



FLORIDA STORMWATER ASSOCIATION

Leadership in Stormwater Management and Utilities

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Via Electronic Mail

September 3, 2021

Water Docket
U.S. Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OW-2021-0328-0001
Pre-Proposal Recommendations on “Waters of the United States”

To Whom It May Concern:

On June 9, 2021, the US Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) jointly announced their intention to revise regulations concerning the definitions of waters subject to the jurisdiction of the federal government or “waters of the United States” (“WOTUS”) as the term is used in the application of the Clean Water Act (CWA) and Corps jurisdictional regulations. This letter presents the initial comments and suggestions of the Florida Stormwater Association, Incorporated (FSA) concerning revisions to such regulations, especially as relates to the potential impacts on Part 122 of the Code of the Federal Regulations (CFR), EPA Administered Permit Programs – the National Pollutant Discharge Elimination System or “NPDES” program.

The Florida Stormwater Association

The Florida Stormwater Association (FSA) is a voluntary, non-profit Florida corporation organized under subsection 501(c)(4) of the Internal Revenue Service Code. There are over 330 organizational members of FSA, primarily consisting of municipal and county governments that must obtain and comply with MS4 permits. FSA’s membership also includes various water control districts, Water Management Districts, academic institutions, and many consulting and engineering firms.

FSA has been actively involved in the development of water quality policy and the implementation of water quality improvement programs in Florida for the past 28 years. All of the members of FSA have an interest in surface water quality improvement and the effective implementation of the MS4 permit program.

Elliot Shoberg, PE
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Elizabeth Perez, PE
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Danielle Hopkins, CMP
Executive Director

Summary of Recommendations

While FSA had significant concerns with the 2014 draft regulations and the 2015 final regulations, we recognize the need for federal oversight that set basic standards for the protection of waterbodies and water quality. We believe that the forthcoming rules should contain measures that ensure environmental protection while improving regulatory clarity and lessening burdens on MS4s.

At this time, we have two primary sets of recommendations concerning any proposed revisions to the WOTUS regulations:

1. DEFINITIONS

- a. We recommend that a definition of “floodplain” be included in the pending regulations but that it be limited to waters located within the 100-year floodplain of waters used for interstate or foreign commerce; interstate waters, including wetlands; and territorial seas.
- b. We recommend that a definition for “adjacent” be included in the pending regulations but that it be limited to waters bordering or contiguous to those used for similar purposes as floodplain definitions. We specifically recommend against the inclusion of a definition of “neighboring waters” or a similar term in the new rules.
- c. We recommend that a definition specifically not include references to “man-made waters” and “ditches” (man-made or otherwise) as a category of waters that could be included as jurisdictional.
- d. We recommend that the new regulations include definitions for significant nexus but that it not include functions such as the retention and attenuation of flood waters, and runoff storage when determining relevance during the nexus evaluation.

2. EXEMPTIONS

- a. The regulations should confirm that ditches, canals and other waterways that convey stormwater to or from features where treatment occurs are included in an exemption and including all sections of NPDES-permitted MS4s that are upstream from the point of discharge.

- b. Any exemptions for waste treatment systems should specifically include stormwater treatment systems, including detention and retention ponds and green infrastructure, designed to meet Clean Water Act requirements or to provide flood control functions.
- c. Any exemptions for wastewater recycling structures should specifically include stormwater recycling structures, and exemptions for stormwater control features constructed to convey, treat, or store stormwater should not be required to be “created in dry land.”

Summary

Florida has a robust program for protecting its water resources. The State and its MS4 permit holders have worked cooperatively for more than 30 years to develop and refine water quality improvement programs that implement the CWA programs, as supplemented by state-based initiatives. Florida’s basin management action plan (BMAP) program is of particular note. *See* § 403.067, Fla. Stat. Unlike most other states, Florida actually implements total maximum daily loads (TMDLs) through BMAPs. Among other things, the BMAPs provide a systematic basis for directing scarce fiscal resources to those waters most in need of improvement and to those waters where there is a realistic possibility of seeing improvements that will benefit environmental systems and human uses. It is a methodical, focused approach, with the costs of implementing water quality improvements as required by the TMDL and BMAP programs primarily borne by the MS4 permit holders.

We believe that the above recommendations and Florida’s existing regulatory regime would serve to provide clarity and protect our surface water resources while significantly reducing the profound impacts that the 2015 regulations would have had on local governments and other entities subject to the NPDES and MS4 permit programs.

As always, we stand ready to answer any questions that you may have and to work with both agencies to improve water quality.

Sincerely,
FLORIDA STORMWATER ASSOCIATION

A handwritten signature in black ink that reads "Danielle Hopkins". The signature is written in a cursive, flowing style.

Danielle Hopkins