



ENVIRONMENTAL RESOURCE PERMITTING RULE DEVELOPMENT WORKSHOP #2

DWRM / Stormwater Technical Services Program
Florida Department of Environmental Protection

Tallahassee, FL | Aug. 31, 2022



WORKSHOP AGENDA

- **Review of public comment and changes to draft.**
 - Section 2.
 - Section 8.
- **Review of new draft language.**
 - Section 12.
- **Public comment.**





SECTION 2

TERMS AND DEFINITIONS



Minor changes to new draft wording throughout based on public comment.

- Best Management Plan (BMP) definition change.
 - BMP definition split into two to better capture the differences between BMPs for sediment and erosion control and BMPs for stormwater treatment.
- “Net Improvement Performance Standard.”
 - Previously proposed definition has been removed.



SECTION 2

TERMS AND DEFINITIONS - 2



- Predevelopment condition definition.
 - *...for nutrient loading determinations shall mean the average annual nutrient loading based on the land use, land cover, and other site conditions that are legally in existence at the date of application.*

This is how it will be implemented within the scope of new rule language.



SECTION 8

PERFORMANCE CRITERIA

IMPAIRED WATERS

Added language to 8.2.3.

Provides an explanation of what is required for a net improvement for all other pollutants that are not Total Nitrogen (TN) or Total Phosphorus (TP). Additional net improvement criteria for impaired waters for TN and TP are later described in 8.3.4.

Hydrologic Unit Code (HUC) 12: added language.

Clarified the requirement to meet the performance criteria for a stormwater system that is within the same HUC 12 and is upstream of the waterbody of concern.

Consistent language.

Clarified language in the requirements to better tie back to the predevelopment condition and post development condition definitions.



SECTION 8

PERFORMANCE CRITERIA - 2

TWO-PRONGED APPROACH

Evaluation of the greater nutrient load reduction criteria.

Percent reduction.

Percent reduction would be used for most sites that are non-natural land.

Percent reduction will usually result in a nutrient loading much less than the average loading on the site at the time of the application.

OR

Pre = Post.

Pre = Post would not result in the greater load reduction in most cases relating to land that has been previously developed.

Pre = Post is most often used when the predevelopment condition is that of natural land.

This system intrinsically incentivizes development of non-natural land, makes sure that development is meeting a sufficient load reduction, and provides protections for development of natural land.

The two-prong system is based choosing the prong that causes the greater load reduction. You cannot choose pre = post on a site that is already developed if a percent reduction would be more protective.



SECTION 8

PERFORMANCE CRITERIA - 3

**Two-pronged approach
when percent reduction would be
used:**

**Predevelopment condition:
residential nutrient loading = 25 TP.**

**Post development condition:
highway nutrient loading = 20 TP.
Percent reduction.**

**Final nutrient loading would be required to use
the 80% reduction = 4 TP.**

**Two-pronged approach
when pre = post would be used:**

**Predevelopment condition:
natural land, nutrient loading = 3 TP.**

**Post development condition:
highway nutrient loading = 20 TP.
Percent reduction.**

**Final nutrient loading would be required to use the
pre = post criteria = 3 TP.**



SECTION 12

INSPECTION AND MAINTENANCE REQUIREMENTS

CURRENT POLICY AND LOOKING FORWARD

- **Opportunities to enhance maintenance and operation.**
- **Importance of maintenance to preserve the functionality of a system.**
- **Methods of how we are currently regulating/overseeing maintenance requirements.**
- **Current methods of evaluating “financial capability.”**
- **Moving forward with new rule requirements.**
 - Enhancing operation and maintenance (O&M) requirements for all projects.
 - Clear financial requirements for perpetual operation of systems.
 - Increased inspections and oversight.





SECTION 12

INSPECTION AND MAINTENANCE REQUIREMENTS - 2

EDITS TO EXISTING LANGUAGE

12.1.

Requirement for demonstration (certification) of financial capability to maintain the system added.

12.2.(a).

Reformatted to better articulate that all kinds of automatic conversion are subject to enforcement if they are not in compliance with the permit requirement.

12.2.(b).

