# Environmental Permitting Summer School

Florida Chamber of Commerce, Marco Island
July 23 - 25, 2014

Robert W. Higgins, P.E. Higgins Engineering, Inc. West Palm Beach, Florida

# NEW STATEWIDE ENVIRONMENTAL RESOURCE PERMIT RULES

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South Florida Water Management District
28th Annual Environmental Permitting Summer School
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# History

- Florida's water resources are regulated pursuant to the Environmental Resource Permit (ERP) program under Part IV of Chapter 373, Florida Statutes (Fla. Stat.).
- 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.
- Those rules went into effect on October 3, 1995, creating the ERP program.

## **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.

# Processing

ERP applications are processed by either the DEP or one of the state's five WMDs, in accordance with the division of responsibilities specified in operating agreements between the DEP and the individual WMDs.

### **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.
- However, since at least 1995, the environmental criterion has been substantially the same in all of the WMDs.
- Water quality and quantity provisions are designed to achieve substantially the same goals, but 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.
- Adoption of chapter 62-330, F.A.C., took place in October, 2013.

### Purpose

- The purpose of this rule is to streamline, promote statewide consistency, and reduce regulatory costs and burdens for the public while preserving environmental standards and continuing to protect the state's water resources.
- Rules still account for the differing physical and natural characteristics within individual water management districts.

### **Statutory Requirements**

As required by section 373.4131, Fla. Stat., the new 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 required the new rule 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.

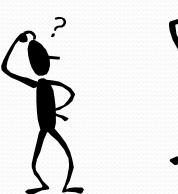
# **Summary of Changes**

### What changed?

- Rule locations and structure
- Permit types & thresholds
- Conceptual approvals
- Fee categories
- Statewide forms
- New & amended exemptions & NGPs will result in cost savings

### What did not change?

- Environmental Criteria
- Water Quality & Quantity Criteria





### **Water Management Districts**

- Chapter 62-330, F.A.C., is also considered a rule of the WMDs.
- Simultaneously, WMD rules were amended or repealed to reflect the new rule and delete duplicative language.
- In implementing the program, the responsibilities of DEP and the WMDs remain unchanged.

### Applicant's Handbook Volume I

Applicant's Handbook (A.H.) Volume I is applicable statewide and includes:

- General information and procedures
- Thresholds and exemptions
- Environmental criteria
- Operations and maintenance requirements

### **Applicant's Handbook Volume II**

Each WMD adopted its own AH II which is applicable within the geographic boundaries of each WMD. They include standards and criteria for:

- Water quality and water quantity
- Special basins
- Flood protection
- Dams

### Florida Department of Environmental Protection



# Statewide Uniform ERP Rules for Florida

Environmental Permitting Summer School July 24, 2014 - Marco Island, Florida

Mark Thomasson, P.E. – Director Division of Water Resource Management









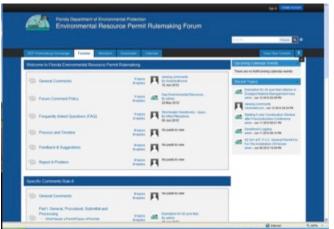




### **Adopting SWERP**

- Workshops via statewide webinars
- ERP Rulemaking Forum
  - http://www.dep.state.fl.us/water/wetlands/swerp
- Online Forum
- Recent & Upcoming







### 30,000 Foot level

### VERY similar to previous ERP rules, with:

- More standardization (substantively based on previous rules, with reconciliation between WMDs)
- Designed to get applications completed more quickly
- Reduced regulatory burdens, add streamlining
- Provides more consistency
  - Single rule with DEP Oversight
- Similar costs
- No reduction of environmental protection



### 10,000 Foot Level

#### **DEP adopted** the following:

- One rule (Chapter 62-330, F.A.C.)
- A.H. **Volume I** (General, procedural, and environmental criteria)
- Rule applies to DEP, WMDs, and delegated local governments with no further rulemaking required

#### SR, SJR, SWF, SF WMDs (& DEP for NWFWMD) adopt:

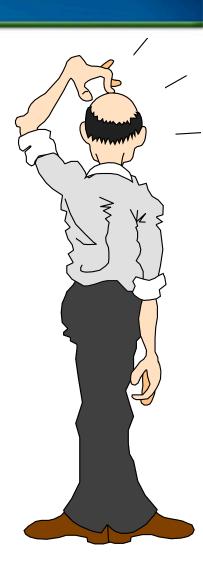
- A.H. Volume II to preserve geographical differences in water quality and quantity requirements
- WMDs repeal existing rules superseded by the above and revise others to conform to the above (i.e. 40X-4)



