FLORIDA STORMWATER ASSOCIATION

Leadership in Stormwater Management and Utilities

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July 29, 2022

Florida Department of Environmental Protection
ATTN: Tim Rach
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000
Submitted via email: Stormwater2020@floridadep.gov

RE: Proposed Revisions Updating the Stormwater Design and Operation Regulations

Dear Mr. Rach:

The Florida Stormwater Association (FSA) appreciates the opportunity to submit the following comments. We support the effort to strengthen stormwater design standards and criteria on a statewide basis. Doing so is more protective of water resources and tends to lessen the need for local governments to adopt their own standards that are more stringent than those of the state. Our specific comments and suggested edits to Sections 2 and 8 are attached.

In general, FSA strongly supports the work and recommendations of FDEP's Clean Waterways Act Stormwater Rulemaking Technical Advisory Committee (TAC) as contained in their Summary Report. The TAC was composed of credentialed professionals, representing a wide-variety of stakeholders and interest groups, who were exceptionally familiar with stormwater permitting policy and practices throughout the State of Florida. The TAC met 13 times over the course of almost a full year. The recommendations of the TAC came after months of discussion and debate.

We strongly urge the Department to incorporate the recommendations of the TAC unless there are sound, scientific reasons to do otherwise. In cases where the TAC's recommendations are not incorporated into the initial drafts of the proposed rule revisions, we request the Department to provide the specific reasons for departing from the TAC's recommendations as contained in the Summary Report.

Attempts were initiated by FDEP to update stormwater design standards and criteria on a statewide basis 15 years ago but were abandoned in early 2010. We hope that the current effort is successful and stand ready to assist the Department in that effort in any way possible.

Sincerely,
FLORIDA STORMWATER ASSOCIATION, INC.

Danielle Hopkins

Draft Revisions to Volume 1, Section 2
ERP Applicants Handbook

Suggested Edits and Comments of the Florida Stormwater Association on selected subsections
July 29, 2022

14. "Best Management Practice (BMP)" means the structural, vegetative, or managerial practices used to treat, prevent, or reduce water pollution. ~~Erosion and sediment control BMPs are structural and often temporary. Stormwater~~ BMPs treat, prevent or reduce the nutrient load and other pollutants in water, address erosion and sedimentation, ~~and other pollutants in water,~~ may be temporary or ~~are~~ permanent in nature, and can be structural or nonstructural.

FSA Comment: Not all E&S BMPs are structural and/or temporary. Not all Stormwater BMPs are permanent.

23. "Control elevation" means the lowest elevation at which water can be released through a control device.

FSA Comment: FSA is concerned that this definition may need to be modified to address impacts in areas with high groundwater tables. Perhaps revise to:

> Control elevation means the lowest elevation, which may be determined by the seasonal high-water elevation at which water can be released through a control device without draining ground water.

29. "Detention with filtration" or "Filtration" means the selective removal of pollutants from stormwater by the collection and temporary storage of stormwater and the subsequent gradual release of the stormwater into surface waters in the state through ~~at least 2 feet of~~ suitable fine textured granular media such as porous soil, uniformly graded sand, or other natural or artificial fine aggregate, which may be used in conjunction with filter fabric and/or perforated pipe.

FSA Comment: Sand filters do not remove nutrients. The necessary depth of filtration material can be highly variable, depending on the media composition, local conditions and pollutant removal needs.

~~29. "Discharge" means to allow or cause water to flow.~~

FSA Comment: This term is used in Subsection 8. FSA recommends not deleting the definition.

56. "Hydrologic Unit Code" or "HUC" means the hydrologic cataloging unit assigned to a geographic area representing a surface watershed drainage basin. A complete list of Hydrologic Unit codes, descriptions, names, and drainage areas can be found in the United States Geological Survey Water-Supply Paper 2294, ~~-~~entitled "Hydrologic Unit Maps" and the latest United States Geological Survey geographic information system HUC coverage.

