

M E M O R A N D U M

TO: Governing Board Members

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

DATE: September 20, 2012

SUBJECT: Authorize publication of Notice of Rulemaking to amend or repeal portions of Chapters 40E-0, 40E-1, 40E-4, 40E-41, and 40E-400 F.A.C., to repeal Chapter 40E-40 and to amend and rename the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, in accordance with the Department of Environmental Protection's (DEP's) statewide effort to improve consistency among the water management districts' and the DEP's Environmental Resource Permitting programs, and request review by the Office of Fiscal Accountability and Regulatory Reform.

Background

House Bill 7003 directed the Department of Environmental Protection (DEP), in coordination with the water management districts, to initiate rulemaking prior to adopt a statewide environmental resource permitting (ERP) rule. As required by newly-created Section 373.4131, F.S., the statewide ERP rule will:

- Be based on the existing DEP & water management district ERP rules.
- Retain regional differences necessary to address geographic variation in rainfall and other physical and natural characteristics, including the existing design and performance standards for stormwater quality and quantity currently contained in each water management district Applicant's Handbook and Basis of Review, and the existing basin-specific rules of each water management district.
- Synchronize permitting thresholds, permit types, fee categories, application content and submittal, procedures and conditions for issuance review and noticing procedures.
- Incorporate some new general permits and exemptions and will amend some existing general permits and exemptions to address developing technologies and to expedite review of certain types of minor or routine projects more quickly, and at lower cost to the applicant.
- Not substantively affect agriculture or silviculture activities.
- Not substantively change the current evaluation criteria and requirements for any other activities regulated under the ERP program.
- Not raise or lower environmental standards.

To accomplish this, DEP proposes to amend Chapter 62-330 F.A.C. to serve as the state-wide ERP rule, including all general permits that were formerly in separate rules. Thus, District rules in Chapters 40E-0, 40E-1, 40E-41 and 40E-400 F.A.C. are proposed to be amended, to reflect

Governing Board Members
September 17, 2012
Page 2

the new rule and delete duplicative language. Chapter 40E-40.F.A.C. (regarding Standard Permits) is proposed for repeal. Additionally, Chapter 62-330 F.A.C. is proposed to incorporate by reference Environmental Resource Permit Applicant's Handbooks (AH) Volume I – General and Environmental and Volume II - For Use Within the South Florida Water Management District. These volumes will replace the current Basis of Review for Environmental Resource Permits (BOR). Volume II will also be adopted into Rule 40E-4.091, F.A.C.

The existing BOR is proposed to be amended to delete general, procedural and environmental criteria. The water quality and water quantity portions of the existing BOR will be retained in the new Volume II, Applicant's Handbook, for Use Within the South Florida Water Management District. Volume II will also incorporate existing explanatory language from the Northwest Florida Water Management District's Applicant's Handbook and Hydrologic Basins and Regional Watersheds applicable to the SFWMD.

District Staff have been coordinating closely with Department staff and the staff of the other water management districts to develop the draft rule language for Chapter 62-330 F.A.C. The proposed rule language is located on the District's website and as backup documentation to the agenda item. Joint public workshops with the Department on Chapter 62-330, F.A.C. were held July 26, 2012, August 7, 2012, August 16, 2012 and September 20, 2012.

Approval of this agenda item will allow staff to proceed with rulemaking to amend and repeal the rules as necessary to accomplish the statutory requirement for state-wide ERP.

Recommendation

Authorize publication of a Notice of Rulemaking to amend and/or repeal the identified rules and request review from the Office of Fiscal Accountability and Regulatory Reform.

**Staff Contact: Anita R. Bain, Chief, Environmental Resource Permitting
Bureau; Phone (561) 682-6866**

**Susan Martin, Sr. Specialist Attorney, Office of Counsel;
Phone (561) 682-6251**