



# CLEAN WATERWAYS ACT STORMWATER RULEMAKING

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# SENATE BILL (SB) 712

## CLEAN WATERWAYS ACT

- Senate Bill (SB) 712 (Clean Waterways Act) directed DEP to adopt new rules to support the goal of improving water quality in Florida, including updating the stormwater design and operation regulations using the most recent scientific information available.
- The final draft rule package was filed on April 28, 2023, and adopted by the Department of State on May 18, 2023.
- These rules still require ratification by the Florida Legislature before they can become effective and are anticipated to be considered during the 2024 Legislative Session.



# SENATE BILL (SB) 712

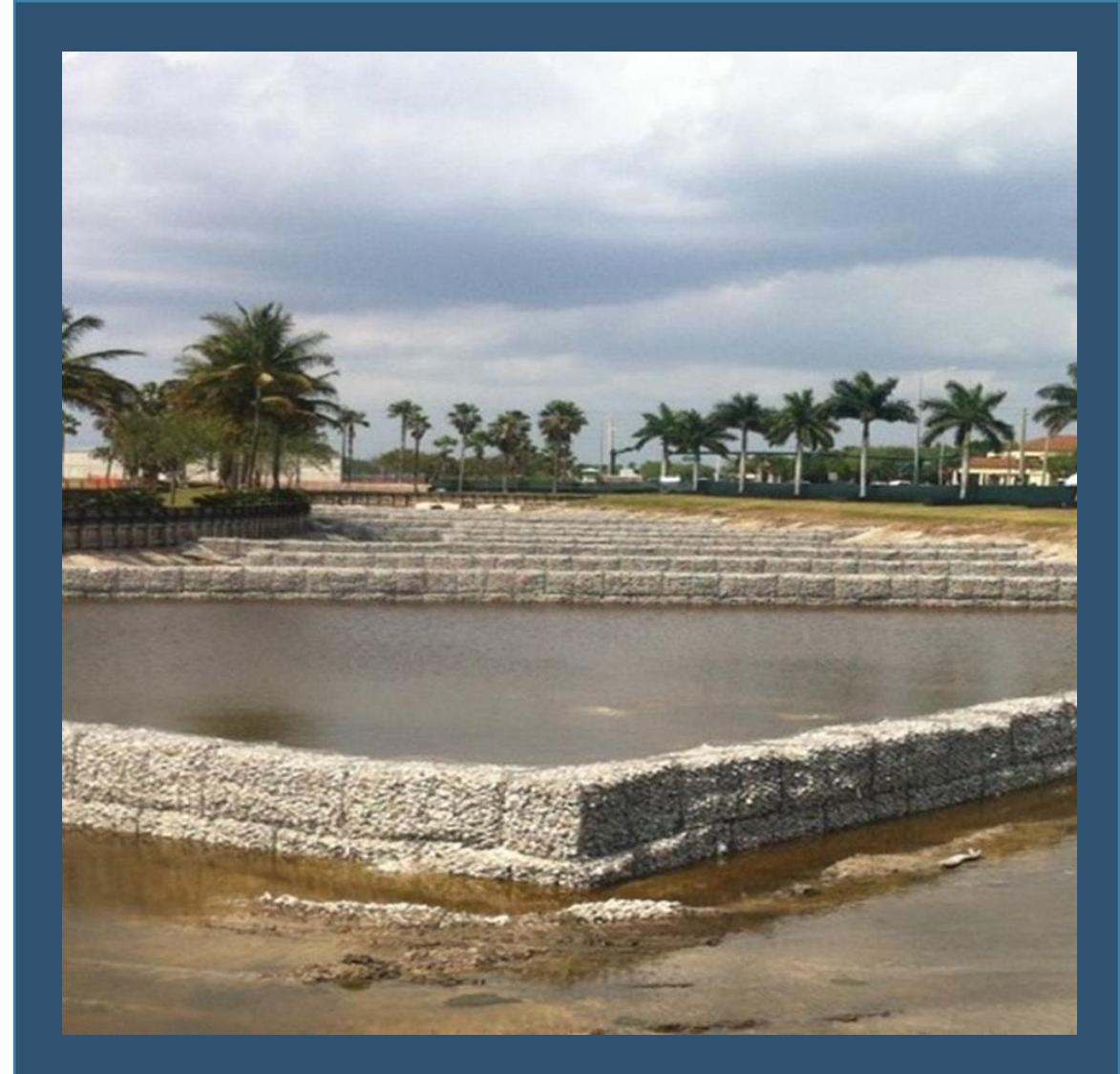
## CLEAN WATERWAYS ACT

- The rule cannot be reopened for a Notice of Change.
  - A new Notice of Rule Development would be required before any additional rule changes could be proposed.
- Environmental Resource Permit (ERP) applicants for stormwater management systems must abide by current provisions under Chapter 62-330, Florida Administrative Code (F.A.C).
- The proposed changes to the respective Applicant Handbook Volume IIs are not effective as they were all dependent on effective date of the Applicant Handbook Volume I; therefore, the current 2020 Applicant Handbook Volume IIs are still in effect and must be followed.



# PUBLIC ENGAGEMENT

- DEP completed rulemaking to update the stormwater design and operation regulations, including updates to the ERP Applicant's Handbook, using the most recent scientific information available.
