November 2, 2016

Robert A. Williams
Chief Deputy General Counsel
Florida Department of Environmental Protection
3900 Commonwealth Blvd., MS-35
Tallahassee, FL 32399
Submitted via Email: robert.a.williams@dep.state.fl.us

Re: Proposed Public Notice of Pollution Rule

Dear Counselor Williams,

As a follow-up to the enclosed October 19th lower cost regulatory alternative and September 29th clarification request, the undersigned wastewater and drinking water utility organizations respectfully submit the following comments on the Florida Department of Environmental Protection (FDEP's) proposed public notice of pollution rule..

By way of background, the Florida Water Environment Association (FWEA) Utility Council is an association of local government utilities in Florida that own and operate domestic wastewater treatment, disposal, reuse, and recycling facilities that produce reclaimed water. Our utility members serve a population of over 7 million Florida residents. The FWEA Utility Council members are substantially affected by the proposed rulemaking.

The FSAWWA Utility Council represents over 100 utilities in the state that provide drinking water to over 9,000,000 residents of Florida. The Utility Council membership covers the entire state: from small water utilities serving a few hundred customers to those serving over a million customers. As drinking water providers, we are actively engaged water treatment including use of chemicals such as disinfectants, addition of fluoride, and the use of acids and bases for pH adjustment and corrosion control. This rule not only affects reporting of incidents on water supply facilities but any impacts to surface and groundwater sources used for drinking water from spills or weather related events.

SEFLUC is an unincorporated, not for profit, association of 35 water utilities located primarily in the Lower East Coast of Florida within Miami-Dade, Broward, Palm Beach, Martin and Monroe Counties. Its purpose is to advocate for water and wastewater utilities with respect to proposed government regulations affecting their interests. SEFLUC's member utilities supply approximately 850 million gallons per day (mgd) of safe and reliable potable water to nearly five million residents of southeast Florida. It is projected that by 2025, its member utilities will supply approximately 1,086 mgd to over six million persons. As part of their normal operations, SEFLUC's member utilities operate domestic wastewater collection, treatment, disposal, and reuse facilities. Therefore, SEFLUC's members are significantly affected by the proposed Pollution Notification Rule.

Florida's utility community supports the goal of ensuring the public is aware of pollution incidents that may impact the public health or environment. Our members' fundamental responsibility is to protect the public health and environment.

Every day, Florida domestic wastewater utilities collect and treat the sewage waste that runs down the drains of millions of Floridians. Our service begins the moment that a silver handle is pulled and does not stop until treated reclaimed water is safely returned back to the environment. With several thousand miles of pipes and millions of resident-controlled entry points into community collection systems, incidents occasionally occur that result in sewer backups and overflows. Florida utilities have a strong track record of timely reporting and addressing these incidents in accordance with Florida law. Most community utilities also have internal protocols for notifying local government leadership when a significant event occurs.

Unfortunately, FDEP's proposed rule overlays new reporting requirements on Florida utilities instead of integrating the new rule with Florida's longstanding monitoring, reporting, and remediation requirements. Further complicating matters, the proposed rule's vague text makes it difficult to understand the rule's intended scope and regulatory obligations. Indeed, the nebulousness of the proposed rule makes it difficult to effectively provide comment, and the expedited rulemaking schedule exacerbates the problem.

The following comments highlight our members' concerns regarding the vagueness and cost of the FDEP's proposed rule. Florida utilities support the objective of ensuring that the public is aware of incidents that create a public health or environment concern; however, the means of achieving that goal need to be efficient and effective. The letter provides a recommended alternative approach that would accomplish our shared public notice objectives in a less costly and more effective manner. This letter closes by addressing issues unique to the management of domestic wastewater collection and treatment systems. Building on the Governor's recently expressed concerns on sanitary sewer overflows, we hope that this final section of the letter will be the first step in initiating a utility / FDEP dialogue on sanitary sewer overflow prevention, response, and reporting.

The Proposed Rule Needs Clarification

The proposed rule is unduly vague. The rule's reporting requirements hinge on the meaning of key terms, such as "pollution," "installation," "affected area," "potentially affected areas," and "potential risk." None of these terms are defined in the rule. Some of these terms are defined in Florida Statute 403.061(7). However, the definitions were established for their statutory context, therefore the definitions need better quantified for the current rulemaking process. This obliqueness causes a number of practical consequences. For instance, with respect to "pollution," the rule is unclear on what is intended to be required of a spill on impervious surfaces and/or contained. The rule also does not explain how utilities would comply with the 24-hour notification to property owners who are away, lease the property, or own vacant affected property. With respect to "potentially affected areas," the rule provides no information as to the scope of reporting obligations when a sewer overflow or chemical release reaches a water of the State.

Unless resolved, the result of these and other ambiguities will be significant uncertainty in Florida's utility community and unfettered FDEP discretion to interpret and apply the rule's

requirements. While Florida's utility community appreciates the informal guidance that has been released, a utility relies on materials outside the four corners of the rule at its own peril, as the news media, local government officials, members of the public, and trial lawyers may interpret the rule text more broadly than FDEP's informal guidance.

In order to resolve these ambiguities, Florida's utility community requests that the proposed rule be clarified to reflect FDEP's intent and re-noticed for public comment.

FDEP Needs to Evaluate the Full Cost of Reporting & Adopt the Least Costly Approach

FDEP needs to reevaluate the cost of compliance with its proposed rule. The number of ambiguities and undefined terms in the proposed rule could result in exceedingly broad application of the rule to both permitted and non-permitted activities.

Since the emergency rule has gone into effect, over 350 incidents have been reported. If this reporting trend continues, the State is on track to have over 4,000 reported incidents in the first year of this rule's effectiveness. Each reported incident takes time and costs money.

