

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