

New Statewide Environmental Resource Permit (SWERP) Rules: The Fundamentals for Lawyers, Engineers and Consultants



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PROGRAM PRESENTED BY THE NATURAL RESOURCES COMMITTEE,
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Susan Roeder Martin is a senior specialist attorney with the South Florida Water Management District. She is an expert in environmental resource permit issues and administrative law.

Ms. Martin graduated from the University of Florida College of Law, with honors. She received her Bachelors of Science degree from Florida Atlantic University.

Ms. Martin is Board Certified in State and Federal Government and Administrative Practice. She is also accredited by the Green Building Certification Institute as a Leadership in Energy and Environmental Design (LEED) Professional.

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Mike Register is the Director of the St. Johns River Water Management District's Division of Regulatory Services which is responsible for implementing the District's Environmental Resource Permitting, Consumptive Use Permitting, Water Well Construction Permitting, and Water Well Contractor licensing programs.

Mr. Register has over 23 years of professional experience with the Water Management District in Water Resource Regulation and Data Management.

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Michelle Reiber began her career as an environmental scientist working in the Tampa Bay area. After moving to the east coast, Ms. Reiber accepted a position at the St. Johns River Water Management District where she has served in a number of roles.

In her current position as the Bureau Chief of the District's Environmental Resource Regulation program, Ms. Reiber is responsible for providing programmatic oversight of the permitting programs contained within the Bureau including ERP permitting and compliance, agricultural assistance, FDOT mitigation, and mitigation banking.

Ms. Reiber received a Bachelor of Science degree in Biology from the University of South Florida and a Master's of Science degree in Environmental Science from Florida Tech.

She is a certified Professional Wetland Scientist and has 25 years of experience in the environmental field.

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Since May 2011, Mark Thomasson has served as the Director of the Division of Water Resource Management at the Florida Department of Environmental Protection where he and his staff oversee all water, wastewater, stormwater, wetland, mining, oil & gas, and beach and coastal permitting for the state.

Mr. Thomasson has a Bachelor of Science degree in Civil Engineering from Louisiana State University and Masters of Science in Environmental Engineering also from Louisiana State University. He is a Professional Engineer in Florida and Georgia and an active member in the Florida Engineering Society.

Prior to joining the State, Mr. Thomasson worked as a consulting engineer with over 20 years of experience in site development, stormwater and transportation projects in Florida and Georgia.

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Bob Higgins is a certified professional engineer with over 30 years of experience specializing in water resources engineering.

In 1976, Mr. Higgins graduated from the University of South Florida with a B.S. in Civil Engineering and an M.S. in Water Resources Engineering.

His professional recognitions include the following: Palm Beach County Groundwater & Natural Resource Protection Board Member, 1985-2007; AWRA Florida Section Board of Directors, 1985-present; AWRA Florida Section President, 2006; Florida Engineering Society (FES) – President, 2010-2011; Water Management Institute President & Founding Member, 1993 to present; and FES President's Award 1993 & 1994.

History & Structure of SWERP

Susan Roeder Martin, SFWMD

History

- Florida's surface water resources for **new development** are regulated pursuant to the Environmental Resource Permit (ERP) program under Part IV of Chapter 373, Florida Statutes (Fla. Stat.).
- In the early 1990's, subsection 373.414(9), Fla. Stat., directed DEP and the WMDs to adopt the 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 for new development. This includes:

- new activities in uplands that generate stormwater runoff from upland construction;
- dredging and filling in wetlands and other surface waters, including residential, commercial and agricultural development; and
- construction of roads.

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 subsection 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

- Each of the five WMDs and DEP have historically 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 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.

Legislation

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.



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.



Legislative Requirements

- This rule was required to provide for the statewide, consistent regulation of the “construction, alteration, operation, maintenance, repair, abandonment, and removal of any stormwater management system, dam, impoundment, reservoir, appurtenant work, works, or any combination thereof.”
- However, the rule still was required to account for differing physical and natural characteristics within individual WMDs.

Statutory Requirements

As required by section 373.4131, Fla. Stat., the new rules shall “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.

