

EMERGING ISSUES IN ENVIRONMENTAL RESOURCE PERMITTING

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IN THE NEWS: HEADLINES...

- Two days after he took office, Gov. Ron DeSantis unveiled sweeping measures to clean up Florida's troubled waters, including spending \$2.5 billion and launching more aggressive policies.*
- DeSantis offers "bold" plan to address water quality problems.*
- Florida Gov. Ron DeSantis is making a splashy show of his commitment to improve water quality and address the State's other urgent ecological needs.*
- Ron DeSantis unveils sweeping environmental plan to fix Florida's water woes.*

THE NEW FRONTIER...WATER QUALITY

- Non-Point Source Pollution – EPA Reports & Initiatives
- ERP Design Criteria – 35 year legacy
- Interest from Environmental Advocates, Third Parties, and Local Governments
- Rebutting the “*Presumption*”/Legislation

ERP WATER QUALITY CRITERIA

- **The rules.** Conditions for issuance for an individual or conceptual approval are set forth in F.A.C. Rule 62-330.301, require an applicant to provide reasonable assurances that the activities:
 - Will not adversely affect the quality of receiving waters such that **state water quality standards**...will be violated...;
- If an applicant is unable to meet State water quality standards because existing ambient water quality does not meet standards, and the proposed system will contribute to this condition, then the applicant must implement mitigation that will **cause a net improvement to water quality** in the receiving waters for the applicable parameters.

REBUTTABLE PRESUMPTION OF COMPLIANCE WITH STATE WATER QUALITY STANDARDS

- ERP AHs contain presumption that compliance with criteria, presumed that the project is consistent with the conditions for issuance of a permit.
- Similarly, presumption also provided in Florida Statutes - when the system is designed in accordance with the stormwater treatment requirements and criteria adopted under Part IV of F.S. Ch. 373, - such systems will be presumed *“not to cause or contribute to violations of applicable state water quality standards.”*

2019 STORMWATER QUALITY LEGISLATION – SB 1344/HB1343

- Proposed bill provided that WMDs, with DEP oversight, adopt rules governing *“design and performance standards that increase the removal of nutrients from stormwater discharges from all new development and redevelopment projects.”*
- Design and performance standards shall *“ensure that new pollutant loadings are not discharged into impaired water bodies.”*
- By December 1, 2019, the A.H. shall include *“revised best management practices design criteria and low impact design best management practices and design criteria that increase the removal of nutrients from stormwater discharges from all new development and redevelopment projects and measures for consistent application of the net improvement performance standard to ensure that new pollutant loadings are not discharged into impaired water bodies.”*

COMPENSATORY WETLAND MITIGATION

- Gov. DeSantis signed this legislation SB 532 & HB 521, which authorizes a local government to allow wetland mitigation for private development on lands purchased and owned by a local government for conservation purposes, **IF** state and federal mitigation credits are not available.
- Opt Out Clause - elimination reduction criteria -- Part A and Part B:
 - Part A – Mitigation equals greater long-term ecological value
 - Part B – Mitigation provides regional ecological value
- Do Mitigation Banks equal regional ecological value?

LEGAL POSITIVE OUTFALLS, DRAINAGE EASEMENTS, RETENTION RIGHTS, AND THE LIKE

- Conditions of issuance – Will not cause adverse impacts to existing surface water storage and conveyance capabilities.
- Documenting the right to discharge offsite to receiving waterbody.
- Offsite storage and retention rights.

Thank you

Concluding Remarks

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