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March 17, 2023

Florida Department of Environmental Protection
Attn: John Coates
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
*Submitted Electronically via **Stormwater 2020@FloridaDEP.gov***

RE: Draft Rule Language

Mr. Coates,

The Stormwater Equipment Manufacturers Association (SWEMA) represents a diverse group of innovative stormwater solution providers, as well as other associate and professional members. Our members maintain a significant presence in Florida through sizeable investments in workforce and economic development activities. Member companies employ many stormwater engineers, consultants, and additional support staff who are dedicated to improving local water quality within their communities by working closely with design engineers, regulated communities, and the development industry. Furthermore, several member companies maintain manufacturing, maintenance and operation, and other facilities throughout the state that employ additional front-line, skilled workers. In as many words, our employees will be directly and negatively impacted by implementation of the proposed rule. We remain ready and willing to assist the Department in establishing an equitable policy that is defensible and scientifically sound.

We respectfully offer the following comments for your consideration:

1) Extend the public comment period

At such a critical time for water quality throughout the state, the public comment period provided for this substantial draft rule is insufficient considering how substantively this proposal changes the stormwater management landscape within the State. More meaningful outreach, particularly to those stakeholders like us who were not engaged at all by the Department during this rulemaking process is necessary. We offered our considerable BMP evaluation, design, and operations and maintenance experience at the beginning of this process with our July 13, 2020 letter to the Florida Department of Environmental Protection (DEP) and the Stormwater Technical Advisory Committee (TAC). While it's unfortunate our assistance hasn't been utilized and past comments went unaddressed, additional time for review and further outreach by DEP would enable us to collaborate now to the betterment of this rule.

2) Better incorporate innovative stormwater technologies within the Rule

All BMPs should be selected and monitored to robust standards. The Draft *ERP AH Vol. 1, Sect. 9.5, Best Management Practices (BMPs) for Stormwater Treatment*, which is incorporated into



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this rule by reference, makes no mention of innovative stormwater technologies, also known as manufactured treatment devices (MTDs). Therefore, no consistent, identifiable method exists to guide their use moving forward. This policy oversight may allow less rigorously tested MTDs to be used that may not perform to expectations and will undermine the program's water quality goals.

Respective to MTDs, there are three (3) nationally recognized programs the Department should consider utilizing for compliance purposes. These evaluation programs represent the latest state of stormwater management science and will allow for equitable comparison of MTD pollutant removal performance.

- The New Jersey Department of Environment Protection (NJDEP) has established a robust laboratory-based protocol that evaluates total suspended solids (TSS) performance for proprietary BMPs.
- The Washington State Department of Ecology's (Ecology) Technology Assessment Protocol-Ecology (TAPE) is a well-established, rigorous field-based protocol that allows for the assessment of a range of pollutants, including TSS and nutrients.
- Both programs form the foundation of the ongoing national verification initiative known as the Stormwater Testing and Evaluation for Practices and Products (STEPP) initiative, currently championed by the National Municipal Stormwater Alliance. STEPP will utilize ASTM (American Society for Testing and Materials) standards that are currently under development. SWEMA strongly supports STEPP.

By reference, we incorporate our prior, unaddressed comments. In addition to the information above, SWEMA requested FL DEP establish processes to:

- Include both natural and manufactured systems equally by having a quality assurance program available to compare best management practice water quality performance data.
- Create a single pathway for full approval of MTDs

Based on the current draft, DEP has not taken action to address these concerns. Instead, DEP has deferred to the existing, piecemeal approach by proposing that "Alternative Designs" be addressed within the proposed rule language under Section 9.5.2 of Applicant's Handbook Volume I on an individual permit basis. This fragmented, inconsistent approach mimics Florida's current regulatory framework for addressing innovative stormwater technologies and perpetuates existing system's inequity and uncertainty.

SWEMA strongly urges FL DEP to reconsider its approach so that all stormwater BMPs can be reviewed and evaluated equally. Due to these concerns, SWEMA does not believe the current



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Rulemaking proposal by DEP meets the required directive of Florida's Clean Waterways Act of 2020 in that the stormwater design and operation regulations and the Environmental Resource Permit Applicant's Handbook *use the most recent scientific information available*.

3) Provide statewide regulatory consistency amongst the various Water Management Districts (WMDs)

At the time of this response and public comment period, only the Applicant's Handbook Volume II for the Northwest Florida Water Management District (NFWMD) is available for review. Not having all the WMD Handbooks available leads to considerable and avoidable uncertainty regarding implementation. SWEMA wants to ensure regulatory consistency is achieved throughout the state as this was an identified goal of the 2020 Rulemaking process.

As noted above, Florida currently has a fragmented stormwater regulatory program. The implementation of the current program by the WMDs contributes to this fragmentation and creates regulatory uncertainty. We urge the Department to make the Applicant's Handbook Volume II for all WMDs available at the same time with ample public review time so all can be assured there is regulatory consistency in the administration and implementation of Florida's Stormwater Management program throughout the state.

We appreciate the opportunity to provide comments on this important issue. We strongly urge you to reach out regarding how we can help facilitate the development of a robust BMP evaluation program and improved rule. We look forward to working with you to further improve water quality within Florida. Please contact SWEMA Executive Director, Laurie Honnigford, at laurie@stormwaterassociation.com or (720) 353-4977, or any of the signatories of this response, with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Greg Williams".

Greg Williams, Ph.D., P. Eng.
SWEMA President

A handwritten signature in blue ink that reads "Jay Holtz".

Jay Holtz
SWEMA Government Affairs and Regulatory Committee Chair