



REMAINING STEPS IN THE RULEMAKING PROCESS, AS CURRENTLY ANTICIPATED

John A. Coates

Clean Waterways Act Stormwater Rulemaking Public Hearing
Florida Department of Environmental Protection

Tallahassee, Florida | March 22, 2023



CURRENT STATUS OF RULEMAKING

NOPR AND LCRA SUBMITTALS

- Notice of Proposed Rule (NOPR) was published in the Florida Administrative Register Feb. 24, 2023.
- By March 17, 2023, four Lower Cost Regulatory Alternatives (LCRAs) were received.
- Subject to section 120.541, F.S., DEP is required to respond to the person who provided the LCRA, revise the statement of estimated regulatory costs, and either adopt the alternative or provide a statement of the reasons for rejecting the alternative, etc.
 - March 5, and March 17, 2023, LCRA letters from Florida Engineering Society.
 - March 16, 2023, LCRA letter on behalf of US Capital Alliance.
 - March 17, 2023, LCRA letter from Associated Industries of Florida.
 - March 17, 2023, LCRA letter from Florida H2O Alliance.
- DEP has also received additional comments and all have been made available to the public online.
- DEP has thoroughly reviewed these alternatives and is considering our options.
- The Joint Administrative Procedures Committee (JAPC) provided March 13, 2023, comments. Notice of Change to address clarifications and corrections from JAPC.



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LCRA SUBMITTALS

- Three letters submitted similar grandfathering language:
 - Requests addresses conceptual, general or individual Environmental Resource Permits and older predecessor permits, plus “non-substantial” modifications of those permits.
 - DEP Response: We are reviewing past grandfathering provisions that have been provided. As we’ve noted in the past rule development workshop meetings that new stormwater design requirements are not intended to alter requirements that apply to existing permits. The proposed language is based on language that has been used historically at the time of rule changes; however, we believe it is important to have increased inspection requirements for even these projects in the future.
- The remaining LCRA was focused on the proposed rule language for the legislative direction to, “update the stormwater design... regulations.”
- The LCRA on the proposed design criteria would eliminate minimum treatment performance standards and only apply a pre-development and post-development loading evaluation to establish a performance based design criteria.



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LCRA AND UPDATING THE STORMWATER DESIGN REGULATIONS

- Today, stormwater design regulations have design criteria that are based on treating the runoff for specified rainfall amounts.
- The proposed rule would update the design regulations so that they are expressed as a performance based design criteria.
- Generally, the proposed rule has minimum treatment performance standards:

All Sites Not Impaired	OFWs	Impaired Waters	Impaired OFWs	Redevelopment (Limited Sites)
Post ≤ Pre, and TP: 80% & TN: 80%	Post ≤ Pre, and TP: 95% & TN: 95%	Post ≤ Pre, TP: 80% & TN: 80%, and Post < Pre (Impaired Parameters)	Post ≤ Pre, TP: 80% & TN: 80%, and Post < Pre (Impaired Parameters)	TP: 80% & TN: 45% or TP: 95% & TN: 60% (for OFWs)



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CONSIDERATIONS FOR LCRA STORMWATER DESIGN REGULATIONS

- DEP believes we need to maintain minimum treatment design criteria.
- Completely eliminating minimum treatment design criteria would result in reduced protections from nutrients, and would not accomplish the objectives of the law being implemented nor the legislative direction for this rulemaking.
- DEP has been reviewing again the Clean Waterways Act Stormwater Technical Advisory Committee (TAC) deliberations:

All Sites Not Impaired	OFWs	Impaired Waters	Impaired OFWs	Redevelopment (Limited Sites)
Post ≤ Pre, and TP: 80% & TN: 55%	Post ≤ Pre, and TP: 90% & TN: 80%	Post ≤ Pre, TP: 80% & TN: 80%, and Post < Pre (Impaired Parameters)	Post ≤ Pre, TP: 95% & TN: 95%, and Post < Pre (Impaired Parameters)	TP: 80% & TN: 45% Or TP: 95% & TN: 60% (for OFWs)
TSS: 80%	TSS: 95%	TSS: 80%	TSS: 95%	