A simple, conservative analysis demonstrates how costly the rule could be:

- Costs to provide written notification could include:
  - Door hangers ($0.25 each)
  - Mailing (Certified letter- $6.74 each)
- Staff time/resources
  - 5 staff members at $35.00/hr. (Includes total cost of employee)
- Examples:
  - Small incident (500 gallons) notification costs:
    - 30 properties "affected" – 10% unoccupied
    - Door Hangers: 30 x $0.25 = $7.50
    - Certified Mail: 3 x $6.47 = $19.41
    - 5 staff members@ 1hr.: 5 x $35.00 = $175.00
    - Total: $201.91($200.00 per small incident)
  - Large incident (>10,000 gallons)
    - 300 properties "affected" – 10% unoccupied
    - Door Hangers: 300 x $0.25 = $75.00
    - Certified Mail: 30 x $6.47 = $194.10
    - 5 staff members@ 3 hrs.: 15 x $35.00 = $525.00
    - Total: $794.10 ($800.00 per large Incident)

Week Of	**9/26/16**	**10/2/16**	**10/10/16**
Small Incidents	26	81	77
Large Incidents	4	27	37
Total	$8,400.00	$37,800.00	$45,000.00
		Grand Total:	**$91,200.00**

- A conservative estimate of the costs of the emergency rule from 9/26/16 – 10/17/16 is approximately ***$91,000.00***.
- This estimate does not include the potential added costs of retaining toxicologists, computer modelers, public relations specialists, and legal counsel.

The above example is a conservative general estimate. Some of our members have tracked the impact of the rule on their utility operations. One midsized utility reports that the incremental increase in staff time for even a small event is approximately 23 man hours (across 11 positions). At a blended labor rate of $35/hour, this results in a cost of $805 per event. This cost does not include overhead or any additional equipment that may be required. FDEP will note that this utility-specific information demonstrates that the above estimate of $200 per small incident may be significantly lower than the actual cost.

Another utility provided an example that underscores how expensive the reporting requirement can be when it is triggered on a weekend. In this example, a utility experienced a Friday afternoon sewer discharge from a manhole in a condominium parking lot. This discharge was caused by a lift station construction site by-pass pump failure. The parking lot was cleaned up, but the discharge flowed into a stormwater ditch, which traveled a considerable distance to a local bayou and intracoastal waters. To meet the 24 hour and 48 hour emergency rule notification requirements, ten department staff were called in the next day (Saturday) to distribute written notifications. The costs to notify the public exceeded $7,200. This included notifying the public with over 600 door hangers and over 30 signs placed along the stormwater ditch. The postings and door hanger distribution occurred as overtime on Saturday and Sunday. Costs included labor, overhead, and non-labor (vehicles) components of the work. Interestingly, the laboratory data report for samples taken in the stormwater ditch on the Friday of the discharge was received late Saturday afternoon and showed that the ditch water quality remained below state surface water standards for bacteriological contamination.

This analysis underscores the need for FDEP to develop a comprehensive statement of estimated regulatory costs on the proposed rule.

FDEP Should Notify the General Public of Significant Incidents

As noted above, Florida utilities already report incidents to the FDEP in accordance with Florida law, and most community utilities already report significant events to the city or county manager pursuant to local protocols. This rule seeks to ensure that the public is aware of significant incidents that may impact the public health or welfare. Florida's utility community asserts that it is more efficient and appropriate for FDEP to provide this public notification.

There are a number of reasons for FDEP to serve the public notification role, including:

- The Florida Legislature tasked FDEP to protect the State's environment and the public health.
- FDEP has trained scientists in various program areas, and these experts can assess the public health risk of a wide variety of incidents involving different water and air contaminants.

- FDEP has statewide public communication capabilities.
- FDEP can ensure that information is communicated in a consistent format.
- FDEP has a superior economy of scale, as it is more cost effective to maintain one properly staffed reporting point that is manned 24/7 than it is to have each of Florida's community utilities try to do so.
- FDEP could serve as a central point of contact for public questions and concerns related to their environmental and human health assessment. The local utility would be the local contact for operational questions and concerns.
- FDEP can ensure that under-reporting of incidents does not occur.
- FDEP can ensure that over-reporting of incidents does not occur, which will help ensure that incident reporting does not turn into ignored static and that serious incidents are taken seriously.
- FDEP could maintain a single, state clearinghouse website of all reported events under existing rules (as currently being done via the emergency notification rule), and the news media could easily access that information.
- FDEP could maintain a listserve that electronically notifies all subscribers (news media, government officials, members of the general public) of reported events.
- FDEP can ensure that in emergency events (e.g. hurricanes, floods) community utilities can focus their limited resources on public safety and restoring damaged infrastructure.
- FDEP can ensure that notification occurs even when the local normal means of communication are impaired or inoperable.
- FDEP has experience in serving this public notification role, as section 376.30702, Florida Statutes, already tasks FDEP for providing contamination notifications.
- FDEP has not cited any statutory authority empowering the agency to require a regulated entity to contact the news media regarding a pollution incident.

For these reasons, Florida's utility community requests that FDEP provide public notification of duly reported pollution incidents when the circumstances dictate.

In addition, some larger local government utility members of the undersigned organizations indicate that they would like to have the flexibility to be delegated authority to serve FDEP's reporting role after FDEP has made the determination reporting under this rule is necessary. These members have local communication networks that could be utilized to ensure prompt and efficient reporting.

An FDEP-Utility Dialogue is needed on Sanitary Sewer Overflows

Over the past two months, Hurricanes Hermine and Matthew made landfall in Florida. Both of these natural disasters damaged critical infrastructure in the State. Wind, storm surge, and heavy rainfall triggered regional power failures and sanitary sewer overflows (SSOs). These infrastructure failures in part led to the pollution incident reporting rulemaking and in a broader sense, raised questions as to why SSOs occur and how they can be reduced. The following information provides information on sanitary sewer collection system maintenance, spill prevention, and response.

Collection systems consist of a series of underground pipes and lift stations that convey wastewater from customers to centralized treatment plants using both gravity and pumps to move the wastewater. Effective preventive maintenance programs have been shown to significantly reduce the frequency and volume of untreated sewage discharges. Still, natural disasters, such as hurricanes, can overwhelm even hardened public infrastructure, and it is important when analyzing SSO issues to distinguish between SSOs related to hurricanes and those caused by other events.