### How will SWERP affect me?

### Generally....

- Reduces number of rules and differences between ERP rules of DEP and WMDs
- Shorter and easier to understand (more "plain speak" rules)
- Streamlining
  - Easier-to-complete forms (get to completeness sooner)
  - New exemptions
  - New general permits





### General Permits: 62-330.401 - .635

- .401 Now "general permits," no longer "noticed general permits"
- .402 Standardized form for notice
  - May amend notice within 60 days without paying new processing fee (if amended to comply w/GP)
- .405 Standardized general conditions (replaces repetitive conditions in GPs)
  - Erosion and sediment controls to not cause or contribute to WQ violations
  - Temporary construction access in wetlands and other waters
  - Conditions for aquatic listed species (manatees, turtles, ....)
  - Historical resources
  - Flooding and surface water levels and flows



### 12 New GPs

- .407 Geotechnical work
- .449 Airport airside
- .450 Urban infill and redevelopment
- .451 Local Government Retrofits
- .488 Governmental entities' public use facilities
- .490 Reclamation of phosphate lands
- .496 Borrow pits < 5 ac.
- .501 Temporary agricultural activities within SFWMD
- .550 Non-production-related agricultural facilities
- .631 Environmental restoration and enhancement by Governments
- .632 Low-profile oyster habitat
- .635 Soil remediation



### Revised and Repealed GP's

#### Revised (significantly):

- .431 Installation of rip rap
- .443 Governmental minor bridges
- .447 Governmental minor activities
- .453 Underground cable and conduit
- .457 Subaqueous utility crossings
- .463 Mosquito control (combined 2)

#### Repealed:

- .448 Paving dirt roads (now exempt)
- .467 Breaching mosquito impoundments (combined w/ .463)
- .491 Raising height of impoundments (never used)
- .500 Minor silvicultural activities (now exempt)



### What About Fees?

- Reconciled fee categories to be generally consistent (but not identical) among Agencies
- Actual fee amounts vary between Agencies
- Overall fee changes remained revenue-neutral for each agency, as compared to existing fees
- Does not affect SSL fees (in Chapter 18-21)





### What was Considered?

- 1. Where feasible, retain existing categories and don't change fees e.g. no change to:
  - Verification of exemptions, General Permits
  - Mitigation banks, enhancement/restoration
  - Most types of permit modifications
- 2. Where new categories necessary, balance fairness and simplicity
  - Small Projects = Small Fees
  - Simple Fee Category Structure
- 3. Balance new vs. previous fees, overall
  - Minimize adverse costs to applicant groups
  - Minimize net revenue impact to agencies





### **Overall Highlights**

- 1. 62-330, FAC, and AH 1 provide unified administrative rules and environmental criteria, often with simpler, clearer language
- 2. AH 2s retain WMD specific treatment and attenuation criteria
- 3. Common fee structure
- 4. Standardized Conceptual Approval Permit Duration
- 5. GPs are the same
- 6. "Florida-Registered Professional" replaced "engineer" where appropriate
- 7. Removed preference for on-site mitigation



### **SWERP Phase II**

# Currently in rule development to make a number of changes, including:

- 1. Clarifying ownership/interest, noticing, and O&M requirements
- 2. Updated forms:
  - Joint Application, GP and exemption forms
  - Status of Mitigation Implementation or Operation of System
- Coordinating construction stormwater requirements for ERP and NPDES programs
- 4. Defining "vessel"
- 5. Refined procedures for Formal Delineations
- 6. Stormwater systems for mines
- 7. Various other clarifications, corrections and "glitch fix" edits



### **SWERP Phase II (cont.)**

#### 8. New GPs:

- Public mooring fields
- Navigational dredging projects by WCIND within Charlotte County
- Aquatic restoration work by FWC

#### 9. New exemptions for:

- NOAA seagrass and coral restoration in FKNMS
- Geotechnical work (currently GP)
- Dry borrow pits < 5 ac (currently GP)</li>
- Cellular communication towers
- Small electric substations
- Residential irrigation intakes and closed cooling systems in lakes
- Creation of General Conditions for Conceptual Approval Permits



