

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 4, 2012

SUBJECT: Authorize publication of Notice of Rule Development to amend Chapters 40E-0, 40E-1, and 40E-4 F.A.C., to repeal Chapters 40E-40, 40E-400 F.A.C., and to amend and rename the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District to Applicant's Handbook, 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 rule development to adopt a statewide environmental resource permitting (ERP) rule prior to October 1, 2012. 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, and 40E-4 F.A.C. are proposed be amended to reflect the new rule and delete duplicative language. Chapters 40E-40 and 40E-400 F.A.C. (regarding General

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Permits) are proposed for repeal. Environmental Resource Permit Applicant's Handbook Volume I- General and Environmental will be adopted by DEP setting forth additional procedural requirements and environmental criteria. Through this rule making effort, Applicant's Handbook Volume I and Applicant's Handbook Volume II - For Use within the South Florida Water Management District will be incorporated by reference into the District's 40E-4, F.A.C. rule. These volumes will replace the current Basis of Review for Environmental Resource Permits (BOR).

The BOR is proposed to be amended to delete general, procedural and environmental criteria; incorporate existing explanatory language from the Northwest Florida Water Management District's Applicant's Handbook Volume II; and be renamed as the Environmental Resource Permit Applicant's Handbook Volume II - For Use Within the South Florida Water Management District. Water quality and quantity criteria from the BOR will be retained. Also to be included in Volume II are Hydrologic Basins and Regional Watersheds applicable to the District.

DEP proposes to amend fee categories in order to achieve statewide consistency in fee categories. Rule 40E-1, F.A.C. will be amended to reflect these new categories. The District is working to retain current fees as close to possible with their current levels, within these new categories. However, there may be some slight increases or decreases in fees as we work to fit our current fees into these categories. A Statement of Estimated Regulatory Cost is being developed to assess these differences.

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. A draft of the rule will be available to the public on DEP's website on or before July 12, 2012. Joint public workshops with the Department will be held at District Headquarters and at the Lower West Coast Regional Service Center on July 26, 2012, August 7, 2012 and August 16, 2012.

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

Recommendation

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

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