The following information provides an overview on utility SSO prevention and response programs:

- **Prevention**

  Utilities have many programs that are specifically in place to prevent SSOs.
  - CMOM – Capacity, Management, Operations, and Maintenance
    - Infrastructure condition assessments
    - Televising collection systems
    - Lining collection systems

  - Fats, Oil, Grease, and Roots Programs
    - Reduces backups and blockages due to the use of vegetable oils and animal fats during food preparation and roots from plants/trees
    - Grease trap inspections and pumpage tracking
    - Restricted plantings in easements

  - Supervisory Control and Data Acquisition (SCADA)
    - Plant and collection systems are monitored 24-hours a day / 7-days a week by SCADA systems.

  - Design standards: 62-604 F.A.C. – Ten State Standards
    - Treatment Plants
      - Must meet Building Code Requirements
      - Emergency pumping and power capabilities
      - Risk Category 1, 2, or 3 - Wind loads (Risk Category 3 means facility must be able to withstand 180 mph winds)
      - Capacity analysis required upon permit renewal (at least every 5 yrs.)
    - Collection System
      - Flood zones:
        - Infrastructure must be above 100 year flood levels (electrical panels, etc.)
        - Vents/covers must be built to withstand 100-year flood conditions
        - Minimum: "Accessible" during 25-year flood conditions
      - Non-Flood zones
        - Minimum: "Accessible" during 10 year flood
      - Emergency pumping capability is required

        - Generators
        - Pump Redundancy
      - Lift Station monitoring
        - Pump run times - high run times during rain events may indicate infiltration
    - Inventory/atlases, maps, GIS of collection systems.
      - Record drawing
      - Pipes/valves in collection system (including material type)
      - Manholes
      - Lift Stations

- Vulnerability Assessments – Public Health Security and Bioterrorism Preparedness and Response Act of 2002 Safe Drinking Water Act
    - Every community water system that serves a population of greater than 3,300 persons is required to:
      - Conduct a vulnerability assessment
      - Certify and submit a copy of the assessment to the USEPA Administrator (see schedule below);
      - Prepare or revise an emergency response plan that incorporates the results of the vulnerability assessment; and
      - Certify to the USEPA Administrator, within 6 months of completing the vulnerability assessment, that the system has completed or updated their emergency response plan.

- **Response**

- FlaWARN Network: A mutual aid and assistance network that provides water and wastewater utilities with the means to quickly obtain help in the form of personnel, equipment, materials and associated services from other utilities to restore critical operations impacted during an emergency.

- Required Plans
    - Emergency Response Plan: Utilities are required to prepare an Emergency Response Plan that incorporates the results of the vulnerability assessment.
    - Sewer Overflow Response Plan (SORP) (62-604 F.A.C.): The primary objective of the SORP is to protect public health and the environment, satisfy regulatory agencies and waste discharge permit conditions which address procedures for managing sewer overflows, and minimize risk of enforcement actions against the sewer system owner Additional objectives of the SORP are as follows:
      - Protect collection system personnel and wastewater treatment plant;
      - Protect the collection system, wastewater treatment facilities and all appurtenances; and
      - Protect private and public property beyond the collection and treatment facilities.

- Risk Management Plan: The Risk Management Plan (RMP) Rule implements Section 112(r) of the 1990 Clean Air Act amendments. RMP requires facilities that use extremely hazardous substances to develop a Risk Management Plan. These plans must be revised and resubmitted to EPA every five years.
  - Applicability is dependent on chemicals and quantities of chemicals kept/used on site.

- Storm Events
  - Overflows and damages are caused by high winds, flooding, up-rooting of trees, impacts from debris, and widespread power outages.
  - Crews unable to respond to overflows during storm conditions and response after a storm is often hampered by debris/flooding/blocked streets.
  - During storm events with flooding, in-flows can exceed treatment plant and collection system design capacity for treatment, storage, and conveyance.
    - Integrity of biological treatment processes must be maintained.
  - Required back-up power is tested weekly at full load.
  - Strategic pre-deployment of generators in collection system
    - Key (re-pump stations) lifts stations
    - As a proactive measure, some generators may be turned on before impending storm conditions prohibit travel.
    - Deployment of additional generators and refueling of generators after storm can be challenging.

- Health Risk
  - Many wastewater spills present little to no public health risk.
    - Spills are small
    - Spills are contained
    - Spill site access is controlled by utility
    - Spills are effectively mitigated
      - Washed down and disinfected (HTH or lime)
      - Vactored (wastewater is vacuumed and placed in the sanitary system)

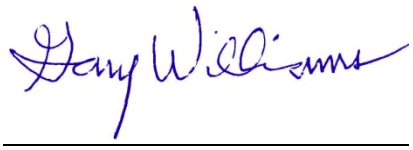
The combination of robust SSO prevention and response programs leads to a more resilient utility and network of utilities. A future FDEP and utility community dialogue would focus on ways to enhance and optimize utility preparedness for future natural disasters. It would also be an additional good outgrowth from this emergency notification rulemaking process.

****

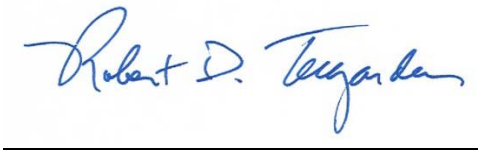
As noted above, the Florida utility community shares the goal of increased public awareness of significant events that could impact the public health and the environment. We look forward to working with FDEP on an approach that more efficiently accomplishes this objective.