### Down the road...?

# Other significant improvements to SWERP and related rules are possible, on the near future:

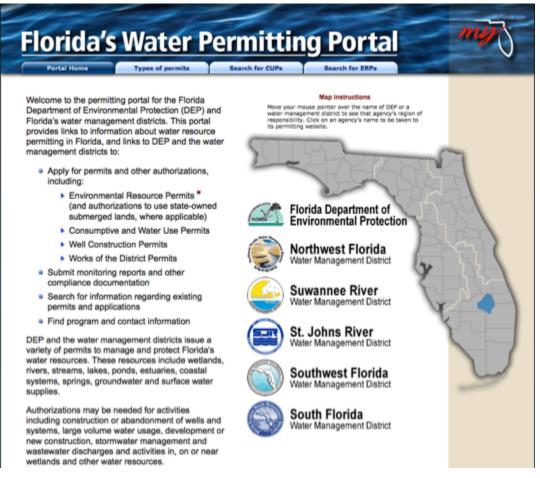
- 1. Flood elevations and the FL Building Code
- SFWMD AH II changes to address "impaired waters memo"
- 3. UMAM Rule Making
- 4. Coastal Cumulative Impact Assessment Zones
- 5. Improved guidance for assessing impacts and mitigation for wood storks
- 6. Updates to stormwater criteria (e.g. rainfall distribution)



### **One-Stop Permitting**

Use the interagency portal to find and apply for ERPs, and other water

permits.



http://flwaterpermits.com/



### Not Just ERP's

#### Types of permits

#### Construction and operation of public water supply facilities

The Florida Department of Environmental Protection (DEP) issues permits for public drinking water plant facilities.

#### Water and domestic wastewater operator certification

Florida Statutes require anyone who operates a drinking water treatment plant or a domestic wastewater treatment plant to be licensed by DEP.

#### Well construction permits

The water management districts or their delegated authority issue well construction permits. Well construction permits are required prior to installation of a well. The permits ensure that wells are constructed by qualified contractors and meet rigid safety and durability standards.

#### Consumptive use or water use permits

Water management districts issue consumptive use permits (CUPs) or water use permits (WUPs) that authorize water use. The permits allow water to be withdrawn from surface and groundwater sources for reasonable and beneficial uses such as public supply (drinking water), agricultural irrigation, and industry and power generation.

#### **Environmental resource permits**

Environmental Resource Permits (ERPs) benefit Florida by preventing stormwater pollution to Florida's rivers, lakes and streams and helping to provide flood protection. The ERP program regulates the management and storage of surface waters, and provides protection for the vital functions of wetlands and other surface waters. ERP permits are required for many types of work within those waters, such as dredging or filling, construction of dams, impoundments, docks or other structures, as well as the construction of stormwater management systems that discharge to those waters. The ERP program is implemented by DEP, the water management districts, and certain delegated local government programs. Some ERP-related activities are exempt from regulation by Florida Statutes or rules, or qualify for general permits, including the "10/2" general permit for stormwater management systems.



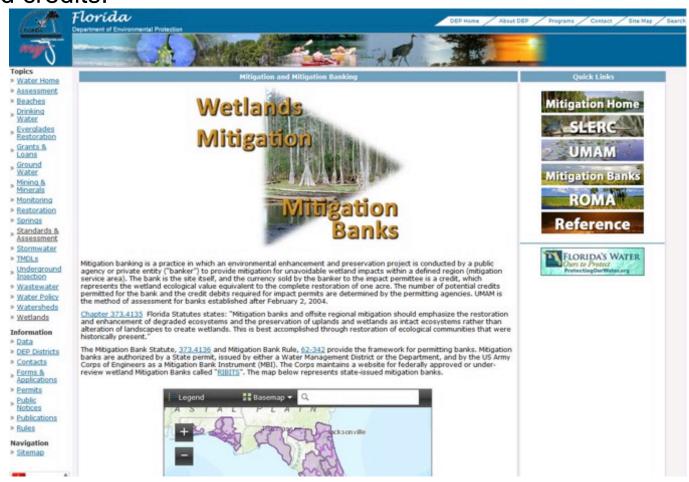
Agricultural water use





### **Mitigation Banking**

Check out our Mitigation Banking website, now with GIS tool for service area and credits!



