



FLORIDA STORMWATER ASSOCIATION

Leadership in Stormwater Management and Utilities

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May 2, 2024

John Coates, Director, Water Management Program
Division of Water Resource Management/Stormwater & Technical Services Program
Florida Department of Environmental Protection
2600 N Blair Stone Road
Tallahassee, FL 32399

RE: Comments – Water Quality Enhancement Area Rulemaking

The Florida Stormwater Association (FSA) appreciates the opportunity to submit the following comments on the draft Water Quality Enhancement Area (WQEA) Rule currently under development.

As an association representing over 350-member local governments, private consulting firms and other stormwater organizations (5,200 individuals) in Florida, FSA's membership has been closely watching this process as this rule language could impact member compliance and resources. From meeting compliance with Environmental Resource Permits (ERPs) to achieving required nutrient reductions, many FSA members are actively working in the permitting and restoration sector. A sound rule that ensures compliance in a way that benefits all entities is a priority for FSA. The rule also creates new methods for achieving state mandated goals. The new methods need to be sound and ensure that fiscally responsible actions are created, as any effort that fails could impact the FSA membership greatly as they work to achieve restoration of impaired waters.

FSA attended the 2nd WQEA Workshop, held on March 21, 2024, and appreciates the work FDEP did to provide an overview of the new rule, answer questions from attendees, and accept comments on how to update components of draft rule. As a follow up from that workshop, FSA would like to provide the following comments concerning the draft rule language and overall approach to this new rule development effort.

1. *Sound language to address potential "Hot Spots" in waters* – Numerous attendees at the March workshop noted that the current draft rule language could lead to the creation of further pollution in a waterbody (commonly referred to as a "hot spot") if language in the rule is not strengthened. FSA agrees with this notion and is concerned that any additional pollution, while not intended, could create additional impairments, or further reduce efforts to decrease pollution in impaired waters. To address this concern, we would suggest stronger language to ensure no "hot spots" are created from any WQEA effort in section 62-332.300 (4) or (12) of the draft rule.
2. *Water Quality Enhancement Areas* – The current draft language is vague in terms of the definition of an Enhancement Area. FSA would recommend some clarifying language and/or defining exactly what a WQEA is, say a HUC 12 or a WBID, or provide guidance on limitations to creating an Enhancement Area, in section 62-332.200.

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3. *WQEA Credit Liability* – Section 62-332.900 provides compliance and enforcement provisions based on current language for mitigation banking. The current draft language is a good start, but further provisions should be included to address the liability of not meeting reduction requirements of restoration plans. The lack of meeting a restoration plan reduction could impact all members working to achieve a goal or deadline, and not just the individual entity. A buyer of any credit should be held accountable for any credit lost or not provided by a restoration plan deadline. A mechanism to strengthen this section could be for the state to require that credits must be developed, reviewed, and approved prior to any credit transaction. The approval of a credit not currently generated then ultimately not developed is highly detrimental to any area under a regional restoration effort by numerous stakeholders.
4. *WQEA Funding* – Many FSA members have voiced concern over the potential for government funds to be utilized for privately funded WQEA projects that could then sell credits to generate a profit. The rule should ensure that any credit development efforts by private entities are solely funded by that party and not supplemented by state dollars that could (and should) be provided to local governments working to develop restoration projects required by state adopted restoration plans. FSA believes funds diverted away from local governments to support projects that will ultimately benefit a private entity is a misuse of tax dollars and is detrimental to the overall joint effort of cooperatively working to restore impaired waters.

Thank you for opportunity to submit our comments and recommendations.

Sincerely,
FLORIDA STORMWATER ASSOCIATION, INC.

A handwritten signature in dark ink, appearing to read "Danielle Hopkins". The signature is fluid and cursive, with the first name "Danielle" written in a larger, more prominent script than the last name "Hopkins".

Danielle Hopkins