- DEP held two public outreach meetings in 2020 and established a Technical Advisory Committee (TAC) in November 2020.
- DEP held four rule development workshops between May and December 2022.
  - Additional workshops were held in January 2023 by the five water management districts (WMDs) to provide proposed updates to their respective Applicant's Handbooks.





# ADOPTED REVISIONS



- Adopted revisions are estimated to affect up to ~14,030 individual ERP projects over the first five years of rule implementation.
- Rule revisions for new permitting requirements, specifically for dam systems, are projected to affect approximately 29 ERP projects over the first five years of rule implementation.
- Implementation requirements for rule revisions are primarily incorporated in ERP Applicant's Handbook, Volume I, which was revised and incorporated by reference in Rule 62-330.010, F.A.C.
- Supporting requirements are found in additional sections of Chapter 62-330, F.A.C., forms and the WMDs' Applicant's Handbook, Volume IIs.





# ADOPTED RULES AND RULEMAKING TIMELINE

- The Notice of Proposed Rule was published in the Florida Administrative Register Feb. 24, 2023.
- Four Lower Cost Regulatory Alternatives (LCRAs) were received on March 17, 2023.
- DEP held a rule adoption hearing March 22, 2023.
- The Notice of Change was published March 24, 2023.
- Adopted by the Department of State on May 18, 2023.
- These rules still require ratification by the Florida Legislature before they can become effective and are anticipated to be considered during the 2024 Legislative Session.