http://www.dep.state.fl.us/water/wetlands/mitigation/mitigation\_banking.htm



### **UMAM Rulemaking**

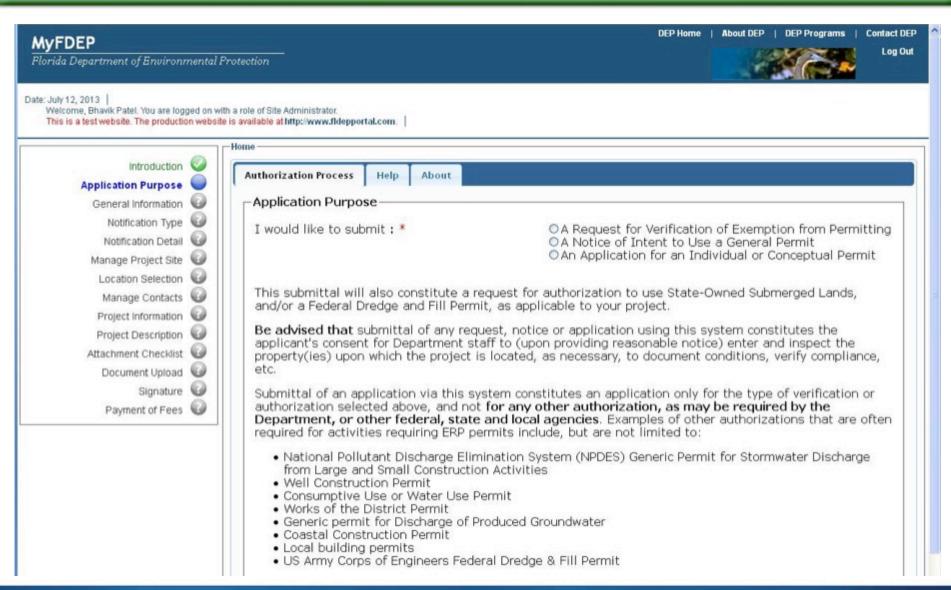
#### Check out our UMAM rulemaking website, too!



http://www.dep.state.fl.us/water/wetlands/mitigation/umam/index.htm



### **Now DEP Applications**





### **Questions?**

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### Background

- The ACOE, Jacksonville District, and DEP developed a State Programmatic General Permit (SPGP)
  - Consultation with USFWS, NMF, EPA, FWC
  - Minor works within waters of the United States
  - Current SPGP (SPGP IV-R1) expands geographic coverage across the entire state (except areas specifically excluded in the agreement)



# State Programmatic General Permit (SPGP) IV-RI

- Programmatic general permits
  - Simplify and expedite the processing of Department of the Army permits.
  - Administered by other government entities on the Corps' behalf, avoiding unnecessary duplication of effort.
- The Corps and SJRWMD have entered into a Coordination Agreement



### Categories of Work

- A) Shoreline Stabilization
- B) Boat Ramps
- C) Docks and Other Piling Supported Structures
- D) Maintenance Dredging





#### **Determine Project Status**

- The status is Green if:
  - It falls into one of the four categories
  - Meets Federal design criteria/limitations
  - Not excluded by T&E species or habitat considerations.
    - Federal authorization issued by SJRWMD, with State exemption, GP, or ERP.



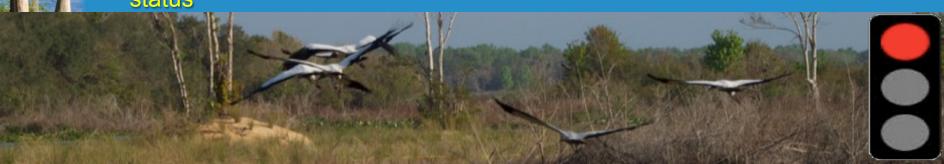
- The project does not meet the federal design limitations/criteria
- State consultation with ACOE
- Status converted to Green or Red





### **Examples of Red Projects**

- Projects with the potential adversely impact a Federally-listed threatened or endangered species or its designated critical habitat
  - Projects within Anastasia Island or southeastern beach mouse habitat
  - Projects within 2500 feet of an active wood stork colony
  - Projects that may affect manatees
- Projects within SAV, marsh, or mangrove habitats that do not adhere to the Corps Guidelines in Florida for Minor Piling Supported Structures
- Projects with previous violations
- Red projects do not qualify for SPGP and must be process by the ACOE.
- Note: See SPGP for full list of factors considered in determining project status

