

**FLORIDA COASTAL NONPOINT PROGRAM
NOAA/EPA DECISIONS ON CONDITIONS OF APPROVAL**

FOREWORD

This document contains the basis for the National Oceanic and Atmospheric Administration's (NOAA) and the U.S. Environmental Protection Agency's (EPA) decision to fully approve the State of Florida's Coastal Nonpoint Pollution Control Program (coastal nonpoint program). It discusses how the State has met each of the conditions of approval placed on the coastal nonpoint program submitted by Florida pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990.

The Findings for Florida's coastal nonpoint program were issued on November 18, 1997 and are available at <http://coastalmanagement.noaa.gov/czm/6217/findings.html>. Since that time, Florida has undertaken a number of actions to address conditions of approval on its coastal nonpoint program. Based on those actions and on materials the State has provided to document how the conditions have been met, NOAA and EPA find that Florida has satisfied all conditions of approval.

This document is organized in the same fashion as the Findings for Florida's coastal nonpoint program (the Findings). Where the original Findings included a condition, this document repeats the condition, and discusses how the condition has been satisfied. For further understanding of terms in this document and the basis for these decisions, the reader is referred to the following: *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* (EPA, January 1993), *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* (NOAA and EPA, January 1993); *Flexibility for State Coastal Nonpoint Programs* (NOAA and EPA, March 1995); and *Final Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance for Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990* (NOAA and EPA, October 1998).

FINAL APPROVAL DECISION

NOAA and EPA find that the State of Florida has satisfied all conditions placed on approval of the Florida coastal nonpoint pollution control program submitted to NOAA and EPA pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990. Therefore, Florida's coastal nonpoint program meets all program requirements and is hereby fully approved, constituting a final approval decision for the program.

Please note that the approval decision made for the Florida coastal nonpoint program does not relieve the State of any requirements under the Endangered Species Act.

AGRICULTURE

CONDITION: Within two years, Florida will develop a strategy to implement the agricultural management measures throughout the 6217 management area.

DECISION: Florida has satisfied this condition.

RATIONALE: Under the Final Administrative Changes published on October 16, 1998, NOAA and EPA agreed to approve program elements for which States had proposed voluntary or incentive-based programs, backed by existing State enforcement authorities, if the State provided three items: a legal opinion from the State that the authority can be used to prevent nonpoint pollution and require implementation of management measures; a description of the voluntary or incentive based programs; and a description of the mechanism or process linking the implementing agency with the enforcement agency and a commitment to use the enforcement authority where necessary. Florida has provided these three components, and therefore has satisfied this condition.

On August 27, 2001 and November 30, 1999, Florida Department of Environmental Protection (DEP) forwarded a total of three legal opinions from DEP's General Counsel (DEP-GC) to address this condition. The opinions are sufficient to satisfy this condition. In the August 2001 opinion, the DEP-GC asserts that the Florida Statutes and DEP regulations adopted thereunder contain sufficient statutory authority to prevent and control nonpoint source pollution and require management measure implementation; that the laws do not contain any provisions that would in any way limit or preclude management measure implementation; and the State has promulgated regulations that meet the 6217 (g) guidance requirements. Specifically, the authorities are derived through the Air and Water Pollution Control Act, codified at §§ 403.011 - 403.9425 of the Florida Statutes and the Water Resources Act, codified at §§ 373.012 - 373.71. The opinion also includes a list of powers and programs that are relevant.

The two opinions submitted November 30, 1999 clarified the linkages between the implementing and enforcement agencies. DEP is both the implementing and the enforcement agency for state permits as well as violations of water quality standards. However, the DEP may also delegate such authority to the water management districts and has done so for the five districts. Some permits may be subject to the authority of both the State and the district, but usually an agreement is established between the State and the district to specify who will have jurisdiction. One particular exception is for agricultural water management systems, which are specifically exempted from State oversight; however, they are regulated by the water management districts.

URBAN

A. CONSTRUCTION SITE CHEMICAL CONTROL

CONDITION: Within two years, Florida will include in its program management measures in conformity with the 6217(g) guidance for construction site chemical control and enforceable policies and mechanisms to ensure implementation throughout the 6217 management area.

DECISION: Florida has satisfied this condition.

RATIONALE: As stated in a December 2002 policy memo, NOAA and EPA have agreed to defer to the National Pollutant Discharge Elimination System (NPDES) Phase I & II Storm Water Program for the construction site chemical control management measure. According to Section 6217 program guidance, once a source is covered by a NPDES permit, it is exempt from 6217 requirements. Therefore, by implementing EPA's Phase I & II Regulations, Florida satisfies the condition for construction site chemical control.

