



## **Southwest Florida Regional Planning Council**

Serving Charlotte, Collier, Glades, Hendry, Lee and Sarasota Counties

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December 7, 2009

Hon. Michael W. Sole  
FDEP Secretary  
3900 Commonwealth Boulevard  
MS 49  
Tallahassee, FL 32399

Dear Secretary Sole:

The Southwest Florida Regional Planning Council applauds the efforts of the Florida Department of Environmental Protection (FDEP) in developing a Statewide Stormwater Quality Rule. Stormwater runoff is one of the leading causes of non-point source pollution resulting in nutrient impairments of local waters. Florida currently lacks a statewide stormwater rule, which can limit the ability for local governments to adequately address stormwater issues and protect water resources, including water quality.

The proposed rule, Ch. 62-347, F.A.C., creates a regulatory framework and basis of review for Environmental Resource Permits; providing performance standards and design criteria for stormwater quality to be incorporated into the design, construction, alteration, operation, and maintenance of stormwater management systems. The accompanying document, the *Stormwater Quality Applicant's Handbook: Design Requirements for Stormwater Treatment Systems in Florida* provides guidance to potential applicants on available best management practices and design criteria. We feel that 85% nutrient removal efficiency is a good start for a statewide stormwater rule and that the reporting and system maintenance requirements are critical for ensuring that the conditions of permits are met. As with any regulatory program, implementation and enforcement will be critical to ensuring the rule's effectiveness.

While we feel that the overall content of the proposed rule is good, there are several items that should be revised or included in the final version. One of the biggest problems with the current rule is that it only addresses phosphorus and excludes nitrogen, which is often the limiting nutrient in estuaries. The rule assumes that "...treatment efficiencies attained for phosphorus will be sufficient to adequately treat other pollutants that would otherwise cause or contribute to water quality violations."<sup>1</sup> This statement is misleading since the chemical properties of phosphorus are much different than nitrogen. It is often much more difficult and costly to remove nitrogen from stormwater because unlike phosphorus,

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<sup>1</sup> Statewide Stormwater Quality Rule, Chapter 62-347, F.A.C. Draft July 14, 2009

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a majority of total nitrogen fraction exists in dissolved rather than particulate form.<sup>1</sup> For example, the *Stormwater Quality Applicant's Handbook* describes nutrient removal efficiencies for phosphorus in wet detention ponds having an upper limit of 90%, while maximum removal efficiency for total nitrogen is 45%.<sup>2</sup> This suggests that where wet detention ponds are used as the sole measure for treating stormwater, it is highly likely that they would not achieve 85% removal efficiency for total nitrogen resulting in more nitrogen reaching downstream waters. Without addressing nitrogen specifically, it will be difficult for coastal communities to protect water quality and meet their Total Maximum Daily Load (TMDL) standards.

Wetlands provide valuable ecological benefits including aquifer recharge, flood attenuation, wildlife habitat, and water quality treatment. It is critical that wetland landuse loading values, which are missing from the current version of the *Stormwater Quality Applicant's Handbook*, be accurate in the final rule so that it does not inadvertently provide incentives to develop wetlands. In situations where wetlands are included in treatment systems, applicants should be required to provide reasonable assurances that they will not exceed the assimilative capacity of the wetlands. Exceeding the assimilative capacity wetlands would result in increased nutrient runoff and degradation of natural habitats. In an effort to encourage protection of natural wetlands, incentives or stormwater credits should be provided in a subcategory under Table 12.1 *Summary of Stormwater Credits*. Credits for conservation of natural wetland areas should be rated higher than those where site alteration is required.

The rule recommends, but does not require littoral zone vegetation to be planted in wet detention ponds. Littoral zone plants can be effective tools for removing nutrients and stabilizing shorelines, and can increase the nutrient assimilative capacity of wet detention ponds. In addition, native littoral zone plantings also provide valuable wildlife habitat that can help mitigate impacts of development on those resources. The rule should require that a minimum of 30% of the shoreline of wet detention ponds contain littoral zone vegetation, unless other treatment mechanisms such as floating (harvestable) vegetative islands or other mechanical nutrient removal equipment would preclude the use of littoral zone vegetation. There should also be harvesting (maintenance) and inspection intervals in the manual for vegetated littoral zones. This is a very important part of stormwater management because if a littoral planting or floating island is left unmaintained it diminishes any nutrient removal benefit that could be realized by placing the plants in the first place. It should not only be required as part of the managed system, but maintenance should be required with similar requirements specified in Section 9.9 for Vegetative Buffer maintenance compliance.

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<sup>1</sup> Harper, H. H. 2007. Evaluation of current stormwater design criteria within the state of Florida. Florida Department of Environmental Protection Final Report. FDEP Contract No. S0108

<sup>2</sup> Department of Environmental Protection and Water Management Districts Environmental Resource Permit Stormwater Quality Applicant's Handbook: Design requirements for treatment systems in Florida. Draft July 2009

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Other technical areas that need to be addressed in the *Stormwater Quality Applicant's Handbook* include the nutrient contributions of reuse irrigation waters in the developed landscape, the recognition of isolated wetlands as nutrient sinks rather than as nutrient run-off contributors, and the use of some existing impaired waters as a reference standard for the nutrient levels of natural wetlands, lakes, and streams.

It is critical that local governments retain the flexibility of local rule to address region-specific issues pertaining to water quality. Paragraph 3(d) of the rule states that "This chapter does not preclude, supersede, or change: (d) the ability of local governments to apply more stringent requirements governing the construction, operation, and maintenance of stormwater management systems."<sup>1</sup> It is critical that the final version of the rule not preempt local governments from implementing more stringent regional-specific stormwater regulations, which may be essential tools for Basin Management Action Plans (BMAP) for achieving TMDLs. In addition, the FDEP should also support efforts by state Water Management Districts to develop special basin rules, which address basin-specific stormwater problems affecting impaired watersheds.

While we realize that a statewide rule will not address all of the state's stormwater issues, we feel that the proposed rule provides a good foundation for stormwater management and along with the state fertilizer rule and local fertilizer ordinances, it will be a valuable tool for achieving water quality goals and meeting Total Maximum Daily Loads (TMDLs).

We thank you for the opportunity to comment on the proposed rule and hope that you will consider including our recommendations in the final version of the rule.

Sincerely,



SOUTHWEST FLORIDA REGIONAL PLANNING COUNCIL

Mick Denham  
Acting Chair

MD/wg/jwb/je

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<sup>1</sup> Statewide Stormwater Quality Rule, Chapter 62-347, F.A.C. Draft July 14, 2009