Sincerely,

Lisa Wilson-Davis
FWEA Utility Council President



Gary Williams
Florida Rural Water Association Executive Director



Rob Teagarden
FSAWWA Utility Council Chair

Sherry Negahban
Southeast Florida Utility Council President

Enclosures

Enclosures:

Hopping Green & Sams

Attorneys and Counselors

September 29, 2016

Frederick L. Aschauer, Jr.
General Counsel
Florida Department of Environmental Protection
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

RE: Public Notice of Pollution Emergency Rule

Dear Mr. Aschauer,

On September 26, 2016, the Florida Department of Environmental Protection issued a notice of emergency rule that imposes new requirements for providing notice of "pollution" under certain circumstances. The emergency rule was issued in response to two incidents that were duly reported to the Department, but for which there was no requirement or specified process to notify local governments or the general public. It is our understanding that the emergency rule is not intended to expand the universe of occurrences that require notice; instead, it only identifies entities that are to receive notice for future incidents and outlines a process for providing that notice. Department rules are replete with science-based thresholds that establish when an incident poses a danger to the public health or environment and thus requires notice. This rule carries forward those scientific evaluations. We believe that the regulated community and the public would benefit greatly from the Department confirming this understanding.

In addition to addressing this principle issue, we believe that the public and the regulated community would benefit from the Department's preparation of detailed guidance regarding the intended scope and applicability of the rule. Since the issuance of the rule earlier this week, our law firm has received numerous questions regarding undefined terms in the rule, acceptable methods of notification to property owners, and other interpretive issues critical to compliance with the rule. We assimilated those questions and enclosed them herein. It is our hope that sharing the array of inquiries we have received will assist the Department in preparing guidance to the regulated community and thus help ensure that the public is timely and appropriately informed of pollution incidents, as intended by the Department's emergency rule.[1]

[1] Neither this letter nor the questions contained herein should be interpreted as rendering any opinion concerning the legal validity of the emergency rule or the related proposed rulemaking.

We appreciate your consideration of these questions and look forward to working with you and your colleagues on this important issue.

Sincerely,

David W. Childs

Enclosures: Rule Inquiries

The following requested clarifications were assimilated from Florida businesses, electric utilities, wastewater utilities and water utilities. The questions were categorized and duplicative issues were combined or removed to the extent possible. Many of these questions will be moot if the Department confirms our understanding that the rule is not intended to expand the universe of occurrences that require notice; instead, it only identifies entities that are to receive notice for future incidents and outlines a process for providing that notice. Department rules are replete with science-based thresholds that establish when an incident poses a danger to the public health or environment and thus requires notice. We understand that this rule carries forward those scientific evaluations. We believe that the regulated community and the public would benefit greatly from the Department confirming this understanding.

POLLUTION

- Does the Department plan to use the definition of "pollution" from 403.031, F.S.?
- Does the agency agree that an incident that would not be reportable under current regulations would not be subject to the emergency rule for public notice of pollution?
- Please confirm that it's not pollution if it's authorized (e.g., in compliance with a permit limit), and there is no harm (e.g., in quantities less than DEP guidance).
- Can the chapter 403 statutory definition of "pollution" be narrowed for the purpose of applying this rule in order to better reflect the intent? If there is an inundation of information / notification to the public, there may be a lack of concern by the public for "real pollution threats."
- The incidences which precipitated the Governor's action both involved significant discharges involving publicly used resources (drinking water aquifer, local waterways). Therefore, is it not reasonable to assume that, in the case of unauthorized water discharges, the Governor's office and FDEP is solely concerned with pollution events that rise to the level of calling the State Warning point, which is an already established threshold for public concern within NPDES permits?
- Can FDEP offer specific guidance for thresholds? For example:
    - Impact to environment – water body – is there a de minimis? Is there a difference for various types of unauthorized releases? Does chlorinated water into water body constitute pollution?
    - Is reporting necessary on construction sites, plant sites, etc. that do not flow into waters of the state or groundwater. What does "atmospheric" constitute?
    - Is there a threshold for other compounds/chemicals that are covered under other rules?
    - Does H2S from a wastewater collection system constitute as atmospheric pollution? If so, at what threshold? At an OSHA defined limit for human health?
- Does pollution also apply to noise and odors, as these are included in the definition of pollution in FS 401.031? How should we deal with non-emergency events that could be interpreted as pollution (i.e. odors for sewage pump stations, wastewater plants, water plants, landfills)?
- If we receive complaint about our lights at our plant, is that reportable?
- Does the agency agree that a release of a liquid or solid that is fully contained in containment or on impermeable surface is not a release to the environment and not subject to the emergency rule for public notice of pollution as it does not place public health at risk?

- Are incidental spills on the ground reportable? Examples include: fluid spills from-vehicles, e.g. coolant, gasoline oil. Who is responsible for reporting a spill from a party different than the property owner when there is no contractual relationship? An example is a fuel truck spilling its contents while driving thru another's property. Is there a minimum threshold?
- Does the agency agree that an air permit exceedance which represents a release in excess of a permit limit that does not exceed an air quality standard is not subject to the notification and reporting requirement?
- What are the reporting thresholds for things that do not relate to permits? Is it the reportable quantity?
- What if we have a small discharge is on the concrete and recaptured? What if it on the ground but we do not expect it to affect groundwater?
- With regards to WCU or petroleum, if we have a plume that is moving, would that be a new reporting requirement, if it has not gone offsite and a was pre-emergency rule discharge? What if it did go off-site? Would the new emergency rule notification procedures be in effect (in addition to the previous off-site notification requirements).
- With respect to SSOs, does the emergency rule only apply to those sanitary sewer spills which are of 1,000 gallons or greater, or which may threaten the environment or public health that are now required, under FDEP Rule 62-620, to be immediately reported by a utility to FDEP through a toll-free, 24-hour hotline? This will insure the public is notified of a potential impact, but not require utilities to over report which will in turn create undue public concern in some instances and may lead to a "static effect" where actual issues are drowned out by the needless reporting of issues that constitute no public health or environmental risk.
- What if 50 gallons of domestic wastewater is spilled from a lift station and flows into a homeowner's yard. Does Notification via TV and Newspaper need to be done? Do utilities maintain discretion?
- Is a sewer spill that does not reach a water body considered pollution?
- Is a sewer spill in a contained area (such as a pump station or treatment plant) considered pollution?
- Is a sewer spill in a confined area, which is recovered (vacuum trucks, etc.…) considered pollution?
- What about a homeowner/property owner that has a spill on their property – do they have the same reporting requirements? (If not, this would support the 1,000 gallon trigger rationale).
- Also, if untreated domestic wastewater enters a storm water inlet, and we believe it never reaches a water body due to a prompt responsive action, do we need to write the mayor and the news media? Property owners?
- Would the rule apply to a French drain site that is on city property? An onsite French-Drain system is basically like a septic system?
- We could come up with numerous examples of small-scale discharges of regulated products well under the reportable quantity, such as a few ounces of hydraulic oil from a piece of heavy equipment. These do not constitute a risk to human health or the environment, and would therefore appear to be well beyond the scope of the intent of this regulatory action.
- What if the incident is a small diesel spill within a treatment plant that doesn't leave the property boundaries, is reporting to the media and elected officials required?
- Does the detection of an odor from our plant constitute a reportable event?