# NOTICE OF CHANGE

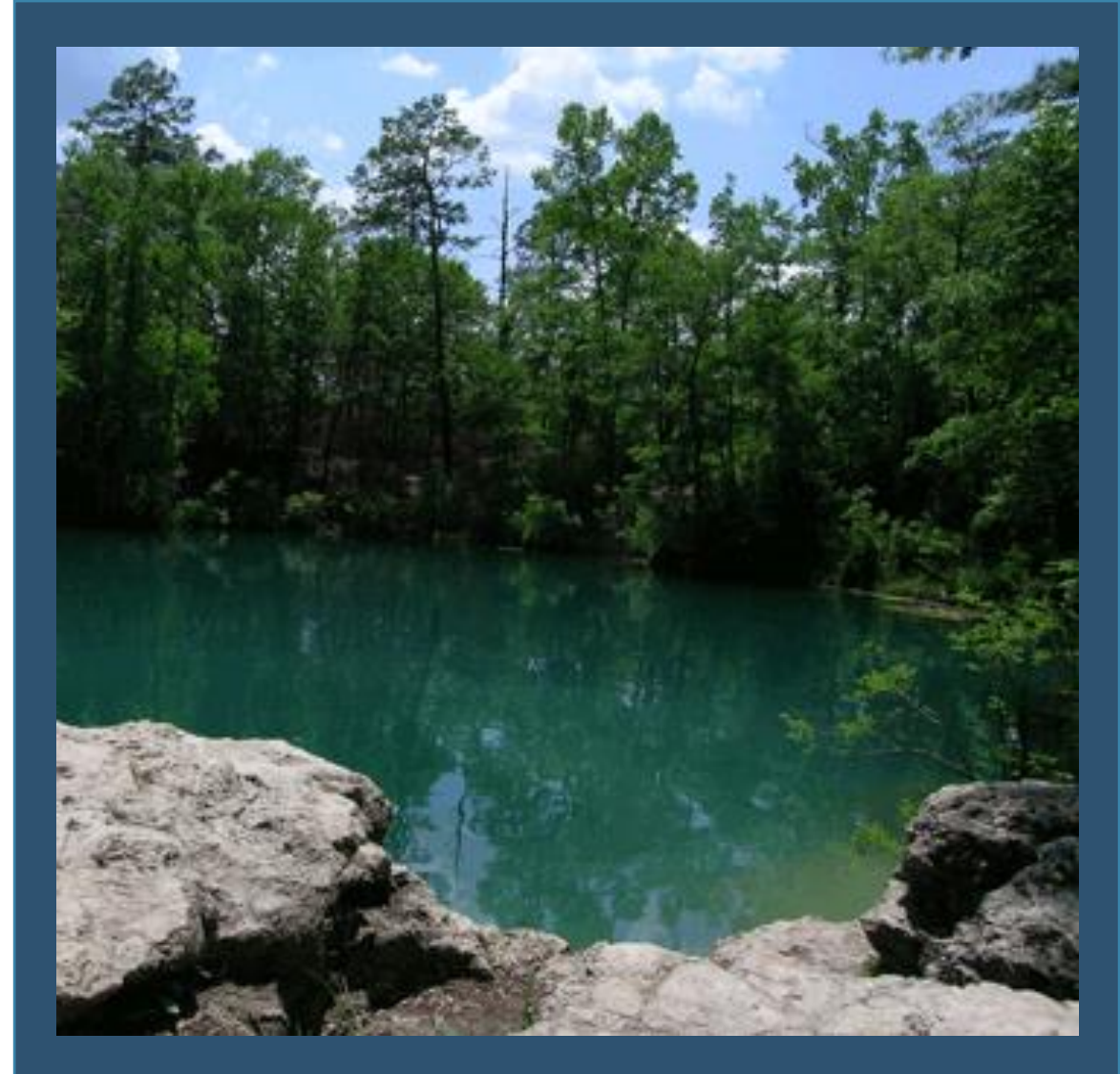


- Lower Cost Regulatory Alternatives (LCRA).
  - Four LCRAAs were received during the 21-day comment period.
  - Three letters submitted similar grandfathering language: and addressed conceptual, general or individual ERPs.
  - The fourth was a LCRA on the proposed design criteria that would eliminate minimum treatment performance standards and only apply a pre-development and post development loading evaluation to establish a performance-based design criteria.



# NOTICE OF CHANGE

- Changes in response.
  - Provided new language that would allow conceptual approval permits to be honored if they had been completed before the rule was put into effect.
  - Lowered the treatment performance requirement for Total Nitrogen (TN) to account for the concerns of limited design options in areas where there is a high ground water table.
  - Kept the two-prong system that would require pre=post analysis or minimum treatment, whichever is more protective.
  - These proposed rule revisions are a significant step in protecting water quality.