Chapter 62-330, F.A.C.

To accomplish this statutory directive, DEP, in coordination with the five WMDs, amended Chapter 62-330, F.A.C., to serve as the Statewide Environmental Resource Permit Rule which has been commonly referred to as “SWERP.”

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.

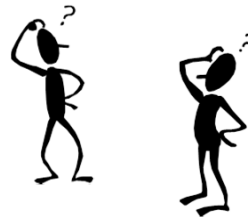
Summary of Changes

What changed?

- Rule locations and structure
- Permit types and thresholds
- Conceptual approvals
- Fee categories
- Statewide forms
- New and amended exemptions and NGPs

What did not change?

- Environmental Criteria
- Water Quality and Quantity Criteria



What SWERP Does Not Do

- It is not a “new” regulatory program;
- It is not a statewide stormwater rule;
- It does not create new rules for agriculture or silviculture;
- It does not increase regulatory burdens; and
- It does not change other rules related to ERP, such as UMAM, mitigation banking, or state-owned submerged lands rules.

What is not regulated?

The following activities are not governed by SWERP:

- operation and maintenance of works legally in existence;
- exempt activities;
- activities approved in an issued permit;
- activities proposed in a complete application prior to October 1, 2013;
- modifications that lessen or do not increase impacts;
- activities that qualify for the “10-2” general permit; and
- activities that do not exceed any of the “thresholds”.

Structure of SWERP Rules

- SWERP is implemented in Chapter 62-330, F.A.C., and in the two-volume Applicant’s Handbook (AH).
 - AH Vol I
 - AH Vol II
- Substantive ERP rules under other chapters were incorporated into 62-330.
- Where differences existed among the previous rules, these were reconciled.
- Many forms and documents incorporated by reference.

Chapter 62-330, F.A.C.

- Applies statewide and is applied by DEP and the 5 WMDs.
- Establishes the scope of the ERP regulatory program, including exemptions from permit requirements.
- Contains basic administrative procedures.
- Incorporates standard, forms for use statewide.
- Sets forth rules for general permits.
- It is used in conjunction with Applicant's Handbook Volumes I and II.

Florida Department of Environmental Protection



Division of Water Resource Management

Implementation of SWERP

**Mark Thomasson, FDEP
November 5, 2013**





How did we go about it?

- Seven workshops via statewide webinars
- Rulemaking Forum
- Online Forum



What does it do?

VERY similar to existing ERP, with:

- More standardization (substantively based on existing rules, with reconciliation between WMDs)
- Get applications complete more quickly
- Reduced regulatory burdens, added streamlining
- More consistency
 - DEP Oversight
- Similar costs
- No reduction of environmental protection



How does it do it?

DEP adopted the following:

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

SR, SJR, SWF, SF WMDs (& DEP for NFWWMD) adopted:

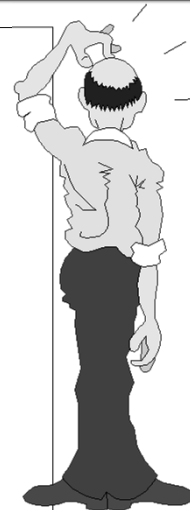
- A.H. **Volume II** to preserve geographical differences in water quality and quantity requirements
- WMDs repealed existing rules superseded by the above & revised others to conform to the above (i.e. 40X-4)



62-330 Proposed vs. Existing What will it do to me?

Generally....

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





62-330.401-.635 -- General Permits

- .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 & sediment controls to not cause or contribute to WQ violations
 - Temporary construction access in wetlands & other waters
 - 4 conditions for “aquatic” listed species (manatees, turtles,)
 - Historical resources
 - Flooding and surface water levels and flows
- .407 - .465 Specific general permits



12 New GP's

- .407 Geotechnical work
- .449 Airport airside
- .450 Urban infill & 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 Governmental entities environmental restoration & enhancement
- .632 Low-profile oyster habitat
- .635 Soil remediation