In addition, Florida's November 30, 1999 submittal of supplemental program information includes Chapter 6 of the Florida Development Manual, entitled "Stormwater and Erosion and Sediment Control Best Management Practices for Developing Areas," which addresses construction site chemical control. Specifically, pages 6-9 through 6-40 contain SW BMP 2.01, Fertilizer Application Control; SW BMP 2.02, Pesticide Use Control; and SW BMP 2.03, Solid Waste Collection and Disposal. Together, these practices are in conformity with the 6217(g) guidance and satisfy the condition that Florida include management measures for construction site chemical control.

The guidelines in the manual are used as the basis for erosion and sedimentation control and stormwater plans and permits. The State's stormwater discharge permitting authority (Chapter 62-25, FAC) requires that erosion and sediment control best management practices be used during construction to retain sediment on site. Further, the State's Water Policy (Chapter 62-40, FAC) requires that Water Management Districts develop erosion and sediment control plans detailing appropriate methods to retain sediment onsite for land disturbing activities, including appropriate construction site chemical control practices.

URBAN

B. NEW AND OPERATING ONSITE DISPOSAL SYSTEMS

CONDITION: Within three years, Florida will include in its program management measures in conformity with the 6217(g) guidance to provide for inspection of onsite systems that are not covered under an annual operating permit.

DECISION: Florida has satisfied this condition.

RATIONALE: Florida has satisfied this condition by incorporating a well funded and targeted approach statewide. Most of Florida's 67 counties have committed to using the State's Carmody Data Systems interactive software for managing and tracking septic system inspection and maintenance. Florida Department of Health (DOH) staff and many onsite disposal system (OSDS) service providers have received training and are actively using the Carmody system, and the State continues to train and encourage others to use this system. As of September 2007, records for more than 514,000 systems were included in this database. Florida has one of the most robust state programs for OSDS licensing, certification, and standards for inspection. Florida is working with the real estate sector (including lenders) to encourage wider inspections of OSDS by informing them of the liabilities of malfunctioning OSDS. Florida has developed

and rolled out a very professional public outreach campaign to educate the public on the importance of maintaining septic systems, including a well done TV ad.

Florida's Areas of Critical State Concern program has identified specific portions of the State that require special protections, most of which have stringent site-specific OSDS standards. Among these are mandatory inspection requirements within the Green Swamp and across the headwaters of the Hillsborough, Withlacoochee, Peace, and Ocklawaha rivers. Coastal barrier island portions of Franklin County require use of aerobic treatment units that include mandatory inspection requirements in order to protect key shellfish harvesting areas. Additionally, Escambia and Santa Rosa counties mandate OSDS inspections during sales of homes served by such systems, and several other counties are considering similar requirements. Wakulla County has an ordinance that requires county-wide inspection of all OSDS every three years. Portions of Marion, Orange, Seminole and Lake counties are being considered for similar maintenance requirements by the state and local governments in specific springsheds. The Florida Keys have several mechanisms in place, including National Marine Sanctuaries, State of Florida Aquatic Preserves, and Florida Statutes, that have resulted in more stringent requirements for OSDS use in Monroe County. All new systems in the Keys must be performance-based treatment systems that meet minimum treatment standards and require regular maintenance and inspections.

Perhaps most importantly, Florida is providing guidance and technical assistance to the local health department offices to help them systematically implement broad OSDS inspection programs on a county-to-county basis and to educate the public about inspections and maintenance. Florida has developed a 15-year schedule (2004 – 2018) to work closely with all 67 county health departments to increase inspections of OSDS. As of May 2007, Florida DEP has been working with 31 counties. To fund this 15-year initiative, since 2004, Florida has spent an average of \$1.5 million a year from three separate sources to apply toward expanding proactive inspections of OSDS that are not subject to annual operating permits and that go beyond the state's regular complaint-driven inspection program. The three sources are:

- State appropriations through the Florida DOH (~\$1.1 million/year);
- A portion of Clean Water Act section 319 funds (~\$330,000/year); and
- Coastal Nonpoint Program Implementation Funds (~\$138,000/year, but zeroed out for federal FY07)

Florida DOH has further committed to maintain a funding level of ~\$1 million/year through 2018 for this effort, provided that State appropriations to DOH remain relatively constant. Florida DEP has also committed \$200,000/year from its base section 319 funds, provided that, too, continues to receive stable funding. Lastly, Florida has committed Coastal Nonpoint Program funds, when appropriated, to this initiative. To cover this shortfall for FY07-08, Florida is assigning a portion of its Coastal Zone Management Act section 306 funds to this effort.

