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FLRules.com one-time comment:

Name: John November
Email: john@publictrustlaw.org
Title: Comments on Proposed Rule Regarding Updates to Agricultural Best Management Practices
Comment: January 28th, 2021

Re: Comments on Proposed Rule Regarding Updates to Agricultural Best Management Practices Program
From: John November Esq, Executive Director & General Counsel
To: The Florida Department of Agriculture and Consumer Services (FDACS)

On behalf of the Board of Directors and members of the Public Trust Environmental Legal Institute of Florida Inc., I am pleased to be providing the following comments on the proposed rule amendments to the Agricultural Best Management Practices (BMP) program:

1. Proposed Rule 5M-1.001 F.A.C. Definitions (7) reads, "Notice of Intent" or "NOI" means a form provided by the Department to be submitted by an agricultural Producer or Landowner to indicate intent to enroll in and properly implement the Department's program of best management practices in accordance with the manual under which they enroll. A Notice of Intent to Implement Best Management Practices form (FDACS-04002, XX/XX), hereby incorporated by reference, shall be submitted for all new enrollments to the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy." The Public Trust applauds the above-proposed changes to this definition of "NOI". Nevertheless, the Public Trust is concerned that this language seems to exclude those entities that were previously enrolled in BMPS from having to submit the updated form (FDACS-04002, XX/XX) that new enrollees would now be required to submit. By failing to require that previously enrolled producers submit this form and have consistent enrollment paperwork completed, the Public Trust anticipates that FDACS may not have the information needed to successfully complete implementation verification visits as effectively as contemplated by this proposed rule. Consistent enrollment of new and previously enrolled producers statewide could lead to the results of the eventual analysis on the effectiveness of the BMP program to be more convincing. This consistent approach would also result in more implementation verification visits happening quicker, as more producers within the older BMAPs would be less likely to "slip through the cracks". The Public Trust recommends that Proposed Rule 5M-1.001 F.A.C. Definitions (7) be further amended to read, "'Notice of Intent" or "NOI" means a form provided by the Department to be submitted by an agricultural Producer or Landowner to indicate intent to enroll in and properly implement the Department's program of best management practices in accordance with the manual under which they enroll. A Notice of Intent to Implement Best Management Practices form (FDACS-04002, XX/XX), hereby incorporated by reference, shall be submitted for all new enrollments and previously enrolled producers to the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy.'" Although we acknowledge that the implementation verification visits would likely catch many of these previously enrolled producers, our recommendation is intended to increase the likelihood that those producers, such as those located within previously adopted BMAPs, would also fall under the strengthened requirements of the new proposed rule changes.

2. Proposed Rule 5M-1.001 Definitions (7) continues, "Submittal of an NOI shall not result in enrollment until such time as a site visit is completed by the Producer and Department representatives to identify the Applicable BMPs to be implemented on the subject parcel. 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.” The legislature’s intent when drafting Section 403.067(7)(b)2g, Fla. Stat. was resource protection. Without enforceable rules expediting the necessary steps to achieve the legislature’s intention, including expedient enrollment, the legislature’s proposed intent will not be met. The Public Trust is very pleased that FDACS is proposing this enhancement to the BMP program by creating clear enforceable enrollment timelines that will accelerate the proper implementation of BMPs to reduce the amount of nutrients, among other potentially harmful pollutants, entering our water bodies as a result of not implementing science-based best practices.

3. Proposed Rule 5M-1.009 Best Management Practices Implementation Assistance reads “(1) The Department will provide implementation assistance to Enrolled Producers or Landowners as follows: (a) If the implementation verification site visit status assessment described in subsection 5M-1.008(1), F.A.C., indicates that an Enrolled Producer has not achieved proper full implementation of Applicable BMPs Best Management Practices (BMPs), the Department will work in cooperation with the Producer or Landowner to identify corrective measures to be taken as soon as practicable to achieve proper full implementation of Applicable BMPs. The identification of corrective measures will include the setting of expectations and for the time required to complete them.” We praise the above language and assert that it will enhance the protection of Florida’s waterbodies. We appreciate that the above language builds in flexibility, promotes collaboration and agency assistance, while providing assurances that enrollment occurs.

4. Proposed Rule 5M-1.009 F.A.C. Best Management Practices Implementation Assistance reads, “(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.” This firm deadline provides the assurances needed to ensure that Florida’s BMP program’s rules meet the legislature’s intended goal for effective resource protection within a reasonable timeframe. However, it would be preferable if FDACS made clear any repercussions of missing this deadline.

Finally, the Public Trust reserves the right to challenge this proposed rule as invalid if it rendered substantially deficient through the rulemaking process. I can be reached at 904-525-3042 to answer any questions and to discuss the matters raised in these comments further.

Respectfully Submitted,

John Henry November Esq.