



# FLORIDA STORMWATER ASSOCIATION

Leadership in Stormwater Management and Utilities

719 E Park Ave - Tallahassee, FL 32301 - [www.florida-stormwater.org](http://www.florida-stormwater.org) - 888/221-3124 - [stormwater@ksanet.net](mailto:stormwater@ksanet.net)

*via electronic mail*

July 3, 2017

Douglas Beason, Esquire  
Office of the General Counsel  
3900 Commonwealth Blvd., MS 35  
Tallahassee, Florida 32399-3000

RE: Pinellas County Amended Petition for Declaratory Statement

Dear Mr. Beason:

The Florida Stormwater Association (FSA) writes this letter in support of the above-referenced petition for declaratory statement filed by Pinellas County (County) with the Florida Department of Environmental Protection (Department). The petition asks the Department to issue a statement as to whether a man-made, privately-owned stormwater pond is part of the County's municipal separate storm sewer system (MS4). For the reasons stated herein, FSA urges the Department to answer that question in the negative.

## The Florida Stormwater Association

Incorporated in 1993 as a voluntary, professional association organized under section 501(c)(4) of the Internal Revenue Service Code, FSA is a Florida-based not-for-profit corporation headquartered in Tallahassee. FSA has over 310 organizational members, including city and county governments, consulting and engineering firms, academic institutions and various special districts. Pinellas County is a member of FSA. The great majority of the local government membership of FSA (including Pinellas County) must obtain and comply with MS4 permits issued by the Department pursuant to an agreement with the US Environmental Protection Agency (EPA) that delegates the management of that permitting program to the Department.

FSA and its members have a long-standing interest in and support for the effective management of the MS4 permitting program and related water quality improvement programs in Florida. We have worked to support of Florida's water quality improvement programs and rules over the past 20 years, such as those related to the listing/delisting of impaired waters; the basin management action plan program; the waterbody classification program; numeric nutrient criteria development; and, the 2015 revisions to the Waters of the United States definitions.

Tiffany L. Busby  
*President*  
Wildwood Consulting

Judy Grim, PE  
*Vice-President*  
Volusia County

Kelli Hammer Levy  
*Secretary-Treasurer*  
Pinellas County

Kurt Spitzer  
*Executive Director*

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Our overarching policy concerns remain firmly rooted in the need for local governments to carefully manage their limited resources. Specifically, local governments must manage and implement their MS4 permit and related water quality improvement programs in a manner that shows tangible improvements in water quality. This typically requires a methodical, long-term approach that focuses resources on specific waters or watersheds, not privately owned ponds.

Improving water quality is put in jeopardy when exogenous shocks are introduced to the permitting systems or when the universe of a permit holder's responsibilities are unexpectedly or unreasonably expanded to features over which local governments have little or no control.

FSA urges the Department to respond to the County's Petition and to respond in the negative for the two reasons stated below.

***1. Federal and State Regulations are Clear***

Policies and regulations implementing the Clean Water Act and the MS4 permitting program at both the federal and state levels are clear as to what an MS4 is and what types of structures or facilities are to be included in the MS4.

Federal regulations (see 40 CFR §122.26(b)) and Department rules (see 62-624.200(8), FAC) have similar definitions of MS4 systems, generally describing them as a conveyance or system of conveyances that may include drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains that are owned or operated by *a public entity*, such as a city, county or other public body having jurisdiction over stormwater services.

The EPA and Department websites specifically emphasize the importance of *public ownership* of the conveyances or system of conveyances as being a key factor in defining the MS4:

**EPA**

“An MS4 is a conveyance or system of conveyances that is owned by a state, city, town, village, or other public entity that discharges to waters of the United States...”  
(See <https://www.epa.gov/npdes/stormwater-discharges-municipal-sources>.)

**FDEP**

“A municipal separate storm sewer system (MS4) is a publicly-owned conveyance or system of conveyances (i.e., ditches, curbs, catch basins, underground pipes, etc.) that is designed or used for collecting or conveying stormwater and that discharges to surface waters of the State. An MS4 can be operated by municipalities, counties, drainage districts, colleges, military bases...”  
(See [http://www.dep.state.fl.us/water/stormwater/npdes/MS4\\_1.htm](http://www.dep.state.fl.us/water/stormwater/npdes/MS4_1.htm).)

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The pond which is the subject of Pinellas County's petition is privately owned. The County neither owns nor operates the pond in question. The County's MS4 permit – issued by the Department – does not identify the pond as being a part of the MS4 permit.

The Department has previously recognized the importance of public ownership in determining what is considered part of the MS4 system. In a letter of April 12, 2016 (see attached), the Department responded to a request to bring enforcement action against the County concerning the pond. The Department declined to do so as the pond was privately owned and therefore not part of the MS4 system, and not otherwise regulated under the County's MS4 permit.

**2. *Protect the Viability of Florida's MS4 Permitting and other Water Quality Improvement Programs***

Adding a privately-owned pond to the County's responsibilities under the MS4 permitting program raises the specter of significant, new and unexpected burdens being placed on those cities, counties, districts and state agencies (e.g. FDOT) that must obtain and comply with stormwater permits in other areas of Florida.

FSA was able to identify an estimated 53,000 active homeowners associations (HOAs) in those county areas where at least one public entity must obtain an MS4 permit. See attached table.