URBAN

C. ROADS, HIGHWAYS, AND BRIDGES

CONDITION: Within two years, Florida will include in its program management measures in conformity with the 6217(g) guidance for construction site chemical control and enforceable policies and mechanisms to ensure implementation throughout the 6217 management area.

DECISION: Florida has satisfied this condition.

RATIONALE: As described above, as stated in a December 2002 policy memo, NOAA and EPA have agreed to defer to the National Pollutant Discharge Elimination System (NPDES) Phase I & II Storm Water Program for all chemical control management measures throughout the 6217 management area, including the one for roads, highways, and bridges. According to Section 6217 program guidance, once a source is covered by a NPDES permit, it is exempt from 6217 requirements. Therefore, by implementing EPA's Phase I & II Regulations, Florida satisfies the condition for construction site chemical control for roads, highways, and bridges.

In addition, as described above, Florida's November 30, 1999 submittal of supplemental program information includes Chapter 6 of the Florida Development Manual, entitled "Stormwater and Erosion and Sediment Control Best Management Practices for Developing Areas," which addresses construction site chemical control. These practices and the accompanying requirement that they be implemented through Erosion and Sedimentation Control and Stormwater plans and permits address this condition.

MARINAS AND RECREATIONAL BOATING: OPERATION AND MAINTENANCE

CONDITIONS: Within two years, Florida will include in its program management measures for operation and maintenance in conformity with the 6217(g) guidance. Within one year, Florida will develop a strategy (in accordance with Section XIII, page 14) to implement these measures throughout the 6217 management area.

DECISION: Florida has satisfied these conditions.

RATIONALE: Florida's Clean Marinas Program, a program for existing marinas and boatyards, addresses management measures for operation and maintenance of marinas in conformity with the 6217(g) guidance.

The aim of the Clean Marinas Program is prevention, recognizing that marinas and boaters may not be aware of the environmental laws, rules and jurisdictions with which they must comply. Florida's Clean Marinas Program has developed two key guidance documents for use by marinas and boatyards: "Marina Environmental Measures" and "Best Management Practices for Boatyards." Marina Environmental Measures describes measures that should be taken to control impacts from petroleum, boat cleaning, solid waste, liquid waste, hazardous waste, fish waste, stormwater and waste water, and describes ways to protect near-shore and shoreline habitats. In addition, "Best Management Practices for Boatyards" covers petroleum and used oil management, boat cleaning, paint scraping and sanding, engine repair and maintenance, solid waste management, liquid waste management, hazardous waste management, and stormwater management. The measures and best management practices (BMPs) in these manuals are consistent with the 6217(g) management measures for operation and maintenance.

Though the Clean Marinas Program is voluntary, it is supported by State laws and regulations that require implementation of management measures. These regulatory requirements are cited at the end of each section of the manual. There are more than 145 clean marinas, and 26 clean boatyards that have been designated as clean marinas so far in the State. In addition, there are four clean marina retailers that promote clean boating practices to their customers.

The DEP has convened a partnership group, called the Clean Boating Partnership, to help implement the program. The group meets quarterly. A variety of organizations are participating in the partnership, including University of Florida Sea Grant, Marine Industries Association of Florida, International Marine Institute, and Marina Owner/Operators and Consultants. This group provides recommendations for program operations and direction and works to improve participation by marinas and boatyards. Results to date are promising, with increased participation rates occurring over time.

HYDROMODIFICATION

[Note: the conditions have been renumbered from the original version of the findings and conditions to assist with more clearly identifying which measures meet which conditions.]

CONDITIONS: Within three years, Florida will include in its program (1) management measures that are in conformity with the 6217(g) guidance for chemical and pollutant control at dams, and (2) management measures for the protection of surface water quality and instream and riparian habitat from the effects of dams. Within three years, Florida will also (3) demonstrate its ability to achieve widespread implementation of these management measures using the approach and enforceable policies and mechanisms described in the State's implementation strategy. Within three years, Florida will also develop a process to: (4) identify and develop strategies to solve existing nonpoint source problems caused by streambank or shoreline erosion that do not come up for review under existing permit authorities; (5) protect shoreline features with the potential to reduce nonpoint source pollution; and (6) protect shorelines against erosion due to uses of the adjacent shorelands or adjacent waters. Within three years, Florida will also either (7) modify exemptions to the dredge-and-fill program or demonstrate that the exemptions do not preclude the State from fully implementing the management measures for channelization and channel modification, shorelines, and streambanks.