- Only groundwater exceedances at the property line are reportable; exceedances within an established ZOD do not apply;
- Would it be safe to say a wastewater spill that is only on the ground and contained would not require the additional notifications?
- Exceedances of secondary standards in groundwater do not constitute pollution, so is no reporting is required?
- Does it apply to all exceedances in the permit? Does this include reporting errors? Lab errors? Sampling errors?
- In view of DEP's Emergency Rule on Public Notice of Pollution the following question(s) is generated in regard to the impact/influence to the IR standard operating procedures: (1) Are currently established thresholds and allowances for pollution (spill) quantities, types, concentrations, etc. germane for public notification under the Emergency Rule?
- Does the rule apply to results above target criteria (soil and/or gw) that is not reportable under 62-780?
- Does Petroleum less than 25 gallons on a pervious surface that is remediated without impact on surface water or groundwater need to be reported? See Rule 62-761.450, F.A.C. (detailing reporting requirements for petroleum).
- Does hazardous material/waste on a pervious surface that is remediated without impact on surface water or groundwater need to be reported?
- Does a leak of high level disinfection reclaimed water need to be reported, as there would seem to be no risk to the public?
- How does this rule apply to non-point source pollution?
- Pollution definition of "biological" (bacteriological) - does it apply to drinking water incidents - boil water notifications, line repairs, offsets, etc.? Processes are in place for addressing such issues already.
- What about MODEF spills that are responded to in compliance with the FDEP guidance for mineral oil dielectric fluid emergency response action protocol? That is not a permit, but FDEP guidance… Do we need to notify for every transformer that goes down or every spill?
- If the spill is to soils only (not expected to leach into groundwater), is it reportable? Based on the 403 definition of pollution, I think we could argue it is not.
- In our NPDES permits, we are required to do confirmation sampling after we detect an exceedance in a water quality standard. If we have a confirmation sample that does not confirm a previous result, it appears we don't need to report under the new rule. This also should consider toxicity testing which requires repeat sampling.
- What happens if I have a permit exceedance? Is this pollution? Does it trigger the notifications? Does the answer differ depending on whether the exceedance is for surface water dischargers, land applications (spray fields, ribs), or deep injection wells.
- Under the NPDES industrial stormwater program, would an exceedance of the cut-off concentration for iron in a quarterly stormwater sample require notification? It is our understanding the cut-off concentrations were established to gauge the effectiveness of the stormwater pollution prevention plan (SWPPP) developed for the facility and to determine if there is a need to conduct additional analytical monitoring therefore exceedances are not considered a permit violation. For example if a stormwater outfall has an iron concentration of 1.5mg/L would it require notification? If so, which groups would need to be notified?

- What about the application of fertilizer to turf, landscapes, gardens, or even farming activities? Some may argue that such use could constitute pollution depending on the timing of storm events, etc. and typically such use is not covered by a DEP permit. Certainly, such use, however, is "authorized by law" and thus falls outside of the section 403 definition of pollution. That is, unless the Department adopts the position that any activity that is not affirmatively authorized by law is de facto prohibited. If that is the case, this rule creates unlimited liability and extraordinary constraints on commerce, because numerous unpermitted activities, from filling a gas tank to treating a yard to lighting a bonfire, may be considered pollution. Please provide clarification on such issues.
- Are cross-connections or violations of drinking water standards discovered in the public water system (source being groundwater or surface water) covered by this rule? In addition, if a customer tampers with a meter by straight-lining the water service (bypassing the meter), is this something that would need to be reported under this ruling?
- Are wetland impacts considered pollution under this new rule? An example would be if you had some soil from a storm wash into a wetland area. Would this need to be reported?
- What about incidental over-spill from citizens while filling gas tanks?
- Are turbid stormwater discharges from construction activities reportable?
- Are dewatering discharges reportable?
- Noise is listed as a pollutant. Since noise isn't typically permitted, what would constitute a reportable incident?

PROSPECTIVITY

- Is it correct that this rule will only be applied prospectively (i.e. new incidents causing new pollution)?
- What about historical contamination?
- Does the rule apply to discovery of historical contamination that is contained onsite?
- What if I am seeking to redevelop a brownfield site? Will I have new requirements imposed on me and how do I know what my new liabilities are? How would this apply to a third party performing an independent study for a potential buyer that discovers contamination?
- With regards to WCU or petroleum, if we have a plume that is moving, would that be a new reporting requirement, if it has not gone offsite and a was pre-emergency rule discharge? What if it did go off-site? Would the new emergency rule notification procedures be in effect (in addition to the previous off-site notification requirements)?

RESPONSIBLE PERSON

- If someone pollutes to the stormwater system, who is responsible for reporting and is everything downstream considered property owners that need to be notified?
- What if a polluter pours a waste product or chemical down a storm drain? Is the local stormwater utility to perform the notification? Is there a threshold?
- If there is a spill on a wastewater utility customer's property, in their private system (e.g. lift station or backup), is the burden on the customer or the utility to report?
- We are a wastewater utility with an Industrial Pretreatment Program (IPP) that permits businesses that can impact the sewer collection system – if discharge exceeds their permit

requirements are they required to notify FDEP and the public directly re notifications, or is it the responsibility of the IPP to make notification to FDEP and the public

- If an owner has a valid contract with a General Contractor for a construction project, and the contractor, or a sub-contractor spills a pollutant, who has the responsibility to report?
- If an event occurs in a public ROW from a private firm, and enters a public receiving system, who has the obligation to report (pick any combination of public/private)?

