



Re: 2020 Stormwater Rulemaking

Stormwater has been regulated in Florida since the early 1980s, initially in an effort to minimize flooding, and later to also prevent degradation of water quality. The rules for stormwater management set a target to achieve at least an 80% reduction of the average annual load of pollutants that cause or contribute to violations of State Water Quality Standards for most surface waters, and a 95% reduction when the stormwater system discharges to an Outstanding Florida Water (OFW). Unfortunately, studies have shown that in reality most systems are not coming anywhere close to achieving these load reductions.¹ In 2007, an effort was initiated to update the stormwater regulations, but unfortunately, after years of workshopping and drafting proposed amendments, the rule was never adopted. This is an outcome that cannot befall this undertaking.

Nutrient pollution is currently one of the most common causes of waterbody impairment across the state.² Ineffective stormwater treatment systems continue to contribute to nutrient pollution issues as our state's population continues to skyrocket. Estimates show that about 900 people move to Florida every single day. With a rapidly growing population, comes rapid development of natural areas and increased runoff. Drastic changes are necessary in order to halt and reverse the decline of water quality in Florida. These comments represent some of those changes as recommended by Waterkeepers Florida - the collective of the 14 independent Waterkeeper organizations working in the State of Florida to protect and restore our water resources.

A Technical Advisory Committee Needs to be created for this rulemaking

Stormwater design and operation regulations are extremely complex, integrating aspects of engineering, chemistry, biology, and law. Many of the subject matter experts that were involved with the previous rulemaking process undertaken from 2007 - 2011 are no longer with the Florida Department of Environmental Protection or the Water Management Districts. As such, a Technical Advisory Committee should be formed with representation from various stakeholders, including significant representation from environmental organizations, to help facilitate this rulemaking process.

The scope of updates should go beyond Environmental Resource Permit Handbooks

Passed last legislative session, Senate Bill 712 directed that "the department and the water management districts shall initiate rulemaking to update the stormwater design and operation regulations, *including* updates to the Environmental Resource Permit Applicant's Handbook, using the most recent scientific information available." While changes to the ERP Applicant's Handbook are certainly needed and overdue, in order to meet the mandate of SB 712, amendments also need to be made to the rules that govern stormwater beyond the ERP Applicant's Handbook. Furthermore, recommendations should be made for legislative updates to relevant statutes to address systemic stormwater issues.

¹ Evaluation Of Current Stormwater Design Criteria Within The State Of Florida (Harper & Baker, 2007)

² 2020 Integrated Water Quality Assessment for Florida: Sections 303(d), 305(b), and 314 Report and Listing Update (FDEP, 2020)

Amendments and updates need to be codified

From 2007 through 2011 an effort was made to update stormwater design and operation regulations, but those updates were never codified. After years of workshopping, drafting, and editing, the proposed rules were shelved and never formally adopted. Because of this, we are now faced with the challenge of reversing another decade of pollution to our waterways from failing stormwater systems. Every effort must be made to ensure that effective amendments to stormwater design and operation regulations are adopted.

Amendments must address existing failing stormwater treatment systems

There are currently over 76,000 stormwater systems across the state. As previously mentioned, studies have shown that the standards to which these systems were built are not sufficient to meet the presumed treatment goals outlined in the regulations. This means that even if effective standards are drafted and adopted to ensure that future stormwater systems are built in such a way that meet the mandated nutrient loading reduction goals, then there will still be an overall net increase in nutrient pollution from stormwater systems statewide. A plan must be developed to determine which existing stormwater systems are failing to meet pollutant reduction targets, solutions need to be developed for alternative technologies or to redesign or retrofit those systems to bring them into compliance, and funding needs to be allocated to carry out these projects.