CURRENT STATUS OF RULEMAKING

DEP EVALUATION OF ALTERNATIVES - LCRA

Predevelopment	Post development	Pre loading		Post Loading		Existing Rule*		Proposed Rule		Alternative TAC		Lower Cost Alternative	
		TN (Lb.)	TP (Lb.)	TN (Lb.)	TP (Lb.)	TN % Load, Lb.	TP % Load, Lb.	TN % Load, Lb.	TP % Load, Lb.	TN % Load, Lb.	TP % Load, Lb.	TN % Load, Lb.	TP % Load, Lb.
Commercial (Ave)	Multi-Family	132.6	20.6	131.9	37.3	33% 88.3	69% 11.6	80% 26.4	80% 7.5	55% 59.3	80% 7.5	-1% 132.6	45% 20.6
General Agricultural	Residential (Ave)	82.4	13.7	398.4	84.6	33% 266.9	69% 26.2	80% 79.7	80% 16.9	55% 179.3	80% 16.9	79% 82.4	84% 13.7
Pasture	Low Density Residential	109.0	21.3	159.4	26.1	33% 106.8	69% 8.1	80% 31.9	80% 5.2	55% 71.7	80% 5.2	32% 109.0	18% 21.3
Light Industrial	Residential (Ave)	478.1	103.6	398.4	84.6	33% 266.9	69% 26.2	80% 79.7	80% 16.9	55% 179.3	80% 16.9	-20% 478.1	-22% 103.6
Light Industrial	Commercial (Ave)	134.1	29.1	206.9	32.2	33% 138.6	69% 10.0	80% 41.4	80% 6.4	55% 93.1	80% 6.4	35% 134.1	10% 29.1
Commercial (Ave)	Commercial (Ave)	206.9	32.2	177.7	27.7	33% 119.1	69% 8.6	80% 35.5	80% 5.5	55% 80.0	80% 5.5	-16% 206.9	-16% 32.2
Pasture	Low Intensity Commercial	30.6	6.0	74.1	14.2	33% 49.6	69% 4.4	80% 14.8	80% 2.8	55% 33.3	80% 2.8	59% 30.6	58% 6.0
General Agricultural	Low Density Residential	82.4	13.7	159.4	26.1	33% 106.8	69% 8.1	80% 31.9	80% 5.2	55% 71.7	80% 5.2	48% 82.4	47% 13.7
Dry Prairie	Single Family	72.1	6.5	169.2	31.3	33% 113.3	69% 9.7	80% 33.8	80% 6.3	55% 76.1	80% 6.3	57% 32.8	79% 3.0
Low Intensity Commercial	High Intensity Commercial	87.2	16.8	312.3	44.9	33% 209.2	69% 13.9	80% 62.5	80% 9.0	55% 140.5	80% 9.0	72% 87.2	63% 16.8
Rangeland/parkland	Residential (Ave)	41.4	2.0	398.4	84.6	33% 266.9	69% 26.2	80% 79.7	80% 16.9	55% 179.3	80% 16.9	90% 41.4	98% 2.0
Ruderal/ Upland Pine	Commercial (Ave)	17.1	1.6	206.9	32.2	33% 138.6	69% 10.0	80% 41.4	80% 6.4	55% 93.1	80% 6.4	92% 17.1	95% 1.6

* based on existing minimum design criteria with 14 day residence time



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DEP EVALUATION OF ALTERNATIVES - LCRA