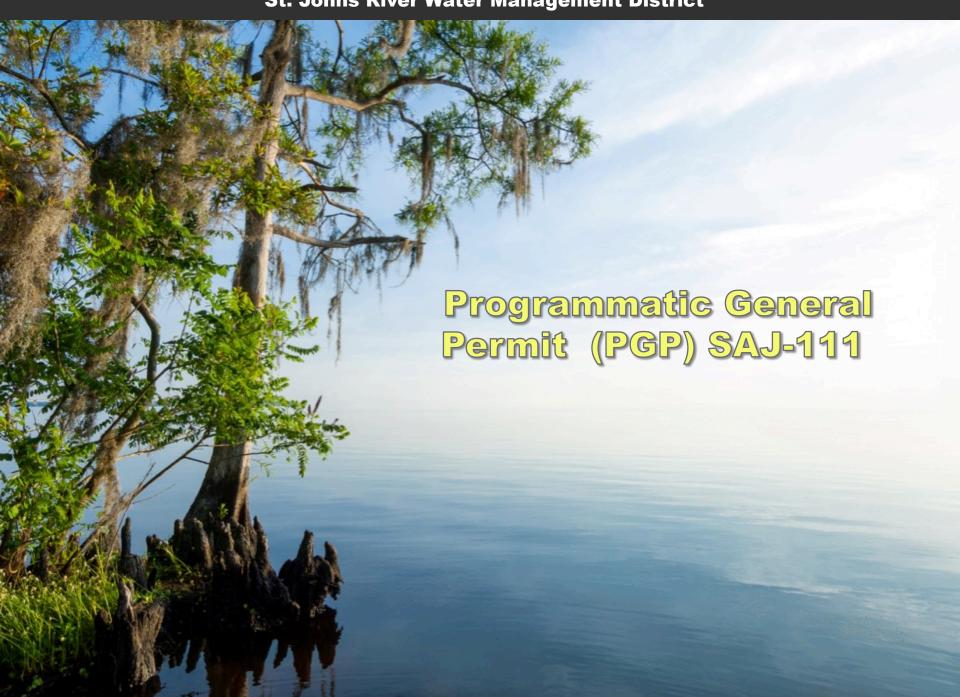




# SJRWMD SPGP Stats as of June 2014

- Implementation December 2013
- 27 permit applications reviewed for SPGP
- 14 issued
  - 8 docks
  - 5 shoreline stabilization
  - 1 boat ramp
- 4 under review
- 9 Red ACOE processing

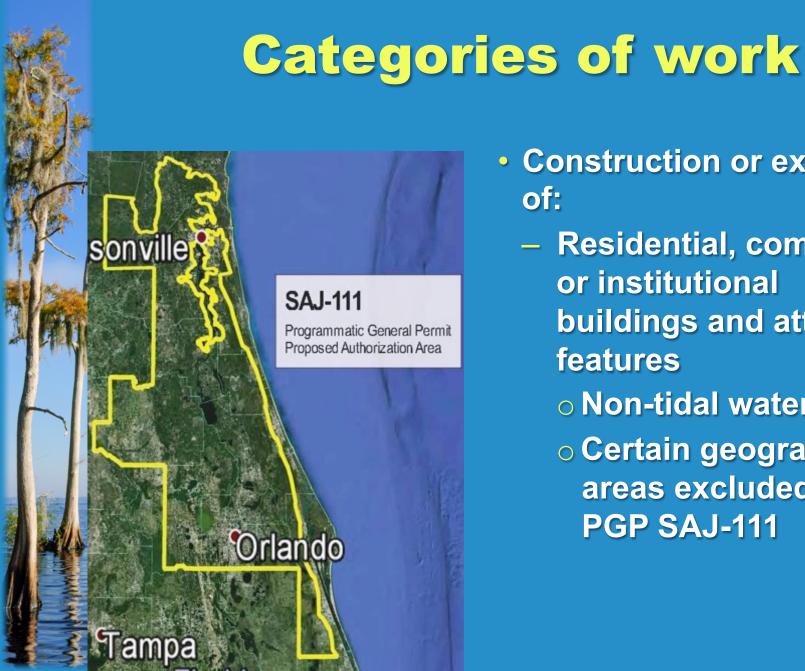
St. Johns River Water Management District





### Background

- The ACOE, Jacksonville District, developing a Programmatic General Permit (PGP) SAJ-111 for use in the State
  - Different project categories but similar process
  - Anticipate Coordination Agreement to be similar to SPGP
  - SJRWMD issue both State and Federal authorizations
  - Presently only being developed for use in SJRWMD region of the state



- Construction or expansion of:
  - Residential, commercial, or institutional buildings and attendant features
    - Non-tidal waters only
    - Certain geographic areas excluded from **PGP SAJ-111**



#### Limitations

- Maximum of 3 acres of fill within certain waters of the United States
- Limited to:
  - Work within 20+ year old bedded pine plantations
  - Non-forested wetlands in improved pasture
  - 75% of parcels bordered by development
  - Wetlands with >80% cover by invasive and/or exotic species
- Impacts must be mitigated at a federally approved mitigation bank (1:1 ratio)



#### **SAJ-111 Status**

Public commenting period complete

 SJRWMD and ACOE developing Coordination Agreement

To be implemented fall 2014



# Benefits SPGP IV-R1 and PGP SAJ-111

 Eliminate the need to obtain separate approval from the Corps

 Continue environmental protection while reducing duplicative permitting

Improve efficiency for regulated community



## Questions?

