



FLORIDA STORMWATER ASSOCIATION

Leadership in Stormwater Management and Utilities

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Via Electronic Mail

November 27, 2017

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

Attention: Docket ID No. EPA-HQ-OW-2017-0480
Non-regulatory docket soliciting recommendations for Step 2 rulemaking
defining “Waters of the United States”

To Whom It May Concern:

The US Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) jointly solicited comments regarding revisions to 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 comments of the Florida Stormwater Association, Incorporated (FSA) concerning recommended definitions that we urge the Agencies to adopt in 2018. Our comments presume that the current (2015) WOTUS regulations have been repealed in their entirety.

FSA’s members primarily consist of municipal and county governments that must obtain and comply with MS4 permits. We have been actively involved in the development of water quality policy and the implementation of water quality improvement programs in Florida for the past 24 years. All of the members of FSA have an interest in surface water quality improvement and the effective implementation of the MS4 permit program.

FSA has been actively involved in rulemaking concerning the definition of “waters of the United States,” as that phrase is used in the CWA and has commented on WOTUS-related rulemaking on several occasions. FSA remains a party to judicial proceedings concerning the 2015 final regulations before the U.S. District Court for the Northern District of Florida, the U.S. Court of Appeals for the Sixth Circuit, and the U.S. Supreme Court.

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Summary of FSA's Recommendations

While FSA had significant concerns with the 2014 draft regulations and still have significant concerns with the 2015 final regulations, we believe that the rules should recognize the scientifically-confirmed connectivity that exists between certain types of waters. We believe that the proposed rule 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 the proposed WOTUS regulations:

1. DEFINITIONS

- a. We recommend that a definition of “floodplain” be included in the 2018 regulations but 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 2018 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 2018 rules.
- c. We recommend that a definition specifically not include references to “man-made waters” and “ditches” as a category of waters that could be included as jurisdictional.
- d. We recommend that 2018 language 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 2018 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 the past 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 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 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 or administering 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, appearing to read "Kurt Spitzer". The signature is stylized with a large, sweeping flourish at the end.

Kurt Spitzer