DECISION: Florida has satisfied these conditions.

RATIONALE: Florida submitted four Surface Water Improvement and Management (SWIM) plans, the Tampa Bay National Estuary Program (TBNEP) Comprehensive Conservation and Management Plan (CCMP), and an inter-local agreement among TBNEP participants to implement the CCMP to demonstrate how these conditions are met.

The Surface Water Improvement and Management (SWIM) Act, Ch. 373, F.S., directed the Florida DEP and the five Water Management Districts to prioritize water bodies of State or regional significance, develop plans and programs to preserve or restore the priority water bodies, and to implement the protection and restoration strategies identified in these plans and

programs. To date, 47 priority waterbodies have been identified and SWIM plans have been developed for 30 of them, which are located throughout the State. The SWIM plans include a process to (1) identify and develop strategies to solve existing nonpoint source problems caused by streambank or shoreline erosion; (2) protect shoreline features with the potential to reduce nonpoint source pollution; and (3) protect shorelines against erosion due to uses of the adjacent shorelands or adjacent waters. The SWIM plans and the inter-local agreement among TBNEP participants also demonstrate implementation of management measures using enforceable mechanisms. Taken together, these management measures satisfy conditions (3), (4), (5) and (6) as noted above.

With respect to condition (1), management measures for chemical and pollutant control at dams, as stated in a December 2002 policy memo, NOAA and EPA have agreed to defer to the National Pollutant Discharge Elimination System (NPDES) Phase I & II Storm Water Program for the Hydromodification - Chemical and Pollutant Control for Dams management measure. According to Section 6217 program guidance, once a source is covered by a NPDES permit, it is exempt from 6217 requirements. Therefore, by having responsibility for implementing EPA's Phase I & II Regulations, Florida has met this condition. In addition, as described in the findings for Construction Site Chemical Control, Florida also addresses the management measure through Chapter 6 of the Florida Development Manual, entitled "Stormwater and Erosion and Sediment Control Best Management Practices for Developing Areas."

With respect to condition (2), dam impacts from possible breaches and releases of excessive freshwater and their impacts on estuaries are addressed by Chapter 373 (Water Resources) of the Florida Statutes, as well as by provisions for all five of Florida's Water Management Districts, Florida's Phosphate Management Rule 62-672, and regulations for BMPs for Non-Clay, Phosphate Mining and Reclamation Berms and Impoundments. Permits are issued for entities desiring to construct or alter dams and oversight is a shared responsibility of Florida DEP and the five water management districts. Florida's permits for constructing, operating, and maintaining dams contain language that provide for the protection of surface water quality and instream and riparian habitat through restoration efforts or restrictions designed to minimize potential negative impacts.

With respect to condition (7), dredge and fill activities that generate stormwater are addressed through the environmental resource permitting (ERP) program for most parts of the State, and in the northwestern part of the State, through the wetland resource permit program (WRP) and stormwater discharge permit programs. The ERP program integrates stormwater regulation with traditional wetland permitting. WRPs and ERPs serve as the water quality certification under section 401 of the Clean Water Act. They are also the means of obtaining concurrence with the federal consistency provisions of the Coastal Zone Management Act. However, Florida has provided procedural relief to entities by allowing certain tightly defined categorical exemptions from dredge and fill regulations that collectively contribute de minimus impacts. EPA and NOAA have reviewed these exemption provisions and have determined that they maintain adequate protections for water quality and do not preclude the State from fully implementing any of the hydromodification management measures. Protections include requirements that water quality standards not be violated and that permitting and performance requirements of all other programs and rules be met.

CRITICAL COASTAL AREAS AND ADDITIONAL MANAGEMENT MEASURES

CONDITION: Within two years, Florida will include in its program identification of, and a process for the continuing identification of, critical coastal areas adjacent to impaired or threatened coastal waters and a process for developing and revising management measures to be applied in such critical coastal areas and in areas where the 6217(g) measures are fully implemented but water quality threats or impairments persist.

DECISION: Florida has satisfied this condition.