11 Revised GP's

- .428 FVPs
- .431 Installation of rip rap
- .437 Fences
- .439 Culverted driveways
- .443 Governmental minor bridges
- .447 Governmental minor activities
- .453 Underground cable & conduit
- .457 Subaqueous utility crossings
- .463 Mosquito control (combined 2)
- .475 SFR in isolated wetlands & other minor activities
- .492 Prospecting



4 Repealed GP's

- .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)



Applicant's Handbook – Volume I


- Applies statewide
- To be used in conjunction with 62-330 and includes:
 - Background and related rules;
 - Definitions
 - Procedures for applying for and processing applications, notices, and formal and informal wetland determinations;
 - Erosion and sediment control criteria;
 - Operation and maintenance requirements;
 - Environmental Criteria;
 - Submittal information; and
 - Standardized forms.



What Happened with Fees?




- Balance Fairness & Simplicity
 - Small Projects – Small Fees
 - Simpler Structure
- Generally consistent categories
- Actual fee amounts may vary between Agencies
- Overall fee structure – revenue neutral
- No Change to:
 - Verification of exemptions, General Permits
 - Mitigation banks, enhancement/restoration
 - Most types of permit modifications



Overall “Changes”

- Singular rule
- Common AH I
- Common Fee Structure
- Conceptual Permit Duration
- GP’s are the same
- Registered Professional replaced “engineer” where appropriate
- Removed preference for on-site mitigation



FloridaWaterPermits.org

Florida’s Water Permitting Portal

Portal Home
Types of permits
Search for CUPs
Search for ERPs


Welcome to the permitting portal for the Florida Department of Environmental Protection (DEP) and Florida’s water management districts. This portal provides links to information about water resource permitting in Florida, and links to DEP and the water management districts to:







- Apply for permits and other authorizations, including:
 - Environmental Resource Permits * (and authorizations to use state-owned submerged lands, where applicable)
 - Consumptive and Water Use Permits
 - Well Construction Permits
 - Works of the District Permits
- Submit monitoring reports and other compliance documentation
- Search for information regarding existing permits and applications
- Find program and contact information

DEP and the water management districts issue a variety of permits to manage and protect Florida’s water resources. These resources include wetlands, rivers, streams, lakes, ponds, estuaries, coastal systems, springs, groundwater and surface water supplies.

Authorizations may be needed for activities including construction or abandonment of wells and systems, large volume water usage, development or new construction, stormwater management and wastewater discharges and activities in, on or near wetlands and other water resources.

Map instructions
Move your mouse pointer over the name of DEP or a water management district to see that agency’s region of responsibility. Click on an agency’s name to be taken to its permitting website.



 **Florida Department of Environmental Protection**
 **Northwest Florida Water Management District**
 **Suwannee River Water Management District**
 **St. Johns River Water Management District**
 **Southwest Florida Water Management District**
 **South Florida Water Management District**

Now DEP Applications Online Too

MyFDEP
Florida Department of Environmental Protection

DEP Home | About DEP | DEP Programs | Contact DEP | Log Out

Date: July 12, 2013 |
Welcome, Bhavik Patel. You are logged on with a role of Site Administrator.
This is a test website. The production website is available at <http://www.fdepportal.com> |

Home

Introduction (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100)

Application Purpose

Authorization Process | Help | About

Application Purpose

I would like to submit : *

A Request for Verification of Exemption from Permitting
 A Notice of Intent to Use a General Permit
 An Application for an Individual or Conceptual Permit

This submittal will also constitute a request for authorization to use State-Owned Submerged Lands, and/or a Federal Dredge and Fill Permit, as applicable to your project.

Be advised that submittal of any request, notice or application using this system constitutes the applicant's consent for Department staff to (upon providing reasonable notice) enter and inspect the property(ies) upon which the project is located, as necessary, to document conditions, verify compliance, etc.