Eliminate the Presumption of Compliance & require post-construction monitoring and management

The single-largest fault with the current stormwater regulation system is the presumption of compliance with water quality standards. Since stormwater systems designed according to the Applicant's Handbook are presumed not to be polluting local waterways and there is no monitoring to ground truth this presumption, failing stormwater systems have continued to degrade water quality for decades. As pointed out by Governor DeSantis's Blue Green Algae Task Force in the Consensus Document issued in fall of 2019 "available data suggest that a substantial number of stormwater treatment systems throughout the state fail to achieve their presumed performance standards." The Task Force went on to recommend "the development and implementation of a stormwater system inspection and monitoring program with the goal of identifying improperly functioning and/or failing systems so that corrective action can be taken." While there is certainly a need to address every single recommendation in this document, without regular, ongoing monitoring to ensure that stormwater systems are functioning properly, this glaring loophole will continue to be abused and our waterways will continue to be polluted.

Close the pre-development/ background loading loophole

The definition of pre-development conditions used to determine pre-development loading needs to be revised to specify that pre-development refers to natural conditions without any anthropogenic impacts. As currently drafted, this provision allows an applicant to use the most recent land use to calculate pre-development loading, which results in significantly higher allowances for pollutant loading than would be allowed if natural conditions were used as the baseline. This interpretation undermines the objective of this provision. As such, the language should be updated to preclude this interpretation.

Statewide rules should represent minimum standards

Florida is a diverse state in terms of population, climate, soil composition, topography, hydrology, etc. As such, it would not be practical to create a single rule to apply uniformly to the entire state. Because of this, statewide rules should represent minimum standards for stormwater design and operation, with Water Management Districts and municipalities able to implement more protective standards better suited to their individual jurisdictions. Nothing in the statewide rule should preempt any entity from passing more protective stormwater design and operation regulations.

Scale back the self-certification process to limit abuse of this provision

The self-certification process allows projects that meet outlined criteria to subvert the normal permitting process by having an engineer certify that they are in compliance with applicable regulations. Because of this, these projects are not subjected to the same level of review and scrutiny as most stormwater projects. Under the current regulations, it is possible for a project to be broken down into smaller phases, each of which is self-certified, in order to avoid the regular stormwater permitting process. The self-certification process should not be allowed to be used for projects that will impact either an impaired waterbody or an Outstanding Florida Water.

Explore funding mechanisms to pay for necessary stormwater projects

A dedicated funding source needs to be established to help cover the cost of stormwater management projects around the state. This could be in the form of a grant program or a revolving loan program administered by the state or by local funding mechanisms. These funding mechanisms would help to cover costs associated with regional treatment projects or new technologies to remedy dated stormwater systems that are failing to meet pollution load reduction goals. Furthermore, increased funding is necessary to perform ongoing, regular inspections of stormwater systems to ensure that they are properly functioning and not contributing to nutrient pollution.

Ensure that relevant, forward-looking data is used to inform management decisions

The models that are used to make design and management decisions for stormwater systems need to incorporate data and projections that take into account sea level rise, changes in groundwater level, changing rainfall patterns, and other consequences of climate change.

Promote low impact development practices beyond stormwater ponds

The failure of stormwater systems to achieve desired pollutant loading reductions, suggest that action may need to be taken outside of stormwater systems to combat nutrient pollution in our waterways. To this end, Low Impact Development practices can help to reduce inputs of nutrients entering stormwater systems in the first place. Utilization of Low Impact Development practices such as increased permeable surface area, rain gardens, and bioswales should be encouraged and incentivized by FDEP and WMDs through mechanisms such as providing BMAP credit for the use of trees to improve stormwater treatment.

Explore alternative technologies for stormwater treatment

Studies indicate that our current methods of attempting to treat stormwater have failed to prevent water quality degradation. As our state's population continues to grow, this problem will only get worse. To address

this, new technologies and methods for treating our stormwater need to be developed and vetted. Options such as binders, coagulants, treatment trains, or regional treatment nodes may be able to better achieve the pollutant loading reduction goals for stormwater systems than traditional designs. Consistent criteria and assumptions should be established for each of these new processes.

Based on the current state of Florida's waterways and the rapid growth that we are experiencing, substantial changes to the way that we treat our stormwater are necessary to halt and reverse the decline of the water resources that support our economy and our way of life. We look forward to working with you towards these solutions.



Respectfully,
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