STAs, Diversion, and BMPs

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STA TREATMENT PROCESS
Construction of 40,000 acres of Stormwater Treatment Areas (STAs)

<table>
<thead>
<tr>
<th>Cell</th>
<th>Area (ac)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1A</td>
<td>745</td>
</tr>
<tr>
<td>1B</td>
<td>745</td>
</tr>
<tr>
<td>2A</td>
<td>471</td>
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<tr>
<td>2B</td>
<td>470</td>
</tr>
<tr>
<td>3</td>
<td>1,026</td>
</tr>
<tr>
<td>4</td>
<td>358</td>
</tr>
<tr>
<td>5A</td>
<td>562</td>
</tr>
<tr>
<td>5B</td>
<td>2,293</td>
</tr>
<tr>
<td>Total</td>
<td>6,670 ac</td>
</tr>
</tbody>
</table>
Rule 40 C.F.R. 122.2 (2015) provides:

- The following are not ‘waters of the United States even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.

  (i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of Clean Water Act.
“Bypass” is the “intentional diversion of waste streams from any portion of a treatment facility.” 40 C.F.R. 122.41(m)(1)

“Upset,” on the other hand, is “an exceptional incident” causing noncompliance with effluent limitations, such as power failures or storms, but not operator error or inadequate treatment facilities or poor maintenance.
“Diversion” is the “delivery of surface water to the Everglades Protection Area without entering the [STA] treatment works . . . .

Diversion shall, at no time, be permitted for the purposes of achieving compliance with WQBEL for TP.”
“Diversion may occur [in order to provide to] maintenance, flood control, to avoid substantial damage to the treatment facilities, to address conflicts with the Endangered Species Act, to address conflicts with the Migratory Bird Treaty Act and for low flow water supply purposes.”
“Diversion” to avoid substantial damage to the treatment facilities is authorized. . . . including infrastructure (e.g. levee and structure integrity) and treatment works (e.g. vegetation integrity):

If insufficient capacity exists in the STA, then direct stormwater to another available STA, as long as redirection would not cause substantial damage to the receiving STA…
If insufficient capacity [still] exists, then direct stormwater runoff to other District works …

After exhausting options above then divert water around STAs to the Everglades Protection Area …
“Diversion” also addresses situations caused by presence of species under ESA and MBTA.

- Direct stormwater runoff to other [STA] Cells without verified active breeding/nesting areas . . . as long as such a redirection of water would not cause substantial damage to the receiving Cells of the STA.
- Direct stormwater runoff to another STA or other District works as long as such a redirection of water would not cause substantial damage to the receiving STA.

- Direct stormwater runoff to other District works in the event there is insufficient capacity available within the STAs.

- After exhausting options to the extent practicable, divert water around the STAs to the Everglades Protection Area if no other alternatives exist.
BMPs as effluent limitations

- In general, Rule 40 C.F.R. § 122.44(k) and USEPA’s *NDPES Permit Writers’ Manual* (2010) authorize Best Management Practices ("BMPs") as part of effluent limitations guidelines and standards.

As provided in 40 C.F.R. § 122.44(k) ("Establishing limitations, standards, and other permit conditions"), BMPs may be used to control or abate the discharge of pollutants when:
• (1) Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

• (2) Authorized under section 402(p) of the CWA for the control of storm water discharges;

• (3) Numeric effluent limitations are infeasible; or

• (4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.
Permits can impose two different types of standards on discharges: (1) technology-based effluent limits ("TBELs") and (2) water quality based effluent limitations ("WQBELs"). 33 USC 1311(b)(1)(C) and (b)(2)(A); 1313; and 1342(a).
TBELs establish minimum level of pollutant controls for a particular industry that may, or may not, meet water quality standards. TBELs typically address categories of industrial sources, such as metal finishing, textile manufacturing, mining, chemical manufacturing.

If TBELs don’t achieve water quality standards, WQBELs must be developed and implemented.
TBELs set effluent limitations on a point source based on how effectively technology can reduce the pollutant being discharged. 33 U.S.C. 1311(b), (e); 1314(b). [40 C.F.R. 125.3] TBELs may, or may not, meet water quality standards.
If TBELs are insufficient to attain or maintain water quality standards, CWA requires NPDES permits to include additional water quality based effluent limits. 33 USC 1311(b) (1)(C); 1312(a).
Related Caselaw:


- *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 502 (2d Cir. 2005) (stating that site-specific BMPs are effluent limitations under the CWA).


- *Natural Res. Def. Council, Inc. v. Costle*, 568 F.2d 1369 (D.C.Cir. 1977) (When numerical effluent limitations are infeasible, EPA may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels.)

- See also, *In re 401 Water Quality Certification*, 822 N.W. 2d 676, 687 (Minn. 2012).