Environmental Resource Permitting for Local Governments

June 2016
Topics

• Stormwater Issues
• How Does ERP Work?
• Changes Under SWERP
• More Changes to Come
In the Beginning
Is Stormwater a Problem?
According to the US Environmental Protection Agency-

Reporting under Section 303(d) CWA:

*States Report that over 40% of Assessed Waters Too Polluted for Fishing or Swimming*
<table>
<thead>
<tr>
<th>General Impairments</th>
<th>Impairments Reported</th>
<th>Percent of Reported</th>
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</thead>
<tbody>
<tr>
<td>PATHOGENS</td>
<td>7546</td>
<td>14.12</td>
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<td>METALS</td>
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<td>NUTRIENTS</td>
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<td>SEDIMENT/SILTATION</td>
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<td>ORGANIC ENRICHMENT/LOW DO</td>
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<td>FISH CONSUMPTION ADVIS.</td>
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<td>pH</td>
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<td>OTHER HABITAT ALTERATIONS</td>
<td>2403</td>
<td>4.50</td>
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<td>THERMAL MODIFICATIONS</td>
<td>2152</td>
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<td>BIOLOGICAL CRITERIA</td>
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<td>FLOW ALTERATION</td>
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<td>PESTICIDES</td>
<td>1399</td>
<td>2.62</td>
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<td>TURBIDITY</td>
<td>1013</td>
<td>1.89</td>
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<td>SUSPENDED SOLIDS</td>
<td>957</td>
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<td>SALINITY/TDS/CHLORIDES</td>
<td>929</td>
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<td>CAUSE UNKNOWN</td>
<td>896</td>
<td>1.68</td>
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<tr>
<td>PCBs</td>
<td>794</td>
<td>1.49</td>
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</tbody>
</table>
Sources of Impairment by Category from the EPA 303(d) List

- Nonpoint Sources Only: 47%
- Point Sources Only: 10%
- Combination of Point & Nonpoint Sources: 43%
The Stormwater Issue

Urbanization Causes:

• Changes in Land Use
• Floodplain Encroachment
• Alteration of Natural Drainage Ways
• Compaction of Soil, Imperviousness
• Installation of “Drainage” Systems
• Addition of Pollutants
Resulting In...

- Decrease in Recharge to Groundwater
- Increase in Velocity of Runoff
- Increase in Volume of Runoff
- Increase in Pollutant Loads...and
Water Quality Violations
Loss of “Designated Use”

Hundreds of Impaired Water Segments In Florida due to Stormwater
Federal Regulatory Response

1987 Clean Water Act Amendments:
– Defined Certain Stormwater Discharges as “Point Source”
– Stormwater Regulation under NPDES:
  • Small and Large MS4s
  • Industrial Activities per SIC Code
  • Construction Activities (as subset of Industrial Discharges)
Stormwater is Non-Steady State

• Variable Flow
• Variable Strength
• Monitoring is Snapshot at Best
• Permit Conditions for “Monitoring” Not Really Feasible
Issues Affecting BMP Treatment Efficiency

• Antecedent Rainfall Period
• Rainfall Volume & Intensity
• Land Use & Soils
• Extremes in Climatic Conditions
• Hydraulics-Health of Biota
• Maintenance Frequency
• Activities within the Watershed
Florida’s Regulatory Approach

• Stormwater is NOT a Point Source
• Cannot Regulate as if Stormwater Behaves as a Point-Source Waste Stream
Florida Approach – Adopted by Many States

• Approach is “BMP-Based” with “Presumptive Criteria”
• Target is Removal of **80% Annual Average Load of** Post-Development Pollutants
• Also, **95% Removal** Target for OFWs
• **Minimum** Targets Codified in Chapter 62-40.432(2)(a), F.A.C.
Section 373.4131(3)(b):

(b) If a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by the department or a water management district under this part, the system design is presumed not to cause or contribute to violations of applicable state water quality standards.

2012 Florida Legislature
Presumptive Design Criteria

• For Northwest, Applicant’s Handbook Volume II:
  – Retention
  – Underdrains
  – Exfiltration
  – Wet Detention
  – Swales
  – Wetland Treatment
  – Vegetated Natural Buffers
  – Stormwater Harvesting
  – Karst Area Criteria

Alternative Designs?
Filters?
Impaired Waters?
The Florida Story - The First in the Nation

• 1978 First Attempt at Stormwater Discharge, “Exemptions” under Chapter 62-4, F.A.C.
• 1982 First Rule – Chapter 17-25; Statewide Regulation of Stormwater Discharges
• 1993 – ERP Permitting – Combined Dredge and Fill and “MSSW” or Stormwater Permitting; All WMDs except Northwest
Main Tenants of ERP Program

Protecting Florida’s Water Resources:

- Water Quality
- Water Quantity Management & Flood Protection
- Wetland Functions & Other Environmental Resources
ERPs Progression

- 1993 – ERP in Most of Florida
- 2008 – ERP in Northwest; Careful Evaluation of All ERP Rules Resulting in 62-346 for NW Only
- Dredge & Fill; 62-25 Finally Retired
- Entire State Using ERP
- However, Very Different sets of Rules – Each WMD has Own Set of Independent Rules
Why Statewide ERP Needed?

