



CLEAN WATERWAYS ACT STORMWATER RULEMAKING

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SENATE BILL (SB) 712

CLEAN WATERWAYS ACT

- SB 712, also known as Florida's Clean Waterways Act, directed the Florida Department of Environmental Protection (DEP) to adopt new rules to support the goal of improving water quality in Florida, including updating the stormwater design and operation regulations.
- Environmental Resource Permit (ERP) applicants for stormwater management systems must abide by current provisions under Chapter 62-330, Florida Administrative Code (F.A.C).
- The final draft rule package was filed for adoption with the Florida Department of State on April 28, 2023.
- These rules have been ratified by the Florida Legislature with amendments to the selected rule provisions under SB 7040.
- We are waiting for a final effective date.



ADOPTED REVISIONS



- Rule revisions focus on stormwater management system design and operational requirements that would be permitted primarily as individual ERP projects.
- Rule revisions for new permitting requirements, specifically for dam systems, are addressed in the adopted rules.
- Implementation requirements for rule revisions are primarily incorporated in ERP Applicant's Handbook (AH) Volume I, which was revised and incorporated by reference in Rule 62-330.010, F.A.C.
- Supporting requirements are found in additional sections of Chapter 62-330, F.A.C., forms and the water management districts' (WMDs') AH Volume IIs.



SB 7040 AMENDMENTS

- Clarified that the revised rules do not eliminate grandfather provisions in existence prior to the effective date.
- Provided that grandfathered projects can use existing forms (i.e., forms related to financial capability certification, dam system information, operation and maintenance and inspection checklists) in effect at the time the permit was originally issued, except for subsequent permits for future phases of construction and operation.
- Provided those entities implementing stormwater best management practices (BMPs) under a different permit (i.e., permittees regulated under the Everglades Agricultural Area basin program and entities implementing BMPs adopted by the Florida Department of Agriculture and Consumer Services [DACCS]) are not subject to duplicate inspections and inspections must be conducted pursuant to such entities' permits.



SB 7040 AMENDMENTS (2)

- Provided alternative treatment standards for redevelopment projects in areas with impaired waters (and upstream of such waters) and provide the minimum level of treatment for such projects (the post-development pollutant loading must be less than predevelopment conditions for those pollutants not meeting water quality standards and reductions of 80% total phosphorus (TP) and 45% total nitrogen (TN) must be achieved).
- Provided clarification when an applicant provides reasonable assurance that the required modeling, calculations and applicable supporting documentation satisfy the provisions specified under Sections 8.2.3 through 8.3.6 of AH Volume I, the applicant shall have demonstrated that it meets the 80% and 95% reduction of total suspended solids (TSS).



IMPLEMENTATION TIMELINE SUMMARY

Section number, AH Vol. 1	When it is effective *	Who is affected
8.3 – Performance criteria	Effective date + 18 months **	All general & individual permits and major modifications of existing permits
8.4.5 – Dam criteria	Effective date	Dam owners
12.3.5 – O&M Cost estimate	Effective date (at the time of application)	Everyone
12.4 – O&M Plan	Effective date (at the time of application)	Everyone
12.5 – Inspection Requirements and Checklist	Effective date (at the time of application)	Everyone except MS4 Entities, and certain activities and BMPs regulated by SFWMD or DACS
12.5(c) – {Qualified Inspector}	{Effective date + 12 months}	

Notes:

* New stormwater rule revisions will become effective upon the ratification bill (SB7040) becoming law, pursuant to s.120.54(3)(e)6, F.S.

**New Conceptual Approval Permits (issued after the rule effective date), will have to reflect the provisions for grandfathering of performance criteria, based on the criteria that would apply for the time of application completeness for the individual construction phase permit.



ERP STRUCTURE

- Chapter 62-330, F.A.C.
 - Rules incorporating the ERP AHs.
 - Changes made to the handbook are reflected in the rule where applicable.
 - Conditions for issuance.
- ERP AH, Volume I.
 - Where the bulk of rule change occurred.
 - Contains permit thresholds and exemptions.
 - Design performance standards.
 - Erosions and sediment control practices.
 - Operations and maintenance requirements.
 - Wetland mitigation.
- ERP AH, Volume IIs.
 - Five separate handbooks; one for each of the WMDs.
 - Contain attenuation and Special Basin Criteria.



SECTION 2

DEFINITIONS

- Definition changes.
 - Pre-development and post-development.
 - BMPs for erosion and sediment control and BMPs for stormwater treatment.
 - Dam, levee and levee system.
 - Directly connected impervious area.
 - Redevelopment.
 - Hydrologic unit code.
 - Impaired water.





SECTION 3

GRANDFATHERING

- Existing permits will not be affected unless they have a major modification.
- ERP applications that will not be required to meet the new rule requirements.
 - Projects with complete application within 18 months from the rule effective date.
 - Florida Department of Transportation projects that have completed their Project Development and Environment Study before rule implementation.
 - Conceptual approval permits issued before the rule effective date.
 - Minor modifications or modifications that will solely bring the previously permitted system into compliance with its existing permit.
- Stormwater management and design plans approved before Jan. 1, 2024.
 - For a planned unit development final development plan.
 - For a valid development of regional impact.
 - With a binding ecosystem management agreement.
 - Submitted to local government agency as part of a local building permit or as part of a site plan or subdivision plat approval.
 - Submitted to local government agency as part of a regional stormwater management system.



SECTION 8

DAMS

- Dam safety requirements.
 - Provide for basic dam safety information during permitting review.
 - Establish a downstream hazard potential classification for new projects.
 - Require emergency action plans where needed.
 - Provide condition assessment reports for High Hazard or Significant Hazard dams.
- All applications containing dams starting at effective date.