However, it is important to remember that the pond in question was only managed by an HOA at one point in time and is privately owned. It is impossible to estimate the number of privately owned ponds – whether currently or previously owned or operated by an HOA - in Florida.

Not responding to the County's request or responding in the affirmative – that the pond should become part of the County's MS4 system – will unnecessarily raise similar questions throughout Florida. Individuals and entities that had never thought that their privately owned pond should be maintained by the city, county or agency may begin to think otherwise based on the Pinellas example and the Department's response. Whether the facility or pond was formerly owned by a homeowners association, currently owned by an active homeowners association or simply privately owned, the ramifications on Florida's MS4 permitting program and permit holders could be very significant.

Adding significant, unexpected burdens on permit holders without a corresponding increase in resources to respond to the new demands, will hamper the ability of the city or county to effectively implement capacity to water quality improvement programs and plans. Doing so without complete knowledge of the potential statewide impacts of an adverse response to the County is fiscally and programmatically imprudent.

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FSA therefore urges the Department to follow historical practice, state and federal regulations, and rational programmatic policy, to respond to the petition with a finding that the pond is not part of the County's MS4 system. A contrary answer would directly and adversely affect FSA's members.

Sincerely,  
FLORIDA STORMWATER ASSOCIATION

A handwritten signature in black ink, appearing to read "Kurt Spitzer". The signature is stylized with a long horizontal line extending from the end.

Kurt Spitzer

Attachments

cc: Secretary Noah Valenstein  
Deputy Secretary John Truitt



## Florida Department of Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Rick Scott  
Governor

Carlos Lopez-Cantera  
Lt. Governor

Jonathan P. Steverson  
Secretary

April 12, 2016

### Via Electronic Mail Only

David Smolker, Esquire  
[davids@smolkerbartlett.com](mailto:davids@smolkerbartlett.com)  
Smolker, Bartlett, Loeb, Hinds & Sheppard, P.A.  
100 North Tampa. Street, Suite 2050  
Tampa, FL 33602


Re: *Reyner v. Pinellas County*: OGC Case No. 16-0200

Dear Mr. Smolker:

The Department reviewed the allegations made against Pinellas County (County) in the verified complaint received by the Department on March 23, 2016. In accordance with section 403.412, Florida Statutes, a copy of the verified complaint was provided to the County via certified mail on March 29, 2016. Based on the information reviewed to date, it appears that the retention pond known as Lake Sylvia is privately owned and therefore, not part of the County's MS4 system. As it is not part of the MS4 system, it is not regulated under the County's NPDES permit. Based on this information, the Department does not intend to bring an enforcement action against Pinellas County.

If you have any questions or wish to discuss this matter further, please feel free to contact me directly at (850) 245-2218.

Sincerely,

  
Alissa B. Meyers  
Assistant Deputy General Counsel

cc: Mary Yeargan, SWD, [Mary.Yeargan@dep.state.fl.us](mailto:Mary.Yeargan@dep.state.fl.us)  
Jeffrey Brown, OGC, [Jeffrey.Brown@dep.state.fl.us](mailto:Jeffrey.Brown@dep.state.fl.us)  
Nancy S. Meyer, Pinellas County Attorney's Office, [nmeyer@pinellascounty.org](mailto:nmeyer@pinellascounty.org)

HOAs by Jurisdiction  
subject to MS4 permitting requirements  
DRAFT

| <b>County</b> | <b>MS4 Phase</b> | <b># HOA</b>  |
|---------------|------------------|---------------|
| Broward       | 1                | 5,476         |
| Duval         | 1                | 1,513         |
| Escambia      | 1                | 516           |
| Hillsborough  | 1                | 5,334         |
| Lee           | 1                | 3,244         |
| Leon          | 1                | 788           |
| Manatee       | 1                | 1,049         |
| Miami-Dade    | 1                | 6,067         |
| Orange        | 1                | 2,740         |
| Palm Beach    | 1                | 5,281         |
| Pasco         | 1                | 780           |
| Pinellas      | 1                | 3,195         |
| Polk          | 1                | 1,156         |
| Sarasota      | 1                | 2,335         |
| Seminole      | 1                | 995           |
| Alachua       | 2                | 614           |
| Bay           | 2                | 517           |
| Brevard       | 2                | 1,634         |
| Charlotte     | 2                | 574           |
| Citrus        | 2                | 226           |
| Clay          | 2                | 274           |
| Collier       | 2                | 2,425         |
| Flagler       | 2                | 174           |
| Glades        | 2                | 6             |
| Hendry        | 2                | 29            |
| Hernando      | 2                | 152           |
| Highlands     | 2                | 242           |
| Indian River  | 2                | 684           |
| Lake          | 2                | 675           |
| Marion        | 2                | 444           |
| Martin        | 2                | 655           |
| Monroe        | 2                | 521           |
| Okaloosa      | 2                | 871           |
| Okeechobee    | 2                | 55            |
| Osceola       | 2                | 561           |
| Santa Rosa    | 2                | 309           |
| St. Johns     | 2                | 593           |
| St. Lucie     | 2                | 403           |
| Sumter        | 2                | 37            |
| Volusia       | 2                | 1,284         |
| Walton        | 2                | 300           |
| <b>TOTAL</b>  |                  | <b>54,728</b> |