Status	Land Use	Area (acres)	CN	DCIA	ROC	EMC TN, mg	EMC TP, mg	Runoff (ac-ft)	TN Loading (kg)	TP loading (kg)
Predevelopment	Commercial (Ave)	10.0	69.0	85.0	0.7	1.59	0.25	13.3	60.3	9.4
Post development	Multi-Family	10.0	69.0	70.0	0.6	1.84	0.52	35.6	59.9	16.9
Predevelopment	General Agricultural	55.6	69.0	0.0	0.1	2.29	0.38	13.3	37.5	6.2
Post development	Residential (Ave)	55.6	69.0	38.0	0.3	1.75	0.37	83.7	181.1	38.5
Predevelopment	Pasture	55.6	69.0	0.0	0.1	3.03	0.59	41.2	49.6	9.7
Post development	Low Density Residential	55.6	69.0	12.0	0.1	1.65	0.27	0.0	72.5	11.9
Predevelopment	Light Industrial	55.6	69.0	72.0	0.6	1.20	0.26	146.8	217.3	47.1
Post development	Residential (Ave)	55.6	69.0	38.0	0.3	1.75	0.37	83.7	181.1	38.5
Predevelopment	Light Industrial	15.6	69.0	72.0	0.6	1.20	0.26	41.2	61.0	13.2
Post development	Commercial (Ave)	15.6	69.0	85.0	0.7	1.59	0.25	48.0	94.0	14.6
Predevelopment	Commercial (Ave)	15.6	69.0	85.0	0.7	1.59	0.25	41.2	94.0	14.6
Post development	Commercial (Ave)	15.6	69.0	70.0	0.6	1.59	0.25	48.0	80.8	12.6
Predevelopment	Pasture	15.6	69.0	0.0	0.1	3.03	0.59	48.0	13.9	2.7
Post development	Low Intensity Commercial	15.6	69.0	60.0	0.5	0.78	0.15	41.2	33.7	6.5
Predevelopment	General Agricultural	55.6	69.0	0.0	0.1	2.29	0.38	3.7	37.5	6.2
Post development	Low Density Residential	55.6	69.0	12.0	0.1	1.65	0.27	35.0	72.5	11.9
Predevelopment	Dry Prairie	55.0	69.0	0.0	0.1	2.03	0.18	13.1	32.8	3.0
Post development	Single Family	55.0	69.0	12.0	0.1	1.77	0.33	35.2	76.9	14.2
Predevelopment	Low Intensity Commercial	15.6	69.0	72.0	0.6	0.78	0.15	41.2	39.6	7.6
Post development	High Intensity Commercial	15.6	69.0	85.0	0.7	2.40	0.35	48.0	141.9	20.4
Predevelopment	Rangeland/parkland	55.6	69.0	0.0	0.1	1.15	0.06	13.3	18.8	0.9
Post development	Residential (Ave)	55.6	69.0	38.0	0.3	1.75	0.37	83.7	181.1	38.5
Predevelopment	Ruderal/ Upland Pine	15.6	69.0	0.0	0.1	1.69	0.16	3.7	7.8	0.7
Post development	Commercial (Ave)	15.6	69.0	85.0	0.7	1.59	0.25	48.0	94.0	14.6



CURRENT STATUS OF RULEMAKING

SUMMARY OF ALTERNATIVES AND NEXT STEPS

- Legislative direction in section 373.4131(6), F.S.:
 - ... shall initiate rulemaking to **update the stormwater design** and operation regulations, including updates to the Environmental Resource Permit Applicant's Handbook, using the most recent scientific information available. As part of rule development, the department shall consider and address low-impact design best management practices and design criteria that **increase the removal of nutrients from stormwater discharges**, and measures for consistent application of the net improvement performance standard to ensure significant reductions of any pollutant loadings to a waterbody.*
- Preparing responses to the four LCRAAs, as required by law.
- Continuing review of additional comments.
 - Some items need a correction or clarification.
 - Best Management Practices review process.
- Considering the three LCRAAs with the grandfathering provisions.
- Considering the range of options that were discussed by the TAC, in response to the LCRA for the proposed performance based design criteria.



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SUMMARY OF ALTERNATIVES AND NEXT STEPS - 2

- Preparing a Notice of Change for JAPC comments, plus we will work to incorporate any changes based on comments, and the evidence and information submitted through the end of the public hearing.
- Preparing a revised Statement of Estimated Regulatory Costs (SERC) that acknowledges the LCRAAs that were submitted, and includes DEP's response to adopt or reject the alternative in favor of the proposed rule.
- The challenge period for the proposed rule includes 10 days after this public hearing, and 20 days after a revised SERC in response to a LCRA is made available to the public.
- A rule may not be filed for adoption until at least 21 days after a Notice of Change, and 21 days after the availability of a revised SERC following receipt of a LCRA.
- This public hearing provides an additional fair opportunity for stakeholders to provide input to inform the Department of any further pertinent information.



THANK YOU

Division of Water Resource Management
Florida Department of Environmental Protection

Contact Information:
Stormwater2020@FloridaDEP.gov