



FLORIDA DEPARTMENT OF Environmental Protection

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Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

January 26, 2021

Mr. Chris Pettit
The Mayo Building
407 S. Calhoun St., Mail Stop E1
Tallahassee, FL 32399-0800

Re: 5M-1 Rulemaking

Dear Mr. Pettit:

Staff within DEP's Division of Environmental Assessment and Restoration (DEAR) have reviewed the changes to Chapter 5M-1, Florida Administrative Code (F.A.C.) and I submit these comments to you on those changes to the rule.

First, I would like to emphasize that we share your desire to develop a process to verify proper implementation of the Best Management Practices (BMPs) by producers. Onsite verification of BMPs will improve compliance with water quality standards and further reduce nutrient loading to waterbodies in Florida. We sincerely appreciate the collaboration with you and your team and look forward to working with you on the implementation of this revised rule. It is going to take our combined efforts to achieve the water quality restoration goals.

While the most recent edits did incorporate some of DEAR's previous suggestions, there are still some concerns about how long it will take to get landowners/producers enrolled in the BMP program.

Please find below some suggestions for specific sections of the proposed rule change:

5M-1.001(7) - A Producer or Landowner that has submitted an NOI but has not undertaken the required site visit will not be reported as unenrolled to the Florida Department of Environmental Protection unless they fail to undertake the required site visit within 60 days after notification by the Department of scheduling availability.

– We would like to get clarification on this language. FDACS provides “unenrolled acreage” statistics to DEP for BMAP purposes; however, it doesn't seem like that is the intent of this language. We would recommend changing “reported as unenrolled” to “reported for enforcement” for the sake of clarity. Furthermore, we would like to include language regarding efforts to proactively engage with landowners before reporting them to DEP for enforcement.

We also have concerns regarding the timetable for bringing non-compliant producers into compliance with Florida law. Please see two specific sections we would like to address below:

5M-1.009(1)(c) In no case shall the overall timeframe for completion of corrective and remedial measures extend beyond the date of the next implementation verification site visit.

- We are concerned that, as written, this timeframe will default to two years (the timeframe for implementation verification site visits) in most cases. We would suggest modifying this language to state that FDACS will conduct a follow-up inspection within a certain number of days (perhaps 30 days).
- We would also like to see language requiring the producer to formally provide notification and documentation to FDACS upon completion of corrective or remedial measures. This places the onus on the producer to proactively document corrective actions and report them to FDACS.

5M-1.009(1)(c) In no case shall the overall timeframe for completion of corrective and remedial measures extend beyond the date of the next implementation verification site visit.

- It appears that the proposed language has consolidated the timeframes for addressing corrective (first offense) and remedial (second offense). The new language adds “as soon as practicable” for corrective actions but does not include it for remedial actions. This is potentially an oversight that we would like to ensure is addressed.
- The new 5M-1.009(1)(c) seems to imply that if a problem is found, it must be completely solved (corrective and remedial actions, if necessary) within two years (i.e., by the next implementation verification site visit).

Our major concern regarding the proposed language in 5M-1.009(1)(c) (specifically the language in the two sections above) is that it could potentially take six years before a landowner who is not properly implementing BMPs is referred to DEP for enforcement:

- 2 years for NOI and first site visit at which “proper implementation” is confirmed and additional BMPs are identified,
- 2 years to the second site visit at which implementation of the additional BMPs will be checked, and
- 2 years to the third site visit, at which time corrective and/or remedial actions must be complete.

Lastly, the rule fails to specifically require FDACS to submit to FDEP the phosphorous and nitrogen application data obtained during each verification site visit as required under s. 403.067(7)(d)3., F.S.

We suggest that FDACS submit a notice of change incorporating these recommended revisions to ensure that producers get enrolled and properly implement BMPs as quickly and efficiently as possible in order to reduce nutrient runoff and protect our water resources. We are available to

discuss these recommended modifications further in an effort to improve upon the current draft rule.

I look forward to speaking with you more on this subject.

Sincerely,

A handwritten signature in purple ink, appearing to read "Julie Espy". The signature is fluid and cursive, with the first name "Julie" and last name "Espy" clearly distinguishable.

Julie Espy
Division of Environmental Assessment and Restoration
Florida Department of Environmental Protection