A Roadmap through Statewide Environmental Resource Permitting Rules

Environmental Permitting Summer School
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SWERP TRIVIA CHALLENGE
Application

The ERP program applies to activities that involve the alteration of surface water flows. This includes:

• new activities in uplands that generate stormwater runoff from upland construction and dredging and filling in wetlands and other surface waters, including residential and commercial development;

• construction of roads; and

• certain agricultural alterations that impede or divert the flow of surface waters.

The ERP program is in effect throughout the state.
Florida’s water resources are regulated pursuant to the Environmental Resource Permit (ERP) program under Part IV of Chapter 373, Florida Statutes (Fla. Stat.).

In the early 1990’s, Section 373.414(9), Fla. Stat., directed DEP and the WMDs to adopt the new rules which relied primarily on the existing rules of DEP and the WMDs.
Processing

• ERP applications are processed by the DEP, one of the state's five WMDs, or a delegated local program

• DEP and WMDs are granted jurisdiction for the permitting program in Part IV of 373, F.S.

• Delegation authority is granted in 373.441, F.S.

• Operating Agreements between DEP and each WMD in 62-113, F.A.C.
• How many delegated local programs currently exist?
  • Broward and Hillsborough counties
  • Miami-Dade has only a partial delegation for SSL
Which Operating Agreement was adopted in 2013?

- Northwest Florida Water Management District (NWFWMD)
Historical Legislative Directive

Under section 373.414(9), Fla. Stat., the ERP rules were:

• to “seek to achieve a statewide, coordinated consistent permitting approach” . . .

and

• “Variations in permitting criteria in the rules of individual water management districts or (DEP) shall only be provided to address differing physical or natural characteristics.”
Differences

- Historically, each of the five WMDs and DEP had different rules for the **processing** of ERPs, and that remained with the 1995 ERP rules.
Water Quality and Water Quantity Conditions for Issuance

The conditions for issuance of an ERP have always been the same and require the following with regard to water quality and water quantity:

- Will not cause adverse water quantity impacts to receiving waters and adjacent lands.
- Will not cause adverse flooding to on-site or off-site property.
- Will not adversely affect the quality of receiving waters such that the state water quality standards will be violated.
- Will be conducted by a person with the financial, legal and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued.
Which ERP Applicant’s Handbook is different for each water management district?

- Volume II – to account for physical and natural differences
Differences

- Water quality and quantity provisions are designed to achieve substantially the same goals, but the technical criteria vary among the WMDs, due largely to physical and natural differences.
Chapter 62-330, F.A.C.

- In 2012, the Legislature adopted House Bill 7003, which is codified in section 373.4131, Fla. Stat. (2012), which directed DEP, in coordination with the five WMDs, to initiate rulemaking to adopt a statewide ERP rule.

- SWERP (AKA SWERP 1) came into effect on October 1, 2013.
Statutory Requirements

As required by section 373.4131, Fla. Stat., SWERP rules “rely primarily on the rules of [DEP] and water management districts in effect immediately prior to the effective date of this section.” The statute requires SWERP to include:

• The types of permits, permit criteria, thresholds for requiring permits and standardized fee categories;

• Synchronized procedures for review, duration, modification, operational requirements, transfer, forms, emergencies, removal, abandonment and electronic submittal;

• Exemptions and general permits that do not allow individual or cumulative significant adverse impacts; and

• Conditions for issuance and general permit conditions.
SWERP 2

- SWERP 1 was accomplished very quickly. It was an amazing feat!
- SWERP 2 planned as a “glitch fix” rulemaking effort before SWERP 1 was finalized.
- Purpose of SWERP 2 = polish & improve
- SWERP 2 Notice of Rule Development published on 9/3/2014
What are two of the main reasons for SWERP phase 2 rulemaking?

- “Polish” SWERP I by providing better clarity of definitions and rule language
- Additional streamlining – More GPs and exemptions
What’s changing in SWERP 2?

• Clarifying ownership/interest, noticing, and O&M requirements
• New and updated forms
  • New - Supplemental Information for Federal Permitting
  • New - Broward County CE’s
• New and clarified definitions
• Refined procedures for Formal Delineations
• Updates for mining – Section H and new Appendix I in Applicant’s Handbook I
• New exemptions and GPs
• Various other clarifications, corrections and “glitch fix” edits
• What is not happening in SWERP 2?
  • No changes that will add significant cost burden to applicants
  • No changes that will add significant cost burden to applicants
Regulated Activities

Which of the following will be a new threshold under SWERP 2, 62-330.020, F.A.C., requiring a permit?