FSA Comment: The definition should reference the latest information that is available.

73. "Net improvement performance standard" means the minimum performance standard(s) for treating stormwater wherein the nutrient or other pollutant loads discharged from the project area are less than those discharged in the ~~existing land use of the~~ project area's ~~are reduced from those pollutant loads generated in the~~ pre-development conditions. See Section 8 for Performance Standard(s) criteria.

FSA Comment: Clarification.

86. "Predevelopment nutrient loading" means the average annual nutrient loading based on the land use, ~~and~~ land cover and activities of a site five years prior to the date the permit application is submitted or where there is an adopted restoration plan with the land use that was utilized to determine the preexisting condition in the restoration plan (i.e. TMDL, BMAP, RAP, etc.).~~that is legally in existence at the time of rule implementation (date).~~

FSA Comment: The suggested revision brings the definition into consistency with the recommendations of the TAC.

93. "Redevelopment" means the construction on sites having existing commercial, industrial, institutional, or residential land uses, excluding silviculture or agriculture, where all or part of the existing impervious surface is removed down to native soil and replaced with new impervious surfaces which has the same or lesser area as the existing impervious surface. ~~will be replaced with the same or lesser intense land use as part of the proposed activity and has not been previously permitted.~~

105. "Seasonal high ground water table" (SHGWT) means the highest average elevation of the zone of saturated soil during the wettest season of a typical year ~~at the highest average elevation during the wettest season of the year~~ during periods of normal rainfall.

FSA Comment: Clarification.

General FSA Comment: Definitions for Restoration Plans and BMAPs should be added to Section 2.

Draft Revisions to Volume 1, Section 8
ERP Applicants Handbook

Suggested Edits and Comments of the Florida Stormwater Association on selected subsections
July 29, 2022

PART II -- CRITERIA FOR EVALUATION

8.0 Criteria for Evaluation

8.1 Purpose

The criteria explained in this part are those that have been adopted by the Agency in evaluating applications for individual and conceptual approval permits, with the exception of those individual permits described in Rule 62-330.054(4), F.A.C. The staff recommendation to approve any ~~individual or conceptual approval~~ permit application will be based upon a determination of whether reasonable assurance has been provided that the activity meets the criteria for evaluation, and whether the applicable permit fee has been submitted. In addition, the staff recommendation to resolve any violation under Chapter 62-330, F.A.C., also will be based upon a determination of whether reasonable assurance has been provided that the activity meets the criteria for evaluation in this part.

General permits are pre-issued, and already contain the limitations and criteria that must be met to qualify to use the specific general permit. Upon receipt of a notice to use a general permit, the Agency's review is limited to determining whether the notice complies with the terms and conditions of the pre-issued permit, in accordance with Chapter 62-330, F.A.C., and whether the applicable permit fee has been submitted. General permits shall meet the water quality treatment requirements for restoration plan areas that provide reduction allocations.

8.2 Criteria for Evaluation

8.2.1 To obtain an individual or conceptual approval permit, an applicant must provide ~~give~~ reasonable assurance in accordance with Rule 62-330.060, F.A.C., and reasonable assurance that the following ~~major~~ standards contained in Sections 373.042, .413, .414, .416, .426, .429, .4595, F.S., are met:

(a) through (d) No change

8.2.2 No change.

8.2.3 No change.

FSA Comment: We recommend that 8.2.3 be modified to be consistent with Section 8.3. It should provide that discharges into waters that do not meet standards will be required to meet the performance standards outlined in Section 8.3.

8.3 Stormwater Quality Nutrient Permitting Requirements

8.3.1 Required Modeling of Performance Standards

Each applicant must demonstrate, through modeling or calculations, that their proposed system is designed to discharge to the required treatment load based on the Performance Standards described in sections 8.3.2 through 8.3.4 below.

