



DATE: February 2, 2010
TO: Members of the Southeast Florida Utility Council
FROM: Randy Brown
SUBJECT: **Meeting - Monday, February 8, 2010**
1:30 – 4:00 PM
City of Boca Raton
6500 Congress Avenue
Boca Raton, Florida 33487

AGENDA

a. Administrative:

- a. Welcome, Call to Order, Introductions (Randy Brown, Pompano Beach Utilities)
- b. Review / Approval of Minutes, January 2010
- c. Treasurer's Report (William Brant, Hallandale Beach Utilities)

b. John Shearer – President of the WaterReuse Association

- a. WaterReuse Activities and formation of a Potable Reuse Committee – East Coast
<http://www.watereuse.org/>
 1. White Paper on Graywater – sent out as Attachment

4. Gerry Wexelbaum – Strategy Support Associates

Will Discuss the Efficient Utility Management program EUM. In May 2006, the Association of Metropolitan Water Agencies; the American Public Works Association; the American Water Works Association; the National Association of Clean Water Agencies; the National Association of Water Companies; the United States Environmental Protection Agency; and the Water Environment Federation joined together to promote effective utility management among the sector. <http://watereum.org/>

5. Legislative/Regulatory Update

- a. FWEAUC Meeting with DEP – January 28, 2010
 - i. Presentation sent out as attachment
- b. Year Round Irrigation Rule: All
 - i. Partnership plan review – sent out as attachment
- c. Waterbody reclassification
- d. Numeric Nutrient Criteria Update
 - i. Sample impact analysis and letter to EPA from Palm Bay sent out as attachment.
 - ii. EPA Stakeholder meetings
 - iii. DEP Meeting
- e. DEP Reuse Stakeholder Progress
 - i. Draft planning documents sent out as attachment

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f. 2010 Legislative Session

i. DEP Proposed Stormwater Legislation

The proposed draft statewide stormwater legislative authority has the most far-reaching potential implications and needs to be critically assessed as to its ramifications. There are three very fundamental elements which are adverse to regulated interests contained within the FDEP proposal. The first is the establishment of a performance standard requiring 85 percent annual average nutrient load reduction, or, alternatively, compliance with a post-development nutrient load that equals pre-development loads. This is a ratcheting of existing performance standards which have been adopted by rule and which provide that 80 percent of removal efficiencies constitute a presumption of water quality compliance. The statutory establishment of this more stringent performance standard may prove to be very problematic in certain topographic and geologic conditions. The second major adverse component of the proposed legislation is an attempt to exempt the implementation of all stormwater rules from the Bert J. Harris Private Property Rights Act. This is a tacit recognition by the FDEP that significant additional land may need to be devoted to this water quality compliance purpose, and, therefore, they have grave concerns regarding the regulation that may constitute an undue burden on property owners. The third fundamental and potentially problematic portion of the legislation involves the recognition that the state may adopt numeric nutrient criteria within two years that would replace the current narrative criteria. The current criteria establishes that a permittee now cannot cause an imbalance of flora and fauna resulting from nutrient discharges. As you are all aware, the EPA is expected to propose numeric nutrient criteria for Florida in January 2010 and adopt those by formal federal rule by October 2010. Consequently, the FDEP proposes to anticipate and authorize a statutory direction to modify its stormwater rules to reflect a state-embraced/adopted numeric nutrient criteria, and it seems highly debatable that the timing is right to establish performance standards that meet the narrative criteria when all indications point to a numeric nutrient criteria that is about to be enacted which will require a wholesale revision of those performance standards. It is also worth mentioning that one of the other negative implications of the statutory authorization that the FDEP seeks is their desire to preserve and protect the water management districts and the FDEP's authority to adopt a more stringent basin-specific nutrient standard, and, therefore, the "statewide" implications of this authority implicitly acknowledge the agency's right to disregard the consistency and uniformity generated by a statewide rule adoption and preserve their rights to further restrict discharges on a basin-by-basin basis.

The most redeeming feature of the draft legislation is the statutory creation of a presumption that by meeting the performance standards, whatever they may be, an applicant has satisfied water quality compliance. *See* §373.4131(5), F.S. This does avoid an applicant having to establish in each and every instance a quantitative analysis and comparison of their pre- and post-discharges, and it provides a relatively manageable cookbook approach to satisfying the Clean Water Act, by giving applicants a rebuttable presumption that can be quite useful in a contested proceeding. Unfortunately, on balance, the draft legislation establishes a performance standard which may be unachievable or extraordinarily prohibitive, and, thus, the benefits of the presumption are greatly diminished. It appears that Senator Mike Bennett and Representative Trudi Williams will be sponsoring the legislation at the request of the FDEP, and we are hopeful that they will be willing to work with the regulated community as this legislation works its way through the process.

Chair
Randy Brown
City of Pomp.



- ii. **House Bill 727** (HB 727) by Representative Jimmy Patronis (R)(Panama City), which proposes periodic inspections for owners of onsite sewage treatment and disposal systems (OSTDS). HB 727, which would become effective on July 1, 2013, requires all owners of OSTDS, except owners of systems that require an operating permit (i.e., performance based OSTDS), to have the system inspected by a septic tank contractor or master septic tank contractor every five years, “to assess the fundamental operational condition of the system, prolong the life of the system, and identify any failure within the system.” The bill instructs DOH to adopt rules implementing program standards, procedures, and requirements, including enforcement procedures for failure of a system owner to obtain an inspection and failure of a contractor to timely report inspection results to the department. DOH must provide a minimum of 60 days’ notice to owners prior to any inspection deadline. The notice must state that the purpose of the inspections is not to determine code compliance. In addition to the inspection requirements, HB 727 also requires DOH to establish a grant program to repair defective OSTDS, particularly including those owned by impoverished single families. Furthermore, the bill sets out the fee schedule which will apply until changed by rule by DOH. Certain portions of the fees collected will be used to fund the grant program.

6. SEFLUC Business

- a. Proposed SEFLUC Charter changes (in red) to add Martin and Monroe Counties as voting members and to create the position of Immediate Past chair. Vote to be sent out after this meeting for acceptance at March 8, 2010 meeting. (Randy Brown)
 - i. Section 5.0. Voting Member. A Voting Member shall be any water resources, potable water supply or wastewater management utility representative, public or private, located in Broward County, Miami-Dade County, ~~or~~ Palm Beach County, **Monroe or Martin Counties**, where such representative agrees to promote Council objectives and programs. Only one (1) Voting Member per utility. A Southeast Florida Utility Council Executive Board Member will miss no more than three (3) regularly scheduled meetings in one year. A utility member will be listed on the Southeast Florida Utility Council mailing list. If a meeting must be missed, a Voting Member may send a representative who can vote and/or make a commitment in his/her absence.
 - ii. Section 4.1. Number. The Executive Board shall consist of ~~three (3)~~ **four (4)** members: Chairperson, Co-Chairperson, **Past Chair**, and Secretary/Treasurer.

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- b. Selection of Nominating Committee for SEFLUC leadership positions 2010-2011, vote will be at the March 8th meeting.
 - i. Section 4.5. Nominations. The Nominating Committee, selected annually by the Chairperson, will present to the membership a slate of candidates for consideration. Additional nominations will be accepted from the General Membership at the Annual Election Meeting.

7. Upcoming Events – sent out as attachment

8. Adjourn

Next Meeting

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