

MEMORANDUM

TO: Governing Board Members

FROM: Sharon M. Trost, P.G., AICP, Director, Regulation Division

DATE: June 27, 2012

SUBJECT: Adopt an amendment to: (1) reclaimed water requirements in Section 3.2.3.2.B.2 of the Basis of Review for Water Use Permit Applications within the South Florida Water Management District (Basis of Review), (2) Rules 40E-2.091, 40E-20.091, and 40E-20.301(h), F.A.C., to incorporate the amended Basis of Review and require applicants seeking an allocation less than 3 million gallons per month (MGM) in a mandatory reuse zone to perform an end-user feasibility evaluation, and (3) repeal and amendment of that portion of Section 3.2.3 of the Basis of Review which refers to Chapter 40E-23, F.A.C.

Staff Recommendation

Staff recommends a doption of the amendment to Section 3.2.3.2.B.2 of the Basis of Review for Water Use Permit Applications within the South Florida Water Management District (Basis of Review), to incorporate the amended Basis of Review by reference in Rules 40E-2.091 and 40E-20.091, F.A.C.; the amendment to Rule 40E-20.301(h), F.A.C., to require applicants located within a mandatory reuse zone who are seeking an allocation less than 3 million gallons per month, to perform the end user feasibility evaluation; and the repeal and amendment of that portion of Section 3.2.3 of the Basis of Review which refers to Chapter 40E-23, F.A.C.

Background:

During the 2010 legislative session, Section 373.250, F.S., was amended, mandating the water management districts (WMDs) to adopt rules to require certain permit applicants to provide documentation from a reuse utility addressing the availability of reclaimed water and rules to specify the content of the required documentation. Water management districts were required to initiate rulemaking by July 1, 2011. This rulemaking effort was included in the Annual Regulatory Plan submitted to the Office of Fiscal Accountability and Reform. The proposed Notice of Rule Development was sent to OFARR in accordance with Executive Order No. 11-72.

The 2010 amendment was the product of the Reclaimed Water Workgroup (Workgroup). The Workgroup is made up of representatives from utility members of the Florida Water Environment Association, the Florida Department of Environmental Protection, and the WMDs. The proposed rule amendments will also require applicants of minor general use permits located in a mandatory reuse zone to perform an end user feasibility evaluation. This rulemaking effort should increase coordination between the District and reuse utilities and further the legislative goal of encouraging and promoting water conservation and the reuse of reclaimed water. The WMDs are coordinating rulemaking efforts to develop consistent rules.

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The District also proposes to repeal and amendment of that portion of Section 3.2.3 of the Basis of Review which refers to Chapter 40E-23, F.A.C., which was legislatively repealed. District staff believes these rules are unnecessary given the requirement to perform an end user feasibility evaluation contained in Section 3.2.3.2 of the Basis of Review.

Staff Contact: Paulette Glebocki, Hydrogeologist - Lead, Water Use Bureau; Phone (561) 682-6941

Jennifer Bokankowitz, Office of Counsel; Phone 561-682-2258

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-2.091 Publications Incorporated by Reference.

The “Basis of Review for Water Use Permit Applications within the South Florida Water Management District – _____ ~~March 18, 2010,~~” is hereby published by reference and incorporated into this chapter. A current version of this document is available upon request.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.042, 373.0421, 373.109, 373.196, 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.236, 373.239, 373.250 FS. History—New 9-3-81, Formerly 16K-2.035(1), Amended 2-24-85, 11-21-89, 1-4-93, 4-20-94, 11-26-95, 7-11-96, 4-9-97, 12-10-97, 9-10-01, 12-19-01, 8-1-02, 6-9-03, 8-31-03, 4-23-07, 9-13-07, 2-13-08, 10-14-08, 7-2-09, 3-15-10, 3-18-10, _____.

Amendments to “Basis of Review for Water Use Permit Applications within the South Florida Water Management District”:

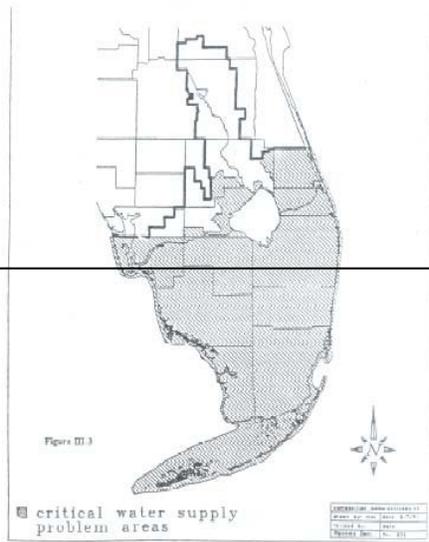
3.2.3 Reclaimed Water Reuse Criteria

The encouragement and promotion of water conservation and use of reclaimed water are state objectives and considered to be in the public interest. In Section 373.250, F.S., the Legislature finds that use of reclaimed water provided by domestic wastewater treatment plants, permitted and operated under a reuse program approved by the Florida Department of Environmental Protection is environmentally acceptable and not a threat to public health and safety. ~~Based upon the statutory guidance and the delineation of feasibility factors found in the State Water Policy, Chapter 17-40, F.A.C., the Governing Board determines that, in those areas of the District which are not designated a Critical Water Supply Problem Area pursuant to Chapter 40E-23, (see figure III-3), when reclaimed water is readily available it must be used in place of higher quality water sources, unless it is demonstrated by the Applicant that its use is either not environmentally, economically or technically feasible. In determining whether reclaimed water is readily available, the District will consider the following factors:~~

- ~~A. Whether a suitable source of reclaimed water exists;~~
- ~~B. Whether the source is offered to or controlled by the Applicant; and~~
- ~~C. Whether the Applicant is capable of accessing the source through distribution lines.~~

~~In those areas of the District which are designated as Critical Water Supply Problem Areas pursuant to Chapter 40E-23, reclaimed water is required to be used, unless it is demonstrated by the Applicant that its use is either not environmentally, economically or technically feasible.~~

Figure III-3



3.2.3.2 Reuse Requirements

The encouragement and promotion of water conservation and use of reclaimed water are state objectives and considered to be in the public interest. In Section 373.250, F.S., the Legislature finds that use of reclaimed water provided by domestic wastewater treatment plants, permitted and operated under a reuse program approved by the Department, is environmentally acceptable and not a threat to public health and safety. Permit applicants must evaluate the feasibility of using reclaimed water to meet all or a portion of their needs, as follows:

- A. No Change.
- B. End User Feasibility Evaluation: In all areas of the District, excluding those covered by Section 3.2.3.2.A., reclaimed water must be used, unless the applicant demonstrates that such use is not environmentally, technically or economically feasible. When reclaimed water is readily available it must be used in place of higher quality water sources, unless it is demonstrated by the Applicant that its use is either not environmentally, economically or technically feasible. The following criteria are used to demonstrate feasibility:
 1. Environmental Feasibility: Reclaimed water reuse is considered environmentally feasible if the Department has permitted the reuse facility that will provide the reclaimed water supply and has permitted the use or discharge of the reclaimed water to the receiving water body, if applicable.
 2. Technical Feasibility: In performing the technical feasibility portion of the evaluation, the applicant shall contact the applicable reuse utility and request a letter stating that reclaimed water is not available or provide the following

information and consider the response provided by the reuse utility in its evaluation:

- (a) Whether a reclaimed water distribution line is at the applicant's project boundary.
- (b) If a reclaimed water distribution line is not at the project boundary, then:
 - (i) Estimate the distance in feet from applicant's project to the nearest potential connection point to a reuse line.
 - (ii) The date the reuse utility anticipates bringing the connection to the applicant's project boundary.
- (c) If reclaimed water is available at the project boundary, then:
 - (i) The minimum quantity in gallons per day of reclaimed water supply available from the nearest potential connection point under a 1-in-10 year drought condition.
 - (ii) The reliability of the potential reclaimed water supply (i.e., on-demand 24/7, or bulk-interruptible diurnal or seasonal, length of supply agreement, or other basis).
 - (iii) The typical operating pressures at which the reuse utility will provide reclaimed water at the nearest connection point to the applicant's project, including any typical seasonal or other fluctuations in the operating pressure.
 - (iv) The water quality parameters of the reclaimed water for the constituents that the applicant has identified as pertinent to the intended use.

Reclaimed water reuse is considered technically feasible if an ~~uncommitted, adequate supply of reclaimed water~~ is available at the site of the proposed use to meet all or part of the applicant's water needs. ~~An uncommitted supply of reclaimed water means the average amount of reclaimed water produced during the three lowest-flow months minus the amount of reclaimed water that the reclaimed water provider is contractually obligated to provide to another customer or user.~~ An adequate supply of reclaimed water means a reasonable volume for the use as defined herein. In the event the ~~uncommitted~~ supply of reclaimed water available is not adequate to fully meet the project's 1-in-10 year drought demands, the applicant may request a partial allocation of water from a non-reclaimed water source. However, such partial allocation will not exceed that amount necessary to compensate for the shortfall in

~~uncommitted~~ reclaimed water supply, in light of total project demands calculated pursuant to the Basis of Review. Available at the project site means the utility has initially provided the distribution facilities at its cost to the project boundary. In the event distribution lines are not provided at the project boundary, the applicant must then provide an assessment of extending the lines to the project as a part of the economic feasibility analysis.