8.3.2 Minimum Performance Standards for all sites

Except as provided below, all stormwater treatment systems shall provide a level of treatment sufficient to accomplish the greater of the following nutrient load reduction criteria:

(a) an 80% reduction of the average annual loading of total phosphorus (TP) and total nitrogen (TN) from the post-development project land use; or

(b) a reduction such that the post-development average annual loading of nutrients does not exceed the predevelopment nutrient loading.

8.3.3 Minimum Performance Standards for OFWs

Stormwater systems that fall within a HUC 12 containing an Outstanding Florida Water (OFW) shall provide a level of treatment sufficient to accomplish the greater of the following nutrient load reduction criteria:

(a) a 95% reduction of the average annual loading of total phosphorus (TP) and total nitrogen (TN) from the post-development project land use; or

(b) a reduction such that the post-development average annual loading of nutrients does not exceed the predevelopment nutrient loading.

8.3.4 Minimum Performance Standards for Waters that do not meet State Standards

1. Stormwater systems that fall within a HUC 12 containing a waterbody on the Verified List of Impaired Waters shall provide a level of treatment sufficient to accomplish the greater load reduction criteria:
   (a) an 80% reduction of average annual loading of total phosphorus (TP) and total nitrogen (TN) from the post-development project land use; or
   (b) a reduction such that the post-development average annual loading of nutrients is less than the predevelopment nutrient loading.

2. Stormwater treatment systems that fall within a HUC 12 where a Total Maximum Daily Load (TMDL) or an approved restoration plan has been adopted shall provide the level of treatment sufficient to accomplish the greater of the following nutrient load reduction criteria:

(a) the level of stormwater treatment required in Section 8.3.4.1, as applicable; and
(b) the greater of:
1. Net improvement for the pollutant that is not meeting water quality standards; or
2. the percent reduction, where specified in the load allocation of an adopted TMDL or restoration plan for the pollutant(s) that is not meeting water quality standards.
(c) Load reduction for nutrients shall not be lower than that for undeveloped or natural conditions.

8.3.5 Alternative Performance Standards for Redevelopment

Stormwater treatment systems serving redevelopment activities shall meet the appropriate minimum level of treatment set forth above in 8.3.2 - 8.3.4. However, an applicant may request approval by the Agency of a lower level of treatment if the redevelopment project is under ~~five~~ three (3) acres and does not discharge directly or indirectly to or affect ~~to~~ a nutrient impaired water~~s~~. The minimum level of treatment allowable for these sites shall be as follows:

(a) an 80% reduction of the post-development average annual loading of TP and a ~~45%~~ 55% reduction of the post-development average annual loading of TN from the project; or

(b) for stormwater systems that fall within a HUC 12 containing an OFW, a 95% reduction of the post-development average annual loading of total phosphorus (TP) and a ~~50%~~ 80% reduction of the post-development average annual loading of total nitrogen (TN) from the project.

8.3.6 Exemption from Minimum Performance Standards for Redevelopment

Redevelopment sites that are under two acres that do not directly or indirectly discharge to or affect a nutrient impaired water may qualify for an exemption as described in section 3.2.7 of this handbook. An exemption will require the redevelopment site to promote infiltration. This exemption only qualifies for redevelopment sites that result in reduced impervious surface or reduced pollutant loading on a case-by-case basis. Requests to qualify for this exemption will require technical analysis and supporting information that demonstrate that minimum performance standards cannot be met and shall be submitted in writing to the applicable Agency, and such activities shall not commence without a written determination from the Agency confirming qualification for the exemption.

FSA Comment: The wording of this subsection is too general. More detail and specificity need to be added so it is clearly understood how it will operate.

Table 8.1 summarizes the Performance Standards in this rule.

