

IMPAIRED WATERS RULEMAKING

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South Florida Water Management District

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Governing Board Meeting / Public Hearing

Recommendation

Adopt amendments with changes to Rule 40E-4.091, F.A.C., and the “Environmental Resource Permit Applicant’s Handbook Volume II: For Use Within the Geographic Limits of the South Florida Water Management District,” to incorporate by reference the Impaired Waters Memorandum.

This Memorandum is formally called the Procedure for ERP Water Quality Evaluations for Applications Involving Discharges to Outstanding Florida Waters and Water Bodies that Do Not Meet State Water Quality Standards.



The Existing Impaired Waters Memo

- The Impaired Waters Memorandum is currently 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 Memorandum was issued in June 2004, updated in 2009 and 2013, and the latter is in use today.



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



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.



Changes Based on Comments Received

- JAPC - non substantive and clarifying language
- DEP - statutory rather than rule reference
- Landscape Architects - “**engineering practices**” to “**design practices**”
- Conservancy - delete equation for treatment efficiency of BMPs in series



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