Rule Consistency Somewhat Lacking
Pre-SWERP ERP Rules

- **SRWMD**
  40B-1, 40B-4, 40B-400, AH
- **SJRWMMD**
  40C-1, 40C-4, 40C-40, 40C-42, 40C-400, 2 AH’s
- **SWFWMD**
  40D-1, 40D-4, 40D-40, 40D-400, BOR
- **SFWMD**
  40E-1, 40E-4, 40E-40, 40E-400, BOR
- **NWFWMD**
  62-346, 40A-4, 40-44, A.H.
So...Before SWERP

• 5 Different Sets of Rules/Interpretations
• Districts “Own” the Rules/DEP Just Implements
• Different Permitting Thresholds
• Different Forms/Permit Types
• Different Certification/Reporting Requirements

Hard to Swallow
So...What is SWERP?

- Statewide Environmental Resource Permitting
- 2013 Legislative Session: Section 373.4131, F.S.
- Directed DEP & WMDs to Jointly initiate rulemaking to Provide Statewide, Consistent Regulation
What is SWERP?, continued

- **STATEWIDE** Criterion Must Include at Minimum:
  - Criteria and Thresholds for Permits
  - Types of Permits
  - Procedures for Application Review
  - Exemptions and General Permits
  - Conditions for Issuance
  - Standardized Fee Categories
  - Based Largely on EXISTING WMD Rules

See Section 373.4131, F.S.
SWERP – Statewide ERP

Legislature’s Direction:

– Streamline the Whole Process
– Operate Under One Rule (or close)
– Reduce Duplication in Rules
– Make Rules “User Friendly”
– Quicker Turnaround of Applications
So...After SWERP

- Statewide Consistent Interpretation
- Guided by DEP
- Only 3 Authorization Types
- Common, Streamlined Forms
- Common Exemptions and GPs
- Common Thresholds
SWERP Did NOT:

- Create a new Permitting Program
- Establish new Statewide Stormwater Rule, or
- Implement Post=Pre
Generally:

• Very Minimal Changes to Technical Criteria
• **NO** Changes to Design and Performance Criteria
• Rule 62-330 **Applies Statewide**
• Rule 62-330 Contains all Exemptions & GPs
Generally:

- Volume I Applies Statewide; Includes Wetland Protection
- Volume II – Unique to each District; Contains Specific Stormwater Criteria
SWERP Rule: Chapter 62-330, F.A.C.

• New Rule - One Rule for All Districts
• Largely Based on Northwest ERP Rule: Chapter 62-346 (repealed)
• DEP “Owns” the Rule, All WMDs Implement
• Which Agency Processes ERP is Determined by Activity-Based Operating Agreement
Operating Agreement - Summary

Generally DEP:
• Single Family
• Waste and Wastewater
• Landfills
• Mines
• Utility Plants
• Ports

Generally WMD:
• Residential, Commercial and Gov. Development
• Roads
• Ag/Silviculture

Modified Operating Agreements Executed Simultaneous with SWERP
Adopted by Rule in 62-113, F.A.C.
Operating Agreement Rule Adoption Hearing

Actual Photo – These are Not Actors
SWERP Chronology

• DEP & WMDs Started SWERP Rulemaking in Summer of 2012 (weekly meetings)
• Significant Effort – LOTS of changes
• October 1, 2013 Effective Date for SWERP
• Agencies Continued to Meet to Discuss Rules – Obvious Issues Began Surfacing
• Started Working “Phase 2” or Glitch Fixes in Early 2014
• Currently in Formal Rulemaking for Glitch Fixes
Highlights of ERP & SWERP
Focus on Local Governments

• What Follows is a Summary of SWERP Changes with Focus on Those Rules that Affect Local Governments

• Combination of SWERP Changes and Proposed Changes under Current Rulemaking
Definitions

• Definitions now located in One Place...
• See Section 2.0 of Applicant’s Handbook Volume I
• 122 Separate Definitions
Individual Permit Thresholds – 62-330.020

- **Cumulatively exceed any of these:**
  - In, On, or Over Wetlands or Other Surface Waters
  - 4,000 sf Semi-Impervious or Impervious subject to Vehicle Traffic
  - 9,000 sf Semi-Impervious or Impervious Surface
  - 1 acre Project Area
  - Impound more than 40 ac-ft, or Dam of 10 ft height
  - Any activity part of a larger common plan of development
Individual Permit: O & M Phase