As-built drawings will be required for all projects in order to convert from construction phase to O&M phase. This will require a final inspection by the registered professional to sign off that the system has been built according to the permitted design.

12.2.1.

Transfer to the permanent O&M entity will require more documentation than previously required. Transfer will require an O&M plan as provided by the registered professional, an O&M cost estimate and documentation demonstrating financial capability if applicable.



SECTION 12

INSPECTION AND MAINTENANCE REQUIREMENTS - 3

12.3.4. NEW LANGUAGE FOR ASSOCIATIONS

Additional documentation during application process.

- Cost estimate for annual O&M expenses (would apply to all O&M entities).
- Documentation that budget would cover estimated O&M expenses in a manner consistent with statutory budget and reporting requirements that already apply to associations under Chapter 720, F.S.
- Fees are being allocated for their intended purpose of maintaining the system.
- Demonstration of the provision for a reserve fund, if created.



SECTION 12

INSPECTION AND MAINTENANCE REQUIREMENTS - 4

12.3.5. NEW LANGUAGE FOR FINANCIAL CAPABILITY

Cost estimate.

- All applicants will develop a cost estimate for the perpetual maintenance that will later be transferred to the O&M entity for their use.
- Cost estimates will be updated when O&M entity is transferred to account for market changes or needs for repairs, deviations from the original design, etc.
- These are meant to be a benefit to the O&M entity so they can better plan for maintenance and repair costs and avoid future more expensive compliance issues.

Financial capability demonstration.

- Submission of a form certifying that the O&M entity has the financial capability to maintain the stormwater management system.

Reserve fund.

- Recognition of the creation of a reserve fund for O&M expenses for associations, if created under Chapter 720, F.S.



SECTION 12

INSPECTION AND MAINTENANCE REQUIREMENTS - 5

12.4. MINIMUM OPERATION AND MAINTENANCE STANDARDS

Maintenance access has been added.

Provides consistency for access requirements to ensure that maintenance can be completed.

O&M plan guidelines:

- An O&M plan will need to be developed for each project by the registered professional.
- The minimum guidelines for this plan are listed in the draft rule language.
- The O&M plan should be reviewed and updated as needed by the O&M entity to update procedures and contact information.
- Plan is developed so that the O&M entity can understand what will be required to maintain the system and what future activities might need to be completed.
- Plan should be updated and available for agency inspection, if requested.



SECTION 12

INSPECTION AND MAINTENANCE REQUIREMENTS - 6

12.5. INSPECTIONS

Inspections will be required initially on an annual basis.

- After demonstration of five consecutive years of the project having no decrease in functionality, the applicant can ask for a decreased rate of inspections. This decreased rate will be evaluated based on rule criteria on a case-by-case basis.
- Inspections must be signed by a registered professional and submitted to the agency on an annual basis. This is to help ensure that stormwater management systems will be maintained over time, as needed, to avoid any future compliance issues.
- Inspection checklists would be provided for consistency.





SECTION 12

INSPECTION AND MAINTENANCE REQUIREMENTS - 7



FINAL SUMMARY OF SECTION 12

Financial capability requirements.

Strengthening requirement for O&M for all projects, developed by registered professional and maintained by O&M entity.

Proposes annual inspections to be conducted by registered professional and submitted to agency, with reduced inspection frequency provisions.



CONTINUED WORK AND FUTURE TOPICS

Work is ongoing...future topics include:

1. Best management plans and library.
2. Additional updated technical references:
 - Potential rainfall/design storm updates.
 - Average annual rainfall.
 - Green infrastructure and low impact design provisions.
3. Calculations for nutrient loading reductions.

We will continue to review the Stormwater Technical Advisory Committee recommendations and ongoing public comments as we finalize the last topics to be proposed for rule development.



REQUEST FOR COMMENTS

- **Please submit any comments, suggested edits and recommendations to Stormwater2020@FloridaDEP.gov.**
- **We will continue to encourage and accept comments throughout the entire rulemaking process.**
- **The next workshop will be noticed in the Florida Administrative Register as well as on the DEP calendar and our rulemaking website below.**

<https://floridadep.gov/water/water/content/water-resource-management-rules-development#erp-sw>

