The ERP Permit: The Essentials On Obtaining An Environmental Resource Permit

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The Permit Challenge

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Pre – Challenge Pointers

• Agency Action – Notice of Permit Issuance
• Point of Entry – 21 Days or 14 days
  • File Administrative Petition
  • Request Mediation
• Newspaper Publication – Controversial Project
• Communication
  • Meet with 3rd Parties
  • Public Meetings
The Permit is Challenged

- Petition is Filed - Sufficient?
- Forwarded to DOAH
- Third Party must have an substantial interest affected
  - Injury in fact of sufficient immediacy
  - Injury is type protected
- Attorneys and Experts
- Coordination with the Agency
- Consultant to Expert Witness
  - Consider more experts
The Administrative Hearing

• De Novo – New Information / Criteria
• DOAH and an Administrative Law Judge
• Testimony – Battle of the Experts
  • Direct and Cross examination
• Exhibits
  • Reports, Emails, Data, Maps, RAIs and Responses
• Discovery
  • Depositions
  • Documents
The New Burden of Proof

- Effective on June 24, 2011
- Applies to Hearings arising Ch. 373, 378, or 403, F.S.
- 3rd Party Challenges Agency
- Ultimate Burden lies with 3rd Party except for exemptions
- Applicant goes 1st with Prima Facie Case (Application)
- Agency present its case with Testimony
- 3rd Party has ultimate burden to prove its opposition to the permit
- Applicant can present rebuttal evidence
After the Trial

• Proposed Recommended Orders to the ALJ
• Recommended Order written by the ALJ
  – Findings of Fact
  – Conclusions of Law
• Exceptions and Responses
• Final Order issued by Agency
  • Can be Appealed
• 12 to 18 month Process for an administrative hearing
The Essentials of an ERP Permit in a Nutshell

• Communication with Agency and Stakeholders
• Know your project’s environmental bottom line
• Understand the Water Quality and natural resource impacts
• What decisions are Policy vs. Criteria
• Controversial Permit - Prepare early for litigation
Questions?

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Related Points to ERP Permitting

- Numeric Nutrient Criteria
- Statewide Storm Water Rule
- Reclassification of Water bodies – 2012 Legislature
- Historic Harm to Wetlands in Water Use Permits
- Clean Water Act HB 2018 in Congress - Limit EPA’s authority under the CWA
  - To replace or override a state’s WQS
  - Object to NPDES permits
- Agricultural Exemptions