INSTALLATION

- Is the Department using the definition of "installation" in section 403.031(4), Fla. Stat.?
- What is the definition of installation? How does this apply to linear assets, such as pipelines?
- It appears that this rule is intended to require reporting by a facility owner/operator. I am assuming that the rule will not apply to releases from non-facility incidents such as traffic accidents or unknown sources to air or water. In other words, this is only limited to systems and not generic release sources not tied to an owner operator.
- Guidance or definition of "installation". Primary concern regarding manholes of collection system. Since these are located throughout the community, as soon as an overflow occurs it impacts property other than the installation. Since they are usually located within road or the right of way, would we need to notify FDOT, electric utility, in addition to property owners?

AFFECTED AREA BEYOND THE PROPERTY BOUNDARY

- How do you determine whether there is an "affected area beyond the property boundary"?
- This is especially difficult for air emissions.
- If you determine the emission is offsite, is there a threshold for determining whether there is "harm"? For example, can visible emissions at 25% opacity cause harm?
- If you determine there is offsite harm, how do you determine the extent of the "affected area" in order to notify the property owners? Again, this is especially difficult for air emissions.
- If an entity had an exceedance of an NPDES permit limit into a surface water such as a river, how far downstream must that entity notify landowners? What basis would an entity use for making such determinations?
- How will DEP approve or evaluate what an entity deems as an "affected area?" For example, a government may say that a ditch for some distance is the affected area, while third parties/public may feel that the ditch draining to a bay or the Gulf is the affected area.
- Generally, by the time a SSO has reached any significantly sized downstream waterbody, the impact has diminished to the extent that it is no longer causing water quality violations. Utilities already have in place notification procedures (i.e., posting signs at boat ramps, parks, etc.) to notify the public of health risks associated with sewer overflows, when those overflows potentially impact downstream waters with recreational potential. This method has the benefit of notifying both property owners and transient populations that might not otherwise be aware of the issue.

POTENTIAL RISK TO THE PUBLIC HEALTH, SAFETY, AND WELFARE

- How do we determine potential risk to safety, health and welfare (without a toxicologist in-house)?
- How do you determine "the potential risk to public health, safety, and welfare"? What metrics should an entity use? These determinations could require the assembling of epidemiological and toxicological data specific to that area and the conditions at the time of the event. This data is likely to not exist and not able to be gathered within the timeframes allotted. This may be especially difficult within 24 or 48 hours.
- Paragraph (3) of the rule requires notification regarding the potential risk within 48 hours, but DEP's website states that the potential risk should be included in the 24-hour notice to DEP under paragraph (1).
- Environmental and Health Risk Impacts: nominal vs actual. *Significant consideration to the impact – given the fact the rule was based on two very large scale events*.
- Specific language for health risk: currently very broad and can lead to misinformation and overreaction.
- How we categorize the risk? (low, medium, high)
- Is describing the risk to public health, safety or welfare as "serious" or "nominal" sufficient?
- FDEP needs to provide the language to include in notifications as to what is the impact of the pollutant to public health and the environment, so that everyone is using the same language and it is correct. For example, what is "the impact for the public to be in contact with surface waters after a raw sewage spill?"
- How do you determine whether public health, safety, or welfare are at risk (or potentially at risk)? For example, for excess air emissions, would the criteria for risk be a NAAQS exceedance beyond the property boundary? If so, how should that be determined and within 24 hours? Most facilities don't have ambient air monitors at the property boundary. Retaining a consultant to do air modeling on an emergency basis, with a less than 24 hour turnaround, could be infeasible. Will guidelines on how to make such a determination of risk be provided which are reasonably accurate and defensible without being overly burdensome?
- Does the agency agree that any incident that is below an established Reportable Quantity, Permit Limit, or qualifies for an existing regulatory exclusion, exception, or exemption in existing regulations have been determined to not represent "a threat to air, surface waters or groundwater of the state such that the public health could be at risk"?
- Ditches Impacted by SSOs: A majority of urban ditches / channelized stormwater conveyances will not meet bacteriological water quality standards even in the absence of a spill. As such, reasonable levels of caution by the general public are appropriate for these conveyances at all times and the benefit of written notice is limited. Utilities generally post notification signs in the immediate vicinity of any spill where the waterbody impacts are greatest, so property owners most affected will already be notified. How do you characterize a list of "risks" from an SSO?- bacteria, pathogens, etc
- When a determination is made by the owner that there is no impact to public health and safety, what level of record keeping is needed in support of that?

- How would one quantify potential risk to public health, safety or welfare? What is the time horizon basis for the risk assessment? Do we only concentrate only on acute exposure effects or are chronic impacts to be considered?
- Does the FDEP have standard/recommended language for potential health effects for sewer spills? For sodium hypochlorite spills? For fuel spills? For hydrofluoric acid spills?
- What about "non-hazardous" releases – such as polyphosphates. Are these considered pollution that triggers the advanced notifications?
- Bacteria related issues are particularly tricky. How many samples must be taken to "release/clear" an area to stop sampling? If can't get bacteriological results down due to ambient background how will this be handled? Need clarification on e-coli and enterococci max daily values.

