

IMPAIRED WATERS RULE DEVELOPMENT

Sharon M. Trost, P.G., AICP
Director, Regulation Division
South Florida Water Management District

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Rule Development

- Governing Board authorized publication of Notice of Rule Development in October 2013.
- Workshops held November in Ft. Myers, Kissimmee, and West Palm Beach.

The Existing Impaired Waters Memo

- The Impaired Waters Memo is used as guidance on the applicability of existing District rules for permitting of projects that discharge to Impaired Waters or Outstanding Florida Waters (OFW).
- The original Impaired Waters Memo was issued in June 2004 and was updated in May 2009.
- The memo was updated in 2013 to reflect new rule numbers as a result of the adoption of the new SWERP rules.

Existing Statutes and Rules

- “In instances where an applicant is unable to meet state water quality standards because existing ambient water quality does not meet standards and the system will contribute to this existing condition, the applicant must implement mitigation measures that are proposed by or acceptable to the applicant that will cause **net improvement** of the water quality in the receiving waters for those parameters that do not meet standards.”
§373.414(1)(b)3, Fla. Stat., and 62-330.301(2), F.A.C.
- Existing District rules require **additional reasonable** assurances for projects proposing to discharge to an OFW or waterbody that does not meet applicable water quality standards.

What is Changing?

- This rule making is limited to making the Impaired Waters Memo a part of District rules.
- The intent is not create new standards.
- This rule making is not designed to accomplish the objectives of the statewide stormwater rule, previously considered by DEP.

Incorporation

- The concepts from the existing impaired waters memo will be incorporated as Appendix E into the Environmental Resource Permit Applicant's Handbook Volume II.
- Changes are made to the memo to transform it from guidance to rule language.

Required Analysis under Appendix E

The applicant must submit the following for each project discharging to an OFW or impaired water:

- Construction Phase Pollution Prevention Plan;
- Operation Phase Pollution Prevention Plan;
- Site Specific Water Quality Analysis.

Additional Source Controls, BMPs and other Protective Measures

An additional 50% water quality treatment volume must be provided for discharges to OFWs and impaired water bodies. This will continue to be required.

In addition, if the site specific water quality analysis does not demonstrate that the OFW will not be degraded or that a net improvement will occur in an impaired water body for impaired parameters, then additional protective measures shall be included:

- Source controls
- BMPs or
- Other Protective Measures.

Examples of Protective Measures

- Increased Hydraulic Residence Time
- Pollutant Source Controls
- Conveyance and Pretreatment BMPs
- Water Quality Treatment Enhancement

Criteria Flexibility

- While the incorporation of this Memorandum into Volume II will mean that it will be a rule, criteria flexibility is required to be maintained under existing rules.
- Rule 1.1 of Volume II provides that: “an applicant may propose alternative designs to those provided in this Volume for consideration by the Agency.”
- If this is done, additional reasonable assurances will be required to demonstrate that the alternative design meets the conditions for issuance of an environmental resource permit.

Proposed Timeline

- April 2014: Present proposed rule language to Governing Board
- June 2014: Public hearing to adopt proposed rule
- July 2014: Rule becomes effective (if no changes since publication)
- August: Rule with changes becomes effective

Questions / Discussion