RATIONALE: Florida relies on priority programs implemented in areas identified as needing resource protection to satisfy the critical coastal areas management measure. Examples of where the State has implemented new or modified management approaches to protect critical coastal areas are described below.

The United States Congress recognized in 1990 the national and international significance of resource protection in the Florida Keys with the passage of the Florida Keys National Marine Sanctuary and Protection Act (Public Law 101-605). The Sanctuary was established in part because of the negative impacts to the near-shore water quality of the Florida Keys that had been documented. Under the sanctuary designation, EPA, in conjunction with the State of Florida and NOAA, is responsible for development and implementation of a water quality protection program. The purpose of the Florida Keys Water Quality Protection Program is to:

...recommend priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the Sanctuary, including restoration and maintenance of a balanced, indigenous population of corals, shellfish, fish and wildlife, and recreational activities in and on the water (Florida Keys National Marine Sanctuary and Protection Act, 1990).

As part of the Keys program, onsite wastewater treatment systems (OWTS) were targeted as a significant source of nitrogen and phosphorus. In response, the DEP funded research for the "Florida Keys Onsite Wastewater Nutrient Reduction System Demonstration Project" in 1998. An original goal of the project was to determine if the Florida advanced wastewater treatment standards of 5/5/3/1mg/L (CBOD₅, TSS, TN, TP) for effluent quality were feasible for OWTS. The results indicated that effluent standards could be met consistently with an engineered media subsurface drip irrigation system or combination of other systems/processes. Construction and operation costs would, however, be considerably greater than conventional OWTS. Based on these results, the DEP implemented changes to the existing rule to incorporate performance-based treatment systems with designs that would allow for the use of alternative and innovative methods, materials, processes, and techniques that reduce the total biological, chemical, hydraulic, organic, nutrient, bacterial and viral discharges to these areas of critical environmental concern. The current minimum level of waste treatment required by rule for the Florida Keys is 10/10/10/1 mg/L (CBOD₅, TSS, TN, TP) using a nutrient reducing material-lined drainfield system or injection well, with prior effluent disinfection, for final effluent disposal. The performance-based treatment systems are monitored every two weeks during the first six months

of system operation and quarterly afterwards. A minimum of one maintenance visit every four months is required for those systems using injection wells for effluent disposal. All new onsite sewage treatment and disposal systems are inspected by an approved maintenance entity at least two times each year. The process used to identify and implement additional management measures in the Keys is consistent with the goals outlined in the 6217 (g) guidance.

Another area of critical concern within the 6217 management areas is Apalachicola Bay, which is a highly productive estuary in the northeast Gulf of Mexico. Concerns with local water quality and impacts on the oyster industry prompted a research project “Groundwater and Nutrient Dynamics on a Strip Barrier Island Served by On-Site Sewage Treatment and Disposal Systems in the Northeastern Gulf of Mexico” in 1999, which was funded by EPA. The results from the tracer studies reported that “bacteria from the OSTDS systems did not appear to have a significant impact on the ground waters or surface waters relative to the background sites.” The results indicated that: (1) the most efficient onsite disposal system would be an aerobic system, and (2) nutrient concentrations were rapidly attenuated indicating very little transport of these nutrients to surface waters. Areas of critical concern in Florida have opted to replace conventional septic tanks with aerobic treatment units or performance-based treatment units that provide enhanced treatment.

In addition to the above examples, Florida’s Tampa Bay National Estuary Program CCMP and the SWIM plans also demonstrate processes for addressing priority areas and related restoration projects. SWIM projects address water quality and land management problems consistent with the 6217 (g) guidance, as does the CCMP. Each SWIM plan identifies sensitive areas for protection and measures to protect those areas.

MONITORING

CONDITION: Within one year, Florida will include in its program a plan that enables the State to assess over time the extent to which implementation of management measures is reducing pollution loads and improving water quality.

DECISION: Florida has satisfied this condition.

RATIONALE: To address this condition, Florida submitted a copy of its Nonpoint Source Management Program Update, November 1999, which described its three-tiered, statewide monitoring program. This program covers the State with monitoring programs of differing temporal and spatial scales to create a uniform, fairly continuous picture of water quality in Florida. The requirement for monitoring the effectiveness of nonpoint source pollution control management measures is met through the third tier, where the permittee or an agent monitors individual permits. This data is correlated with second tier and first tier data to verify results and bolster conclusions. NOAA and EPA encourage wider use of third tier monitoring data as a means to effectively gauge the success of the Coastal Nonpoint Program management measure implementation over time.