TIMING

- Some of the permit exceedances are not known until the lab has run the analysis. In certain cases it may take up to 2-weeks to know of the exceedance. How do we go about reporting an event that may have occurred 2-weeks later when the issue may not be a danger to human health or environment anymore?
- Do they expect separate notifications for the 24 hour and 48 hour requirements or if the responsible person has information available to answer both requirements in one email within 24 hours, is that okay?
- Reporting Timeframes: within the first 24 hour period most agencies are still within the initial assessment phrase. Erroneous information provided to the public (based on initial investigation / findings) during this period could lead to significant overreaction and miscommunication (especially if the information changes dramatically over the following 24 hours).
- Property owner determinations – impacts may not be known within 24 hours of an incident. For example, sewer spills that make it to surface water bodies beyond visual impacts only testing will determine the extent of the spill impacts. Therefore, 24 hours from the spill may not be time to determine impacted property owners. We need clarification on impacted property owners determinations, which will greatly impact our ability to comply with this rule or potentially face civil or criminal penalties?
- 24 hours to notify individual property owners in writing if large area impacted is logistically unrealistic and could create liability unless some guidance is given.
- If we elect to mail the neighboring property owner, will we be in compliance as long as it's post-marked within 24 hours of becoming aware of potential effects?
- How do the timing requirements interplay with testing that may be necessary to determine nature and extent of potential impacts?
- Are special directions given regarding reporting during widespread emergency events; hurricanes, etc.? Even though this rule was partially triggered by extreme weather conditions, how will extreme weather conditions be addressed in this rule? For example, during emergency situations logistics for the timely notification of property owners via written communication may be hindered by conditions such as power outages, downed trees, accessibility, or safety.
- Is there the potential for an individual on the scene to be in violation if spill is not reported to owner, till some later time?

NOTICE

- What actually needs to be reported? Amount? Location? Impact to ground/surface water? Potential Health impacts?
- Is there a template to be used for the written notice to the newspaper?
- What is the expected/required content of the different notices? DEP's website describes what is expected in the notice to DEP within 24 hours, but this is not in the rule. The notice requirements under (1)(a)-(c), and (3) do not prescribe the content, so presumably can be different from the notice to DEP.
- How are the contents of the 24 hour notice to differ from the 48 hour notice?
- Some of the SSOs get washed away by rainfall and end up water bodies, where do you draw the line about the notification boundaries as far as the neighbors are concerned?
- Can we have templates for what the written notices would look like? What risks need to be listed for SSOs, for reclaimed water, for chlorinated water into a waterbody?
- We don't have email addresses for all property owners, what are acceptable methods of notification? I.e. door hangers? What if it is a vacant lot?
- If a pollutant spill/event/source is determined to be reportable, and requires some time to repair, is there an additional requirement to report? Can a single report cover the time frame required to repair or mitigate the effect?
- Is the intent of this executive order and subsequent rule to establish a mechanism for public notification updates for unmitigated releases that affect different areas at different times, e.g. a plume of contaminants moving through the aquifer impacting different well fields along their path or an emission cloud from a chemical fire that can impact different locations depending on atmospheric conditions like wind speed and direction.
- In the example of Sanitary Sewer Overflow events reaching a stormwater pond, does signage posted at potential public access points meet the requirements for written notice as required?
- Would excess emissions notifications for air incidents that are allowed under the 2-hr SSM provision be subject to this rule?
- Do the Department and/or the public have to provide a response for the notification to be considered valid?
- Are the notifications to affected property owners the property deed owner (who may live thousands of miles away) or the resident of the property?
- Do all possible constituents have to be listed in public notices or can we refer customers to a list of potential contaminants or pollutants?
- This rule appears to have been drafted with only land and water in mind, as it may be impractical for air quality incidents. An incident may cover miles of territory, and it may simply be impossible to notify in writing each property owner within the specified time period.
- Typically for SSOs, we place signage in affected areas—does this constitute written notification, or does it need to be delivered (door hanger, email, letter) directly to customer?
- What is the answer to characterize risk from sewer overflows? This is very important and needs immediate attention. It would be sensible that it is simple, such sewer spills may contain bacteria and other compounds that may be a potential risk to human health if ingested/
- If incident is in a municipality, do we have to notify County officials also?

- What if the property owner lives out of the country? (3) requires notification to "property owner"
- Define what qualifies as "in writing" (e-mails, letters, door hangers, posting signs at the site)
- Please confirm that an email notification to the newspaper for their choice to print is considered as satisfying the rule.
- Would it be acceptable to post on the county website and let newspaper/broadcasting agencies know that's the go-to place if they want to find information for an article and provide a contact person for questions?
- Is email sufficient written notification? If using email, is there a minimum percentage that would be required to use this mechanism for public notification? For example, would we need to have 50% of potentially affected customers? 80%? etc.
- Can robocalls (reverse 911) be used in place of direct written notification? These calls are automated and sent to each customer. A report of success rate (live person answered, went to voicemail, no response, disconnected number) is generated for each robocall. It will be very difficult to implement direct written notice to customers within 24 hrs—we do not have the staff available to hang door hangers while we are in the middle of responding to an emergency. And snail mail would take 1-2 days to be delivered. It would also be difficult to get something written in the media within 24 hrs.
- In the Public Notification section, responsible persons must notify local broadcast television affiliates (all of them? one of them?) and a newspaper of general circulation in the area of the contamination. FDEP has indicated that the notification is not a formal notice under Chapter 50 FS but can be an email. Beyond that, the content of this notification is not explained.
- Other than DEP, what are the recipients of the notices under (1)(a)-(c) expected to do with the information?
- Will FDEP provide standard wording for to use under different scenarios for "potential risk to public health, safety or welfare?
- Has it been defined who at the local government should be notified? Is the city and county manager sufficient?
- A delegated City environmental program is an extension of the Mayor and the City Manager; can we assume that notifying the environmental program constitutes notification for both? Such notice may be more effective in achieving the stated goals of this rule.
- It is my assumption that FDEP can interpret their rule and recommend in writing (e-mail) any additional notifications that are triggered by a reported release. This seems like a logical way to determine what will require public notification.
- Does the City Cable TV channel qualify as the "local broadcast television affiliates"?
- What does "general circulation" mean for a newspaper and can the noticing be done to the locally owned weekly newspapers instead of the large papers serving multiple counties?
- Affected Property Owner Notifications – Who needs to be notified for sanitary sewer overflow events that reach flowing waterbodies? Are all property owners along/adjacent to the affected waterbody considered affected? Or is the owner of the stormwater system (MS4/State) considered the affected property owner?
- How should notifications be handled in public Rights of Way?
- Are water quality results to be reported to the public as part of the notice?
- For a local government utility with a service area that crosses jurisdictional boundaries – does the utility have to report to my municipalities senior officials as well as the senior

officials of the other jurisdiction, just the utility's, or just to just senior officials of the other jurisdiction? Similarly, if the "pollution" crosses jurisdictional boundaries – what reporting and to whom is it required? (and when?)