Table 8.1 Stormwater Treatment Performance Standards

DEVELOPMENT TYPE	NON-OFWs	OFWs	IMPAIRED WATERS	IMPAIRED WATERS WITH ADOPTED TMDL, ~~OR~~ BMAP or Restoration Plan
New	• 80% load reduction of TP and TN or • Post=Pre for TN and TP Whichever results in greater load reduction	• 95% load reduction of TP and TN or • Post=Pre for TN and TP Whichever results in greater load reduction	• 80% load reduction of TP and TN or • Post<Pre for TN and TP Whichever results in greater load reduction	• 80% load reduction TP and TN or • Post<Pre for TN and TP, or • Adopted Restoration Plan's ~~TMDL/BMAP~~ % reduction Whichever results in greater load reduction
Redevelopment Under ~~5~~ 3 Acres	• 80% load reduction of TP and 55% ~~45%~~ load reduction of TN	• 95% load reduction of TP and 80% ~~50%~~ load reduction of TN	N/A	N/A

8.4 Additional Criteria

8.4.1 ~~8.2.4~~ No change.

8.4.2 ~~8.2.4~~ No change.

8.4.3~~8.2.4~~ No change.

8.4.4 ~~8.2.4~~ No change.

8.4.5 Oil and Grease Control

Discharge structures from areas with greater than 50 percent impervious and semi-impervious area or from systems that receive runoff from directly connected impervious that are subject to vehicular traffic shall include a baffle, skimmer, grease trap or other mechanism suitable for preventing oil and grease from leaving the stormwater treatment system in concentrations that would cause a violation of water quality standards. Designs must assure sufficient clearance between the skimmer and concrete structure or pond bottom to ensure that the hydraulic capacity of the structure is not affected.

8.4.6 Hazardous or Toxic Substances

Systems serving a land use or activity that produces or stores hazardous or toxic substances shall be designed to prevent exposure of such materials to rainfall and runoff to ensure that stormwater does not become contaminated by such materials. Such land uses may not be appropriate for certain BMPs such as retention basins to minimize introduction of such materials into the ground water.

8.5 ~~8.3~~ State Water Quality Standards

8.5.1 ~~8.3.1~~ No change.

8.5.2 ~~8.3.2~~ Additional Permitting Requirements to Protect Ground Water

State water quality standards for ground water are set forth in Chapter 62-520, F.A.C. In addition to the minimum criteria, Class G-I and G-II ground water must meet primary and secondary drinking water quality standards for public water systems established pursuant to the Florida Safe Drinking Water Act, which are listed in Rules 62-550.310 and 62-550.320, F.A.C.

Only the minimum criteria apply within a zone of discharge, as determined by Rule 62-520.400, F.A.C. A zone of discharge is defined as a volume underlying or surrounding the site and extending to the base of a specifically designated aquifer or aquifers, within which an opportunity for the treatment, mixture or dispersion of wastes into receiving ground water is afforded. Generally, stormwater systems have a zone of discharge 100 feet from the system boundary or to the project's property boundary, whichever is less.

Pursuant to subsection 62-555.312(3), stormwater retention and detention systems are classified as moderate sanitary hazards with respect to public and private drinking water wells. Accordingly, stormwater treatment facilities shall not be constructed within 50 feet of a public or bottled water plant water supply well, 100 feet of a limited use commercial or limited use community water supply well, or 75 feet of a private or multifamily water supply well, per the setbacks outlined in Table I of Section 62-532, F.A.C.

To assure protection of ground water quality, all stormwater treatment systems shall be designed and constructed to:

1. Assure adequate treatment of stormwater before it enters any aquifer system used for potable water supply such that no violation of ground or drinking water standards exist outside the authorized Zone of Discharge (the property boundary).

2. Avoid breaching an aquitard that will allow direct mixing of untreated water between surface water and an aquifer system used for drinking water. Where an aquitard is not present, the depth of the stormwater treatment system shall be limited to prevent any excavation within three (3) feet of the underlying limestone which is part of a drinking water aquifer.

8.5.3 ~~8.3.3~~ No change.