• A project in, on, or over wetlands or other surface waters
• 4,000 square feet (sf) of impervious/semi-impervious surface areas subject to vehicular traffic or a total of 9,000 sf
• Dry storage facility storing 10 or more vessels associated with a boat launching area
• A total project area of more than five acres
• Dam having a height of more than 10 feet
• A capability of impounding more than 40 acre-feet of water
New Exemptions 62-330.051

- Aquatic plant management by FWC - (3)(d)
- Repair of existing concrete bridge pilings by FDOT, counties, and municipalities – (4)(f)
- Installation of a piling supported boatlift within an existing, authorized, mooring area – (5)(h)
- Seagrass and coral restoration by NOAA’s Florida Keys National Marine Sanctuary – (7)(h)
- Geotechnical investigations – (11)(d)
New Exemptions 62-330.051

• Communication tower sites in uplands – (14)(g)
• Electrical distribution and switching sites in uplands – (14)(h)
• Water intake lines for irrigation and cooling lines for air conditioning within waters of the state for single family residences – (14)(i)
• Minor dry borrow pits for sand and soil – (17)
New GPs

• .411 - Public navigation channel and canal infrastructure by the West Coast Inland Navigation District within Charlotte County
  • Effective 12/28/15
• .420 - GP to local governments for public mooring fields
  • Effective 11/19/15
Revised GPs

**Noteworthy Revisions:**

.427 Docks, piers and associated structures
  • Allowances for small vessels and roofs

.437 Installation of fences
  • Clarified language

.443 Minor bridge work by FDOT, counties & municipalities
  • Added protection for Johnson’s seagrass
  • Added bridge culverts

.475 Minor activities and single-family activities in isolated wetlands
  • Piling supported structures – no walls, screens, or doors
Revised GPs

Noteworthy Revisions, continued:

.631 Limited environmental restoration or enhancement by governmental entities
   • Added restoration of prop scars/blow holes

.632 Low profile oyster habitat
   • Simplified language
   • Added oyster cultch or seedstock as an acceptable material
   • Removed cumbersome notification requirements
Repealed GPs

**Proposed for Repeal:**

.407 Geotechnical investigations  
(changed to exempt)

.496 Dry borrow pits of less than 5 acres  
(changed to exempt)
Conceptual Permit for Urban Infill or Redevelopment

Under SWERP 2, what must a county or municipality do before obtaining a GP to construct roads, parking areas, buildings, and other structures in an area that requires work in wetlands or other surface waters?

• Obtain an individual permit for the work in wetlands and other surface waters

• Complete the dredging and filling authorized under the individual permit

• Satisfy mitigation requirements of the individual permit (initiate mitigation, record conservation easements, purchase credits, etc. in accordance with permitted mitigation plan)
New and Clarified Definitions

- “Artificial Waters” now includes “artificial waterway” or “artificial watercourse”
- Clarified definitions of “Forested wetlands” and “herbaceous wetlands” are for purposes of the exemptions or GPs in 62-330
- “Preservation” added reference to Section 704.06, F.S.
- “Riprap” – large enough to remain stable
- “Vessel” – new definition
- “Wetland Normal Pool Elevation” – added “under normal conditions”
Forms

- All forms being updated
  - New DEP logo, minor improvements
- Some forms significantly improved or new
  - New – Broward County CEs
  - New – Supplement for Federal Permitting
  - Improved – As-Built Certification
  - Improved – Section H: Stormwater Management Systems for Mines
What Else is Going On?

- 10/2 General Permit (*Not a GP under 62-330*)
- UMAM Rulemaking
- Mitigation Financial Assurances
- State Programmatic General Permit (SPGP) – V
- Water Bill
  - Outstanding Florida Springs
  - Septic tanks
  - 10/2 Notification requirements
Changes to 10/2 GP

- House Bill 589 became law on 4/6/2016. Name two recent changes to 403.814(12), F.S. (pertaining to 10/2 projects) that were made to comply with this bill:
  - Must file certification **before** construction
  - System must be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373 (aka Applicant’s Handbook Volume II)
UMAM Rulemaking

Rule development began June 26, 2013

- Established seven workgroups – each with representation from private sector, NGOs, and state and federal agencies
- Over 45 meetings have been conducted to date
UMAM Rulemaking

• Most field-testing conducted summer/fall of 2014
  ▪ ACOE still field testing streams and seagrass assessments

• The Department hopes to publish a proposed rule during winter 2016
  ▪ The effective date will be at least six months after adoption, to allow for rule/form training

• There was a session at Summer School focusing exclusively on UMAM draft rule/worksheets

• For more information, contact John Humphreys (john.humphreys@dep.state.fl.us)
Mitigation Banking / Financial Assurance Rulemaking

- Rulemaking initiated on April 17, 2015.
- Proposal to allow mitigation banks to use insurance certificates and escrow agreements to demonstrate financial assurance for construction/implementation phase.
- These alternatives could be used in combination with, and will need to meet the same performance requirements as, existing forms of financial assurance.
Impaired Waters

If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or the department shall consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.

