



FLORIDA STORMWATER ASSOCIATION

Leadership in Stormwater Management and Utilities

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Via Electronic Mail

February 4, 2022

Water Docket
U.S. Environmental Protection Agency
Washington, DC

Attention: Docket ID No. EPA-HQ-OW-2021-0602
Revised Definition of “Waters of the United States”

To Whom It May Concern:

On December 7, 2021, the US Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) published revised 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 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 non-partisan, voluntary, non-profit Florida corporation organized under subsection 501(c)(4) of the Internal Revenue Service Code. There are over 320 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. There are 4,300 individuals who are actively engaged as members of FSA.

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 29 years. All of the members of FSA have an interest in surface water quality improvement and the effective implementation of the MS4 permit program.

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City of Clearwater

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Summary of Recommendations

FSA recognizes the need for federal oversight that sets 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, FSA offers the following recommendations for clarifications to the proposed revisions of the WOTUS definitions and regulations:

1. Adjacency - We recommend the definition of waters that are “adjacent” be limited to those that are bordering or contiguous to other jurisdictional waters. We specifically recommend against the inclusion of the term “neighboring” as an example of an adjacent water, as this term is not defined and will lead to confusion and (or) an inconsistent application of the term “adjacent.”
2. Waste Treatment Systems - The regulations should confirm that ditches, canals and other waterways that convey stormwater to or from features where treatment occurs, or where water is stored or flood protection occurs, are included in an exemption from WOTUS coverage, as follows:

Waste treatment and other surface water systems and their components, including detention and retention ponds, lagoons, and conveyances such as ditches and canals that move stormwater to or from locations or structures where treatment, storage, recycling or flood protection occur, are not waters of the United States.
3. Significantly Affect - We recommend that in the definition of “significantly affect” (and also in all other sections of the proposed rule where the phrase “...chemical, physical, or biological integrity of waters...” is used) be revised to “...chemical, physical, *and* biological integrity of waters...” Making such a revision would bring the proposed regulations in line with key decisions of the courts, be protective of key waters and lessen the burden on MS4 permit holders.

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 avoiding 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