62-330.310

• (4) Upon Completion...permittee must submit:
  – As-Built Certification (not plans) and request for Conversion to O&M; and
  – Request to Transfer to Perpetual Operation Entity

• Converted to O&M Phase upon Certification, and Verification by District that all Documents have been Recorded in accordance with 12.3.3 of Volume I

• Allows for “Independent Portion” to be Transferred to O&M
Ind. Permit: Inspections and Reporting 62-330.311

- Permittee must provide for inspections by registered professional of the project during O&M phase per 12.4 Volume I
- Must maintain a record of each inspection, make available to Agency upon request
- Inspection Frequencies are detailed in Volume II
- Only **REQUIRED** Reporting is for System Failure; or if the Project is a Regional Stormwater System
## IndividualPermits: Inspections 2.12 Volume II

<table>
<thead>
<tr>
<th>TYPE OF SYSTEM</th>
<th>INITIAL INSPECTION AFTER BEGINNING OPERATION</th>
<th>AFTER THE FIRST YEAR OF SUCCESSFUL OPERATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dry Retention basins</td>
<td>1 Year</td>
<td>Once every 5 years</td>
</tr>
<tr>
<td>Exfiltration trenches</td>
<td>1 Year</td>
<td>Once every 2 Years</td>
</tr>
<tr>
<td>Underground retention</td>
<td>1 Year</td>
<td>Once every 2 Years</td>
</tr>
<tr>
<td>Sand Filters*</td>
<td>1 Year</td>
<td>Once every 2 Years</td>
</tr>
<tr>
<td>Underdrain filtration</td>
<td>1 Year</td>
<td>Once every 2 Years</td>
</tr>
<tr>
<td>Underground vault/chambers</td>
<td>1 Year</td>
<td>Once every 2 Years</td>
</tr>
<tr>
<td>Swales (treatment)</td>
<td>1 Year</td>
<td>Once every 5 years</td>
</tr>
<tr>
<td>Wet Detention systems</td>
<td>1 Year</td>
<td>Once every 5 years</td>
</tr>
<tr>
<td>Vegetated Natural Buffers</td>
<td>1 Year</td>
<td>Once every 5 years</td>
</tr>
<tr>
<td>Above-ground Impoundments</td>
<td>1 Year</td>
<td>Annually</td>
</tr>
</tbody>
</table>

**Required Inspection Frequency Unless Otherwise Specified in Permit**
Permit Modifications, cont.

6.2.1 Volume I

• **Minor Mods** Can be requested by **Letter** or **Email** but must include:
  – Permittee and Permit No.
  – Contact Information
  – Clear Description of the Proposed Mod
  – Drawings if applicable
  – Fee, if applicable
New Conceptual Permit – 62-330.055 for Urban Infill or Redevelopment

- For Cities or Counties – Can request Conceptual approval for Community Redevelopment Areas created under Chapter 163, F.S.
- General Permit available for use within an area covered under this Conceptual Permit (GP under 62-330.450)
- Development Within these Areas **DO NOT** have to provide compliance with Volume II Requirements

- Must Submit Stormwater Management Master Plan
- Must Identify Contributing Watersheds, Sub-Basins
- Must estimate Existing daily load per sub-basin; Becomes basis for post-development allowance (net improvement or post = pre)
- Also Estimate Existing Peak Rates and Volumes
- GPs Submitted Must Show they comply with the Stated Rates, Volumes and Pollutant Loads
- Must Use BMPs to the Extent Possible
“Other” Conceptual Permits 62-330.056

- Conceptual Permits good for 20 years; must start Construction within 5 years
- Permit/Criteria are “Binding” for the Duration of the Permit unless:
  - Changes to Water Quality Standards that would affect the permit
  - New Basin Criteria in area of permit
  - Change to Listed Species that would affect the permit
Exemptions
Exemption Procedures - 62-330.050

• Notice Typically **Not Required**
• If a Person desires Agency Verification, and Cannot or Chooses not use the Self Cert Portal, request can be made by letter or by Form 62-330.050(1):
  – **Must** Include $100 Fee; One fee can cover multiple exemption types under one action
  – **Must** Provide:
    – Location map
    – Any Supporting Information
  – Authorization to enter the property signed by Owner
Exemption Procedures - 62-330.050

- Agency to **Try to Review** within 30 Days
- If exemption request is missing items, we can ask for more information (but it is not an RAI), and they have 60 days to provide. We then should take action within 30 days
- Exemptions can be “Bundled” in with Individual Permit Applications; they can also be split-out at applicant’s request
Exempt Activities – 62-330.051 (4)

Bridges, Driveways, Roadways:

• (b)1. Can Use This Exemption for Servicing 10/2 Projects, EVEN Though Greater Than One Acre Project