373.414(1)(b)3., Fla. Stat.
Water Bill (Senate Bill 552)

• Became law on 1/21/2016

• Provisions related to ERP:
  • Outstanding Florida Springs priority focus areas to be designated in Basin Management Action Plans (BMAPs) by 2018
  • Closer look at secondary impacts from septic tanks during ERP application review
  • Requires notification of local government when a 10/2 is issued in a priority focus area
Water Quality Framework

- Set water quality standards
- Monitor water quality
- Determine pollution problems
- Establish restoration goals (TMDLs)
- Work with community leaders
- Develop and implement restoration plans (BMAPs)
- Measure success and adapt
Water Quality Restoration

- Watershed Restoration Act (403.067 F.S.)
- Enacted in 1999, amended in 2006
- Gives DEP clear legal authority for TMDLs & BMAPs
- Requires “Good Science” - DEP to adopt methodology for determining impaired waters = Impaired Waters Rule (62-303, FAC)
- Requires “Public Participation”
  - 303(d) lists and BMAPs are adopted by DEP secretary
  - TMDLs are adopted by rule
- Requires “equitable allocation” of load reductions
Elements of Act

- Notification to local governments of 10-2 permits.
  - Environmental Resource Permit (ERP) General Permit.
    - Applies within Priority Focus Area (PFA).
- Proposed restrictions within PFAs.
  - Directed to new development.
  - Prohibition on some activities:
    - Domestic wastewater disposal facilities unless they meet treatment requirements.
      - Applies to ≥100,000 gallons per day unless it meets standard of 3 milligrams per liter (mg/L) total nitrogen on an annual basis or better, if needed.
      - BMAP effluent standards apply in these basins.
Elements of Act (cont.)

- Prohibitions:
  - New hazardous waste disposal facilities.
  - Land application of residuals, unless there is an approved nutrient management plan.
  - New OSTDS on lots smaller than 1 acre, IF the specific systems conflicts with an OSTDS remediation plan in a BMAP.
  - New agricultural operations that do not implement best management practices or perform monitoring under an approved plan.
Silver Springs - Urban Setting

MARION COUNTY UTILITIES
Silver Springs Water Quality Improvement
Nitrate Content 5 miles from the Springs

FIGURE 3-2
Referred to PFA 1 and PFA 2 in the Wakulla BMAP
OSTDS Initiative

Objectives

• Evaluate and collect scientific information
• Develop education plan
• Identify and develop projects to reduce loading

Plan

• Prioritize areas where greatest risk exists
• Determine areas of opportunity (cost/benefit ratio)
Supplemental Information for Federal Permitting

- ERP application
- Minimize Requests for Additional Information
- ENG Form 4345
Supplemental Information for Federal Permitting

- Purpose and Need
- Jurisdictional Information
- Impact Details
- Avoidance, Minimization and Compensation
- Adjacent Property Owners
- Standards for Permit Drawings
SPGP-V

- SPGP-V to be issued on or before July 25, 2016
- Issued by the Corps authorizing DEP or designee to administer on Corps’ behalf
- Expedites permitting and reduces duplication
- Minor actions
SPGP-V

- SPGP-IV R1 expires on July 25, 2016
- What’s new in the draft SPGP-V?
  - Boat lifts in Monroe County
  - Living shorelines
  - Removal of derelict vessels
  - Scientific sampling, measurement, and monitoring devices
  - Limited upland to upland directional drilling
  - Geotechnical investigations
  - Seawall or riprap restoration 18 inches waterward instead of 1 foot.
Programmatic General Permit SAJ-111

- Issued on October 31, 2014
- SJRWMD administers the permit
- Authorizes up to 3 acres of fill
- For activities associated with construction or expansion of residential, commercial, or institutional buildings and attendant features
- Non-tidal waters only
- Baker, Brevard, Clay, Duval, Flagler, Lake, Marion, Nassau, Orange, Putnam, Seminole, St. Johns, and Volusia Counties
UMAM

- Corps continues to participate in the FDEP-led effort
- Corps review to date:
  - Standard assessment worksheet appears to work well.
  - Significant concerns over the standard assessment mitigation valuation, and submerged aquatic habitat and stream system assessment worksheets.
  - Certain components of the worksheets and differences in respective agency requirements are problematic.
  - Calculations are not very intuitive but may improve with use.
  - If the worksheets must be accessed on the FDEP website - 508 compliance may be an issue.
Operating Agreement

- DEP, WMDs and Corps
- Currently revising 2012 agreement
- Coordinate permitting, enforcement and compliance programs
- Better collaboration
  - Quarterly meetings
  - Pre-application meetings
  - Joint field inspections
Questions?