- Is it acceptable to reference website for more complete information for public notification?
- Under the NPDES industrial wastewater program, would an exceedance of, e.g. a quarterly sample for metals (such as lead or copper) require notification to Mayor, City Manager, General public, and property owners of any affected area if the sample is collected at the main plant discharge point (property boundary)? If we are required to notify property owners how would we determine which property owners to notify? Adjacent property owners, downstream property owners with a specified distance?

RELATIONSHIP WITH OTHER RULES / ORDERS

- Am I correct that this rule is in addition to, and not instead of, existing reporting rules? If so, is the Department going to provide guidance such that requirements are not duplicative?
- How are requirements in Consent Orders treated under this mandate?
- We would like confirmation that the new public notification requirement does not apply to historical discharges that are already being addressed under agreements with FDEP (Remedial Action Plans, Consent Orders, etc).

OTHER UNDEFINED TERMS

- Are the terms "incident resulting in pollution" and "discovery of pollution equivalent to violating a permit limit or other regulatory standard? Or are they equivalent to any currently reportable incident, which may include events that are not considered violations. Examples might include: (1) Certain spills are reportable, but may not be considered violations if all response, notification, cleanup, disposal requirements are met. (2) Malfunctions causing air emissions which exceed the otherwise applicable permit limit are reportable, but may not be considered violations if they meet certain criteria (e.g., unavoidable, duration minimized and in no case more than 2 hours, etc.). The applicability of the rule in general and with respect to specific cases like these examples should be clearly defined.
- How does one determine potentially affected boundaries?
- If there a matrix for comparing size of spill vs. size of receiving water for determining potentially affected boundaries?
- Why is the word "contamination" used in 1(c)? How are they defining "contamination"?
- What is the definition of incident?
- Are discharges only to impermeable surfaces or within containment an "incident of pollution"?
- Does off property mean outside of the city easement/right of way?
- Deciding whether a release poses a "threat" could be open to interpretation depending on the audience.
- How does the Department define "risk" or "risk to surrounding areas?"
- What is the definition of "local" related to "broadcast television affiliates"?

October 19, 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,

The undersigned organizations appreciate the opportunity to provide these comments on the proposed pollution incident reporting rule. We share your and Governor Scott's goal of enhanced public awareness of incidents that may threaten human health or the environment. As presently drafted, however, this proposed rule fails to efficiently achieve that objective and would impose a sustained, adverse impact on Florida's economy and job creation. We respectfully request that the Department redraft the proposed rule to avoid these unintended consequences.

Florida law already requires private sector companies and local governments to promptly report pollution incidents to the Department. The shortcoming identified by the Governor is that at times these incidents may pose a public health concern, but the law provides no requirement that the information be made publicly available in any specific manner. As a lower cost regulatory alternative to the proposed rule, we request that you establish a partnership between the regulated community and the Department in which regulated interests continue to promptly report pollution incidents to your agency as required by current law, and then the Department notifies the public when the circumstances dictate.

As the state agency charged with protecting the environment and public health, the Department is best positioned to serve this public notification role. When the Florida Department of Environmental Protection speaks, the people listen. Your agency has trained scientists on staff that can quickly evaluate whether a significant incident poses a health risk or has been contained and addressed such that the risk is negligible. Your agency also has public communication capabilities that can disseminate such information quickly and efficiently. The Department's leadership role would ensure consistent analysis, consistent legal interpretations, consistent communication, and timely and effective public notification. Conversely, the imposition of the proposed rule's analysis and reporting requirements on Florida private sector companies and local governments would give rise to inconsistent application and public messaging, and it would constitute added cost and liability to perform a function that is the Department's core business.

Under the leadership of Governor Scott, our State's economy has turned around. Since December 2010, Florida businesses have gained over 1.19 million jobs. Florida's revitalized business environment, vibrant agricultural base, and world class tourism industry continue to attract growth. We want to maintain this progress. We respectfully request that the Department prepare a statement of estimated

regulatory costs that compares its proposed rule to our recommended approach, and provide this statement for public review and comment. We also ask that the Department conduct a public rule adoption hearing, pursuant to section 120.54(3)(c), Florida Statutes. This process would provide the Department and the public with the information necessary to efficiently meet the objectives of this rulemaking, and afford the administrative rights under sections 120.54(3)(e)2 and 120.56(2)(a), Florida Statutes.

We look forward to continuing to work with you and your colleagues, and we appreciate your consideration of these comments and proposal for a lower cost regulatory alternative.

Sincerely,

American Water Works Association Utility Council
Associated Industries of Florida
Chemours
Florida Association of Counties
Florida Chamber of Commerce
Florida Electric Power Coordinating Group, Inc.
Florida Farm Bureau Federation
Florida Forestry Association
Florida Fruit and Vegetable Association
Florida H2O Coalition
Florida Home Builders Association
Florida League of Cities
Florida Petroleum Council
Florida Petroleum Marketers and Convenience Store Association
Florida Pulp & Paper Association Environmental Affairs, Inc.
Florida Retail Federation
Florida Rural Water Association
Florida Stormwater Association
Florida Water Environment Association Utility Council
Manufacturers Association of Florida
National Waste & Recycling Association – Florida Chapter
RaceTrac Petroleum, Inc.
Speedway LLC
Southeast Florida Utility Council
Southeastern Lumber Manufacturers Association
Treated Wood Council
Wawa, Inc.

Cc: Robert A. Williams, DEP Chief Deputy General Counsel