• (c) Minor Safety Projects – Deleted prohibition regarding work in other surface waters; and added that this work can occur in upland cut drainage ditches (this exemption includes sidewalks, turn lanes, road widening, etc.)
Exempt Activities – 62-330.051(4)

Bridges, Driveways, Roadways:

• (e) **Paving (Dusty Roads)**, Repair of Existing Unpaved Roads that have been publicly used since Jan 2002, and subsequently have:
  
  • Become **Municipally** or County or Maintained at some point prior to using this exemption

• Must Notify Agency 30 days prior to work
Exempt Activities – 62-330.051(9)

Exempt Pipes or Culverts:

- (b) Construction or Removal of Outfall Pipes including headwalls, rip-rap, etc., allowed so long as wetland impacts limited to 1,307 sf.

- (c) Extension of Pipes for otherwise Exempt or GP Activities (i.e., road widening) so long as Wetland Impacts limited to 4,356 sf.
Other Proposed New Exemptions

1. Repair of concrete bridge pilings
2. Installation of boat lifts in existing slips
3. Construction of cellular communications towers in uplands
4. Construction of small electrical substations in uplands
5. Certain temporary geotechnical investigation work
6. Creation, alteration, etc. of “dry” borrow pits
7. Installation of small intakes for residential irrigation and cooling purposes
General Permits
General Permit Processing
62-330. 402

• No Longer called “Noticed”, just GP
• 30 Days for Agency Review
• If there are Errors or Omissions, we give the applicant 60 days to amend the notice (but it’s not an RAI)
• If the Activity does not qualify for GP, the applicant can apply the fee toward an Individual Permit if applied within 60 Days of Agency action
GP to DOT, Cities and Counties for Bridge Work

62-330. 443

- Added Placement and Removal to the list of things you can do to a Bridge
- Allows up to 0.5 acre Wetland Impacts
- 2 lane Bridges allowed for One-lane Roads
GP to DOT, Cities and Counties for **Minor Work** in R-O-W 62-330.447

- Various Clarifications – allows Work in Wetland up to Certain Size Limits for Various Activities
- Can use in Conjunction with Permits or Exemptions for road widening and extension of culverts
- Allows ditch or canal bank stabilization for erosion and includes use of riprap, toe walls, etc. in wetland or other surface waters
- Allows things such as guard rails, signs, poles, etc. to be placed in wetlands subject to size limits
Championed by City of Tallahassee, Allows:

- New Treatment or Attenuation Construction to Serve Existing Development
- Modification of Existing Systems
- Stabilization of Eroding Streambanks
- Excavation to Remove Sediments in Existing Surface Waters
GP Retrofit for Local Governments

• Cannot Serve New Development
• No Limit to Impacts to Artificial Waters
• 0.5 Acre Limit to work in Natural Wetlands
• Cannot Include a Dam with More that 50 ac-ft of Capacity
• Must Provide New Treatment Capacity in Some Form, or
• Remove Pollutants from Previous Discharges
GP Retrofit for Local Governments
62-330.451, cont., even more

• Water Quantity (Drainage) Improvements Allowed if:
  • Does not reduce Water Quality Treatment, or
  • Increase Discharge of Untreated Water to Receiving Waters
Brand New GPs Under SWERP

- 62-330.407 Geotech Investigations (becoming at Exemption)
- 62-330.449 Airport Airside Activities
- 62-330.450 Urban Infill and Redevelopment
- 62-330.451 Retrofit for Local Govs
- 62-330.496 Upland Borrow Pits Less Than 5 acres in Uplands (also becoming an Exemption)
Latest Rulemaking Schedule

• End of May – Submitted to Secretary for Approval
• End of June – Publish Notice of Proposed Rule (30 day comment period)
• Mid-August – Pre-scheduled Hearing (45 Days after publication….will be cancelled if not requested)
• October 3, 2016, Target Effective Date
Some Final Thoughts

• SWERP Should Have Made things Easier for Locals
• New Exemptions & General Permits
• Common Sense Clarifications to Others
• Still A long way to Go – Kelli may attest
• WMDs and DEP Focused on Processing ERP Applications Quickly
Performance Metrics for 4th Quarter of Year 2015

Environmental Resource Permitting
Active Staff Processing Time, All Individually-processed Permits
(excludes time awaiting response from applicant, legal challenges, etc.)

- SFWMD - During FY15 Qtr 4 a Senior Engineer left employment, training continues for new permit reviewers.
- SFWMD - FY15 Qtr 4 increase due to staff processing old applications.

- Fiscal Year 15, Quarter 1
- Fiscal Year 15, Quarter 2
- Fiscal Year 15, Quarter 3
- Fiscal Year 15, Quarter 4
- Annualized Median
- Statewide Average
Questions?

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