

November 9, 2016

Jonathan P. Steverson  
Secretary  
Florida Department of Environmental Protection  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399

***Re: Proposed Pollution Incident Reporting Rule***

Dear Secretary Steverson,

On November 2, 2016 the undersigned community water and wastewater utility organizations submitted detailed comments on the Department's proposed pollution incident reporting rule. As explained therein, we share your goal of enhanced public awareness of incidents that may threaten human health or the environment, but we believe that our recommended alternative approach constitutes a more effective noticing process.

Since the submission of our comments, the Department shared updated rule language, released a draft statement of estimated regulatory cost, and conducted a public rule adoption hearing. While we appreciate that the updated proposed rule language clarifies multiple ambiguities in the initial proposed rule language, it still represents a much more costly and less effective regulatory approach than the lower cost regulatory alternative that our organizations and numerous businesses submitted on October 19, 2016. Indeed, we maintain that a Department-led public notification process, utilizing modern forms of communication (website postings and listserves), substantially accomplishes the Department's objectives at a lower cost than the proposed rule and the revised proposed rule's archaic public notification process (newspapers and local broadcast media). The draft statement of estimated regulatory costs fails to conduct a comparative economic analysis between the two proposals and includes unrealistic cost assumptions for the regulated community. We respectfully ask the Department to reconsider its proposed notification framework. Further, there are mechanical shortcomings associated with the Department's less desirable approach, such as:

- The catch-all reporting requirement for reporting an incident that "poses an immediate danger to the public health, safety, or welfare" creates undue ambiguity in the revised proposed rule, which already requires notice for incidents that require notice to the State Watch Office.
- Requirements to report under the underground injection control program should be clarified to trigger reporting obligations when a release has the potential to contaminate potable water wells outside the property boundaries of the installation.
- Discharges of reuse irrigation water (i.e. reclaimed water) do not constitute a threat to the public health, safety, or welfare and should be excluded from the rule.
- Calls to the State Watch Office are often made within minutes of an event and then this reporting rule imposes reporting obligations within 24-hours. Utilities are likely going to over-report to ensure they comply with this rule. The Department should give the regulated public

the opportunity to withdraw or amend determinations giving rise to the reporting obligation and also provide a statement that it will not consider a report as an admission of violation or liability.

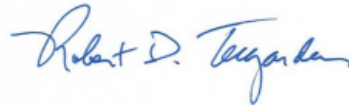
- The revised proposed rule still requires direct notice to be given to property owners; however, if the intent is to notify the potentially affected public, the owner of the property may be the wrong person to notify. Notice should be considered to be accomplished when a door hanger or sign is posted, or the occupant or manager of the property is otherwise constructively notified. Additionally, automated phone calls may provide more timely and effective individual notification and should satisfy notification obligations.
- The requirement to provide the identification number for any active Department permits, variances, registrations, or orders should be limited to only those relevant to the reportable release.

We appreciate your consideration of these additional comments.

Sincerely,



Lisa Wilson-Davis  
FWEA Utility Council President



Rob Teegarden  
FSAWWA Utility Council Chair

Cc: Kristin Bigham, DEP Hearing Officer  
Robert A. Williams, DEP Chief Deputy General Counsel