# ERP STRUCTURE

- Chapter 62-330, F.A.C.
  - Rules incorporating the ERP Applicant's Handbooks.
  - Changes made to the handbook are reflected in the rule where applicable.
- ERP Applicant's Handbook, Volume I.
  - Where the bulk of rule change occurred.
  - Contains permit thresholds and exemptions.
  - Design performance standards.
  - Conditions for issuance.
  - Erosions and sediment control practices.
  - Operations and maintenance requirements.
  - Wetland mitigation.
- ERP Applicant's Handbook, Volume II.
  - Five separate handbooks for each of the WMDs.
  - Contain attenuation and Special Basin Criteria.



# ADOPTED AMENDMENTS

- Additional permitting requirements.
  - Modeling or calculations required rather than presumptive best management practice (BMP) design.
  - Minimum stormwater treatment performance standards for design.
    - Based on a pre=post analysis or a nutrient reduction efficiency, whichever is more protective.
  - Treatment designs would provide 80% reductions of total phosphorous (TP) and a 55% reduction of TN.
  - Additional removal requirements of 90% for TP and 80% for TN for projects discharging within Outstanding Florida Waters.
  - Additional provisions for projects discharging to impaired waters to ensure consistent procedures for demonstrating that a project will provide a net improvement to receiving waters.
- Redevelopment.
  - Adopted provisions would allow a reduced TN performance standard of 45% under limited conditions which are expected to support redevelopment in areas where there are likely little or no historical stormwater treatment.





# ADOPTED AMENDMENTS

- Calculations.
  - Modeling or calculations outlined in new section of Applicant's Handbook, Volume I.
  - Based on land use of the site, hydrology and event mean concentration (EMC) value.
    - Calculate the predevelopment loading and the post development loading before treatment.
    - Use this and the site location to determine which performance criteria to follow.
  - Updated average annual rainfall data.
- BMPs.
  - Traditional BMPs listed in Appendix O.
  - BMP treatment train.
  - Low impact design and green stormwater infrastructure.
  - Alternative designs.
- Off-site treatment.
  - Over treatment.
  - Off-site compensation.
  - Regional stormwater systems.



# ADOPTED AMENDMENTS

- Increased operation and maintenance requirements.
  - Strengthened training, documentation and inspection frequency requirements help ensure that new stormwater management systems will be properly operated and maintained over time.
  - New permitting requirements to ensure that entities will be capable of performing operation and maintenance over time.
- Definition changes.
  - Pre-development and post-development.
  - BMPs for erosion and sediment control and BMPs for stormwater treatment.
  - Dam, levee, levee system.
  - Directly connected impervious area, redevelopment, hydrologic unit code and impaired water.





# ADOPTED AMENDMENTS



- Grandfathering.
  - ERP applications that will not be required to meet the new rule requirements.
    - 12-month buffer period to complete applications that are currently in house.
    - Department of Transportation project which have completed their Project Development and Environment Study before rule implementation.
    - Conceptual approval permits will be honored if completed before rule implementation.
    - Minor modifications or modifications that will solely bring the previously permitted system into compliance with its existing permit.
  - Existing permits will not be affected unless they have a major modification.



# ADOPTED AMENDMENTS

- Dam safety requirements.
  - Provide for basic dam safety information during permitting review.
  - Establish a downstream hazard potential classification for new projects.
  - Require emergency action plans where needed.
  - Provide condition assessment reports for High Hazard or Significant Hazard dams.







# SUMMARY

- Provides minimum stormwater treatment performance criteria.
- Increases treatment and removal of nutrients (TP and TN).
- Establishes updated stormwater BMPs that more accurately reflect latest scientific information on their performance.
- Strengthens Florida's overall water resource protections.
- Ensures consistent application of net improvement performance standards.
- Strengthens requirements for operation and maintenance of stormwater systems.
- Improves permitting requirements and information for dam systems.



# FUTURE GOALS

## ONGOING TOPICS

- Creation of process to accept and verify alternative BMPs.
- BMP studies to provide additional scientific information on the performance of traditional BMPs.
- Consistency of implementation.
  - Ongoing coordination with DEP and WMDs.
  - Meeting with professional associations on implementation.
- Qualified inspectors training programs.
- Other needs or suggestions.







# THANK YOU

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