provides the framework that supports the use of potable reuse as a water supply alternative in Florida to meet future water supply needs while protecting public health and the environment. The Florida Legislature recognized the important work of the PRC by including in Chapter 2020-150, Laws of Florida,<sup>1</sup> a directive to DEP to initiate rulemaking based on the recommendations of the PRC's Final Report and deeming reclaimed water a water source for public water supply systems.

The Florida Legislature has determined that "reclaimed water provided by domestic wastewater treatment plants permitted and operated under a reuse program approved by the department is environmentally acceptable and not a threat to public

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<sup>1</sup> Senate Bill 712 (2020)

health and safety.”<sup>2</sup> The treatment of reclaimed water and its use are highly regulated in Florida.<sup>3</sup>

It has recently come to our attention that the TAC is proposing recommendations<sup>4</sup> that may significantly impact the use of reclaimed water in the State of Florida, as well as statements that are inaccurate. Unfortunately, WRFL is concerned that the intent of the Draft Report is to deem reclaimed water harmful to the environment and negatively impacts the water quality of stormwater. The comments included in the Draft Report are not only inconsistent with current legislative and DEP initiatives, but we believe are inaccurate.

In addition to supporting the comments included in the letter submitted by the Florida Water Environment Association on September 10, 2021, there are many things that impact the water quality of stormwater including but not limited to, potable water (which has both nitrates and phosphorus), fertilizer, and rainwater. All of which are not being considered by the TAC. Unfortunately, the TAC is targeting reclaimed water, which has extensive regulations and already may not cause or contribute water quality standards under Florida law.

The TAC should avoid using broad statements, such as secondary treated effluent water is similar to septic tank leachate and advanced wastewater treatment (AWT) reclaimed water may “sometimes be better quality than regular stormwater runoff”. Not only are these statements not based on science, but if taken out of context, may harm many of the successes Florida has achieved in using reclaimed water. The State of Florida is spending hundreds of millions of dollars on septic to sewer conversions due to the harm that septic tanks are causing on the State’s water resources, especially within springsheds and areas associated with a Basin Management Action Plans. Secondary treated reclaimed water is not the same as leachate.

WRFL is concerned that the TAC is considering regulations outside of stormwater regulations, especially since it appears to be outside the scope of the TAC. The rulemaking directive found in Section 5 of Chapter 2020-150, Laws of Florida, directs DEP and the water management districts to:

initiate rulemaking to update the stormwater design and operation regulations, including updates to the Environmental Resource Permit

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<sup>2</sup> Section 373.250, Florida Statutes.

<sup>3</sup> Chapters 373 and 403, Florida Statutes; Chapters 62-4, 62-302, 62-303, 62-304, 62-520, 62-550, 62-610, 62-620, 62-640, 62-650, Florida Administrative Code.

<sup>4</sup> Although the Draft Report states that recommendations were approved if they are bolded, after reviewing the videos of the TAC meetings, it appears that there was no approval of the recommendations included in “3. Reuse Water Quality Standards” (Recommendations). Rather, it appears that the statements and Recommendations are from one presentation and have been inserted as though they had been approved.

Applicant's Handbook, using the most recent scientific information available. As part of rule development, the department shall consider and address low-impact design best management practices and design criteria that increase the removal of nutrients from stormwater discharges, and measures for consistent application of the net improvement performance standard to ensure significant reductions of any pollutant loadings to a waterbody.

This directive can be found in Section 373.4131(6), Florida Statutes, which is titled "Statewide environmental resource permitting rules." If the Legislature intended that DEP initiate rulemaking in other substantive issues, such as wastewater utilities rules, it would not limited the directive to environmental resource permits (ERP). In addition, DEP is currently amending many of the rules related to reclaimed water in a rulemaking process separate from this TAC.

Regulation of stormwater through ERPs, by DEP and the water management districts, is pursuant to part IV of Chapter 373, Florida Statutes, and the associated rules. Reclaimed water is regulated by DEP pursuant to Chapter 403, Florida Statutes, and the associated rules. In addition, unlike DEP, the water management districts are prohibited from restricting the use of reclaimed water provided by a utility to a customer under Section 373.250, Florida Statutes. The exception to the regulation of reclaimed water is found in Section 373.707(9), Florida Statutes, which authorizes certain conditions that may be included in cooperative funding agreements, including the implementation of education programs regarding the proper use of reclaimed water and reclaimed water rate structures based on actual use of reclaimed water. The Recommendations related to water management districts' regulation of reclaimed water have already been considered by the Florida Legislature, and laws were passed to prohibit such regulation.

If utilities are required to treat all reclaimed water to AWT standards, there will be no incentive to place the reclaimed water into purple pipes, as utilities could use such highly treated water for other purposes, or discharge it directly into surface water. Although initially this may sound beneficial to the TAC, a more holistic consideration would find that this concept would result in more groundwater and surface water withdrawals. More people are continuing to move to Florida every day and more water will be needed to meet the demands for both potable and irrigation purposes.

What is more troubling is that the proposed recommendations are from one presentation from a TAC member who is frustrated that the utilities are ignoring the information provided by him (summary of his comments). There was no consideration of information or education from wastewater utilities or DEP regarding the water quality and regulation of reclaimed water. Early in the TAC's existence, David Kramer from the Southwest Florida Water Management District educated the TAC regarding the ERP process and stormwater. This was done to ensure that the TAC could have meaningful

dialogue about the issues under consideration. Reviewing the membership of the TAC, it appears that only one government representative oversees wastewater operations.

Over the last two years, there have been two new laws enacted which were related to reclaimed water; both reiterate the importance of not causing or contributing to water quality violations. Chapter 2020-150, Laws of Florida, provides that “[r]ules for **potable reuse projects must address** contaminants of emerging concern and meet or exceed federal and state drinking water quality standards and other **applicable water quality standards.**” (emphasis added). Chapter 2021-168, Laws of Florida, related to the prohibition of discharging reclaimed water into surface water bodies by 2032 unless otherwise exempt, states that a utility is not exempt from requirements that prohibit the causing of or contributing to violations of water quality standards in surface waters, including groundwater discharges that affect water quality in surface waters.<sup>5</sup> In addition, utilities are authorized to continue to discharge into surface waters after 2032 if (1) the discharge is into a stormwater management system that is subsequently withdrawn by a user for irrigation purposes, or (2) if a utility reuses a minimum of 90 percent of its reclaimed water the prior five years. Regardless of how a utility meets the requirements of Section 403.064(17), Florida Statutes, it must still comply with the prohibition on not causing or contributing to water quality violations.

We recognize that the TAC’s desire is to make recommendations that will protect Florida’s environment. We should work together to formulate how best to protect Florida’s waterways and ecosystems as, at the end of the day, it is all water. This approach is consistent with an effort that DEP is currently undertaking called “One Florida Water”. The source of the water should not matter, all water in Florida should be recycled in order relieve pressure on Florida’s water resources and ecosystems. The more water we recycle, the more water remains in our rivers and springs for the plants and wildlife that rely upon them. The recycling of water should include stormwater. Let’s bring all of the stakeholders together to develop the best recommendations for Florida’s future. On behalf of WRFL, we would like to offer our assistance to the TAC by providing a presentation on the water quality of reclaimed water and to cooperatively work with the TAC to develop meaningful recommendations.

Sincerely,



Lynn Spivey  
Past President, WRFL  
Chair, PRC

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<sup>5</sup> Section 403.064(17), Florida Statutes.