3. Economic Feasibility: If the applicant asserts that reuse is not economically feasible, then the applicant must provide the District with an assessment of the economic feasibility of use of reclaimed water use. In performing the assessment, the applicant shall contact the applicable reuse utility and request a letter stating that reclaimed water is not available or provide the following information and consider the response provided by the reuse utility in its analysis:

- (a) The reclaimed water rate(s) the reuse utility would charge the applicant (e.g., the cost per/1000 gallons) and any other periodic, fixed, or minimum charges for use of reclaimed water by the applicant.

- (b) The reclaimed water availability charges the reuse utility would charge the applicant in lieu of connection to the reclaimed system.

- (c) Other one-time charges for the connection to the reuse.

- (d) Whether the reuse utility helps fund potential reclaimed customers' costs to connect to the reclaimed line or convert its operation to use reclaimed water.

The applicant's economic feasibility analysis must consider all of the following:

- (a) Costs associated with purchase of a reclaimed water supply source including: i. pump and distribution costs, ii. storage costs, iii. monthly rates charged for the reclaimed water supply, and iv. costs associated with risk of loss of reclaimed supply;

- (b) Costs associated with development of an otherwise permissible supply source including: i. well, pump, and distribution; and ii. operational costs including increased fertilizer costs, where applicable, power costs, pumping, and system operation and maintenance costs;

- (c) Alteration in the rates charged by the permit applicant's business to account for costs associated with using reclaimed water; and

- (d) Other factors affecting the economic feasibility of using reclaimed water as proposed by a permit applicant in light of their particular situation.

If the reuse utility fails to respond or does not provide the information within 30 days after receipt of the applicant's request, the applicant shall 1) provide the District a copy of the applicant's written request and a statement that the reuse utility failed to provide the requested information; and, 2) complete the end user feasibility evaluation with the best available information.

40E-20.091 Publications Incorporated by Reference.

The "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – _____ ~~March 18, 2010,~~" is hereby published by reference and incorporated into this chapter. A current version of this document is available upon request.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.042, 373.0421, 373.103(4), 373.118, 373.171, 373.223, 373.229 FS. History—New 8-14-02, Amended 8-31-03, 4-23-07, 9-13-07, 2-13-08, 10-14-08, 7-2-09, 3-15-10, 3-18-10, _____.

40E-20.301 Conditions for Issuance of General Water Use Permits.

(1)(a)-(g) No change.

(h) For uses with a recommended maximum allocation which exceeds 3 million gallons per month or uses within a mandatory reuse zone, makes use of a reclaimed water source in accordance with the criteria contained in the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District", incorporated by reference in Rule 40E-20.091, F.A.C.

(i)-(k) No Change.

(2) No Change.

Rulemaking Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.036, 373.042, 373.103(4), 373.1501, 373.1502, 373.223, 373.229, 373.2295, 373.470 FS. History—New 8-14-02, Amended 8-31-03, 4-23-07, 2-13-08, 7-2-09, _____.

**CHAPTER 40E-23
CRITICAL WATER SUPPLY PROBLEM AREAS**

- 40E-23.011 Policy and Purpose
- 40E-23.021 Definitions
- 40E-23.023 Boundaries
- 40E-23.031 Implementation
- 40E-23.043 Application
- 40E-23.053 Criteria for Designation

40E-23.011 Policy and Purpose.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.023, 373.103(1), 373.216-.249, 403.064(1) FS. History–New 11-17-91, Repealed.

40E-23.021 Definitions.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.023, 373.216-.249, 403.064(1) FS. History–New 11-17-91, Repealed.

40E-23.023 Boundaries.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.023, 373.216-.249, 403.064(1) FS. History–New 11-17-91, Repealed.

40E-23.031 Implementation.

The effective date for rules established in this chapter is November 17, 1991.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.023, 373.216-.249, 403.064(1) FS. History–New 11-17-91, Repealed.

40E-23.043 Application.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.023, 373.216-.249, 403.064(1) FS. History–New 11-17-91, Amended 7-11-96, 4-9-97, 12-10-97, Repealed.

40E-23.053 Criteria for Designation.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.023, 373.216-.249, 403.064(1) FS. History–New 11-17-91, Amended 7-11-96, 4-9-97, 12-10-97, Repealed.