



*Florida Department of
Environmental Protection*

*Chapter 62-344
Rule Development
Workshop*

July 26, 2011



AGENDA

- Opening and Introduction
- Presentation (Questions may be asked)
 - Brief Rule Background & Overview
- Public Questions and Comments
- Next Steps
- Closing





62-344 – Delegation of ERP program to Local Governments

- Existing rule – adopted 1995
- Authority – Section 373.441, F.S.
- Partners during adoption of original rule:
 - DEP
 - FLERA
 - Hillsborough, Miami-Dade Counties
 - Representatives of other local governments
 - WMDs





Overview

- Only addresses delegations under part IV of Chapter 373, F.S.
 - ERP (water quality, water quantity, dredging & filling)
 - NOT mangroves or NPDES
- NOT a preemption rule or statute
 - Voluntary
 - Local Govt. programs not required to be delegated (future legislation could change that)





Current Delegations

- In Effect:
 - Broward Co. (2001) [from DEP & SFWMD]
- Petitions Under Review
 - EPC Hillsborough Co. [from DEP; petition complete]
 - Miami-Dade Co.
- Petition In Development
 - Orange County





Existing Rule

- Content of Petition
- Procedures & Criteria for Review
 - Will delegation provide for an efficient, effective, and streamlined permitting program & maintain environmental protection?
 - Does the local government have financial, technical, and administrative capabilities and desire to effectively & efficiently implement and enforce the program?





Existing Rule (2)

- Full or partial delegation
 - Activities that are responsibility of DEP
 - Activities that are responsibility of WMDs
- Local govt. can use:
 - Rules of DEP & WMDs + stricter/non-conflicting provisions of local govt.
 - Rules, ordinances, or regs of local govt. that incorporate by reference DEP & WMD rules + stricter/non-conflicting provisions
- Provisions for identifying & reconciling duplicative permitting & stricter local standards





Existing Rule (3)

- Additional considerations; effect on:
 - JCP
 - Concurrent processing of SSL authorization
 - Assumption of federal d/f permitting program or establishment of SPGP
 - Waste facility permitting
 - Mining
 - Other regulatory, resource planning, land management, or land acquisition programs
- Use of ch. 120, F.S., provisions or equivalent local procedures for such things as:
 - Noticing
 - Notice of Rights
 - Administrative Hearings
 - Judicial Review
 - Enforcement





Existing Rule (4)

- Cannot delegate:
 - Activities proposed, owned, or operated by local government
 - Activities outside JD of local govt. (except mitigation allowed)
 - Mitigation banks
 - FDOT
 - U.S. Coast Guard, Dept. of Defense
 - Central Florida Beltway
 - Electrical distribution & transmission lines
 - Natural gas or petroleum exploration, production, transmission, or distribution, including pipelines
 - Activities w/in Wekiva River & Econlockhatchee River Hydrologic Basins & SJRWMD Sensitive Karst Areas Basin





Delegation Agreements

- Responsibilities of parties specified in Delegation Agreement
- Delegation Agreement must be incorporated by reference in a rule (Ch. 62-113, F.A.C.)





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*Everything Discussed
So Far is Existing*

So... Why are We Here?



Why We're Here:

- 2010 Legislative Amendments (SB 1752; Chapter 2010-147, Laws of Florida) amended s. 373.441, to:
 - Provide that only DEP can delegate ERP program (no longer delegations by WMDs)
 - Provide a process for a local govt. to petition the Governor and Cabinet for a review of a delegation request that has not been approved or denied within 1 yr. of being initiated





That's it!

- Amendments to conform to legislative changes
- Other minor clean-up & updates, including deleting an unnecessary form
- Had to open most rule sections to do this
- Changes proposed do not trigger need for a SERC
- Changes approved by the Office of Fiscal Accountability and Regulatory Reform





Florida Department of Environmental Protection

Rule Draft:

Existing Text

~~Proposed Text to be Deleted~~

Proposed New Text



Questions? Comments?





Next Steps

- Consider comments
- Possible revisions to rule draft
 - Will revisions delay implementing mandated statutory changes?
 - Will revisions trigger the need for a SERC?
 - Will revisions expand scope such that Legislative ratification of the rule is required?
- More workshops?
- Approval for and publication of a Notice of Proposed Rulemaking.....
 - Possible hearing
 - Possible Notice of Change
- File rule certification
- Rule effective





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FDEP Web Site

<http://www.dep.state.fl.us/water/wetlands/erp/rules/guide.htm>