SECTION 8

PERFORMANCE STANDARDS

- Additional permitting requirements.
 - Modeling or calculations required rather than presumptive BMP design.
 - Minimum stormwater treatment performance standards for design.
 - Based on a post \leq pre analysis or a nutrient reduction efficiency, whichever is more protective.
 - Treatment designs would provide 80% reductions of TP and a 55% reduction of TN.
 - Additional removal requirements of 90% for TP and 80% for TN for projects discharging within Outstanding Florida Waters (OFW).
 - Additional provisions for projects discharging to impaired waters to ensure consistent procedures for demonstrating that a project will provide a net improvement to receiving waters.
- Redevelopment Section 8.3.5.
 - Adopted provisions would allow a reduced TN performance standard of 45% (60% for projects discharging within OFW) under limited conditions which are expected to support redevelopment in areas where there are likely little or no historical stormwater treatment.



SECTION 8

EXEMPTION FROM MINIMUM PERFORMANCE STANDARDS



- Section 8.3.6 – for redevelopment only.
 - Under one acre.
 - Result in reduced impervious surface or reduced pollutant loading.
 - Requests pursuant to Section 3.2.7.
 - Allows reduced performance standards in these areas.
- Performance standards required for applications deemed complete 18 months before the effective date.



TREATMENT STANDARDS

SUMMARY OF SECTION 8.3, AH VOLUME I

Project Scenario	TP	TN	Additional Criteria
All sites	80	55	Or post \leq pre
OFW	90	80	Or post \leq pre
Impaired water	80	80	And post \leq pre plus net improvement
Impaired + OFW	95	95	And post \leq pre plus net improvement
Redevelopment	80	45	N/A
Redevelopment + OFW	90	60	N/A
Redevelopment + impaired	80	45	And net improvement for the pollutant of concern



SECTION 9

CALCULATING AND MEETING PERCENT REDUCTIONS

- Calculations.
 - Modeling or calculations outlined in new section of AH Volume I.
 - Based on land use of the site, hydrology and event mean concentration (EMC) value.
 - Calculate the predevelopment loading and the post development loading before treatment.
 - Use this and the site location to determine which performance criteria to follow.
 - Updated average annual rainfall data.
- BMPs.
 - Traditional BMPs listed in Appendix O.
 - BMP treatment train.
 - Low impact design and green stormwater infrastructure.
 - Alternative designs.
- Off-site treatment.
 - Over treatment.
 - Off-site compensation.
 - Regional stormwater systems.



SECTION 12

OPERATION AND MAINTENANCE

- Increased operation and maintenance requirements.
 - Strengthened training, documentation and inspection frequency requirements help ensure that new stormwater management systems will be properly operated and maintained over time.
 - New permitting requirements to ensure that entities will be capable of performing operation and maintenance over time.
 - Required for applications submitted after effective date.
- Detailed O&M plan.
 - At time of application develop O&M plan for BMPs used on site.
 - Provide this O&M to all subsequent permit holders and O&M entities.
- Cost estimate.
 - Provide annual cost for maintaining stormwater system for its operation life and the replacement cost.



SECTION 12

INSPECTION

- Inspections to be done regularly by a qualified inspector.
 - Qualified inspector can be a Professional Engineer (PE), under supervision of a PE, or have specific training in stormwater inspections.
 - Would be required 12 months after effective date.
 - Required at interval indicated by the permit based on the BMP's complexity.
 - Projects under Chapter 40E-63, F.A.C., and DACS under Title 5M, F.A.C., are not subject to duplicative inspection requirements or the qualified inspector requirement.
- Options for municipal separate storm sewer systems.
 - O&M: "... where the operation and maintenance entity is or will be a Municipal Separate Storm Sewer System permittee subject to Chapter 62-624, F.A.C., (MS4 Entity) are not required to submit a separate O&M plan under this section."
 - Inspections: "An MS4 Entity shall conduct and report inspections ... in accordance with their MS4 permit requirements and any associated Standard Operating Procedures (SOPs) required pursuant to Chapter 62-624, F.A.C."



IMPLEMENTATION TIMELINE SUMMARY

EFFECTIVE IMMEDIATELY

Unless otherwise grandfathered, these requirements are to be included at time of effective date.

- Dam system criteria, Section 8.4.5.
 - Form 62-330.301(25).
 - Form 62-330.311(4).
- Cost estimate form, Section 12.3.5.
 - Form 62-330.301(26).
- O&M Plan, Section 12.4.
 - Form 62-330.311(1).
- Performance criteria for conceptual Permits.





IMPLEMENTATION TIMELINE SUMMARY

EFFECTIVE WITH LAG TIME



- Applications deemed complete after the effective date + 12 months will be required to utilize a qualified inspector for all required inspections.
 - Section 12.5, Form 62-330.311(3).
 - Excludes MS4 Entities and certain activities and BMPs regulated by South Florida Water Management District or DACS.
- Applications deemed complete after the effective date + 18 months will be required to meet the stormwater quality nutrient permitting requirements.
 - Performance Criteria Section 8.3.



SUMMARY

- Provides minimum stormwater treatment performance criteria.
- Increases treatment and removal of nutrients (TP and TN).
- Establishes updated stormwater BMPs that more accurately reflect latest scientific information on their performance.
- Strengthens Florida's overall water resource protections.
- Ensures consistent application of net improvement performance standards.
- Strengthens requirements for operation and maintenance of stormwater systems.
- Improves permitting requirements and information for dam systems.



THANK YOU

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