Submittal of an application via this system constitutes an application only for the type of verification or authorization selected above, and not for any other authorization, as may be required by the Department, or other federal, state and local agencies. Examples of other authorizations that are often required for activities requiring ERP permits include, but are not limited to:

- National Pollutant Discharge Elimination System (NPDES) Generic Permit for Stormwater Discharge from Large and Small Construction Activities
- Well Construction Permit
- Consumptive Use or Water Use Permit
- Works of the District Permit
- Generic permit for Discharge of Produced Groundwater
- Coastal Construction Permit
- Local building permits
- US Army Corps of Engineers Federal Dredge & Fill Permit

THE MECHANICS OF SWERP

Michael A. Register, P.E., Director **Michelle Reiber, Bureau Chief**
Division of Regulatory Services **Bureau of Environmental Resource Regulation**

St. Johns River Water Management District

Statewide Consistency Changes to ERP Rules (62-330, F.A.C.)

- Amended permit types and thresholds
- Statewide application form, fee categories
- New and amended exemptions, GPs, and conceptual approvals
- Applicant's Handbooks to be used with 62-330
 - Applicant's Handbook Vol. I (Applies Statewide)
 - Applicant's Handbook Vol. II (specific to each WMD)

Pre-SWERP Permit Types

SJRWMD	SFWMD	SWFWMD
	No-Notice 10-2	
Noticed General	Noticed General	Noticed General
Stormwater ERP		Minor Systems ERP
Standard ERP	Standard General ERP	Standard General ERP
Individual ERP	Individual ERP	Individual ERP
Conceptual ERP	Conceptual ERP	Conceptual ERP

Statewide SWERP Permit Types

DEP and all WMDs
General
Individual ERP
Conceptual ERP

Statewide Rule (62-330, F.A.C.) Applies to FDEP and all WMDs

- **General and procedural**
 - **Definitions, thresholds, permit types, exemptions**
- **Formal Determinations**
 - **General information pertaining binding determinations of the boundaries of wetlands and other surface waters**
 - **Formal Determination procedures in Section 4.5 2, Vol. 1, A.H.**
- **Authorizing and Administering**
 - **Conditions for issuance, modifications, duration, permit transfers, general conditions, variances**

~~• **Noticed General Permits**~~

Statewide Consistency Permit Thresholds (62-330.020)

- **Thresholds (for a complete list of thresholds see 62-330.020)**
 - 4000 s.f. impervious subject to vehicular traffic
 - 9000 s.f. total impervious
 - Work in, on, over wetlands or other surface waters
 - Capable of impounding a volume of >40 acre-feet
 - A dry storage facility with >10 vessels associated with launching facilities
- **Individual ERP required if:**
 - Activity is not exempt, does not qualify for GP or “10/2” self-certification, and exceeds permit thresholds

SJRWMD Applicant's Handbook Volume II

- **SJRWMD merged the MSSW, Stormwater, and Agriculture A.H.'s into a single A.H.**
- **Permit Information Manual**
 - **Volume II A.H. (Specific to WMD and incorporated by reference)**
 - **Design Aids (Specific to WMD and not incorporated by reference)**
- **The arrangement of the Volume II Handbook of other WMDs**

SJRWMD Applicant's Handbook Volume II Organization

- **Part 1 – Introduction, Organization, & District-specific Thresholds and Exemptions**
- **Part 2 – General Criteria & Definitions**
- **Part 3 – Water Quantity/Flood Control**
- **Part 4 – Water Quality**
- **Part 5 – BMP's**
- **Part 6 – Basin Criteria**
- **Part 7 – Agriculture**
- **Appendices**



What Sections Do I Fill Out?

Does the project Involve...	A	B	C	D	E	F	G	H
Fill in wetlands or waters for single-family home (SFH)	X	X						
Docks, shoreline stabilization, seawalls, associated with SFH	X	X				X [#]		
Wetland Impacts	X		X					
A marina, multi-slip docks, offshore structures or dredging	X		X	X		X [#]		
Work in SSL	X		X			X		
Construction of a water management system	X		X*		X			
Constructing a mine	X		X*					X
Creating a mitigation bank	X		X		X**		X	

*Assumes work in wetlands,
 ** Assumes project includes a water management system
 # Assumes work in SSL



Questions?



Thank You

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