



Florida Department of Environmental Protection

State 404 Program Workshop Chapters 62-330 and 62-331, F.A.C.





Scheduled Workshops

May 30: 2600 Blair Stone Road, Tallahassee, 32399

May 31: 3319 Maguire Boulevard, Orlando, 32803

June 1: 2295 Victoria Avenue, Fort Myers, 33901



Public Comments

- Oral comments accepted at workshops
- Written comments accepted through **June 15, 2018**
- Submit comments to:

Jessica.Melkun@dep.state.fl.us



Statutory Authority

The department has the power and authority to assume, in accordance with 40 C.F.R. part 233, the dredge and fill permitting program established in s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and rules promulgated thereunder.

Ch. 2018-88, Laws of Florida



Proposed Changes to Chapter 62-330, F.A.C.



62-330.010 & .050, F.A.C.

62-330.010 Purpose and Implementation

- Updates effective dates of WMDs' Applicant's Handbooks, Vol II

62-330.050 Procedures for Review and Agency Action on Exemption Requests

- Updates effective date of exemption verification form, which will be revised to include 404 language
- Creates subsection (10), recommending a person requesting verification of an exemption to waive the timeframes in subsection (4) and (5) if project requires 404 authorization
 - o Allows for review of 404 authorization and verification of ERP exemption at the same time
 - o Ensures consistency
 - o Reduces potential need for project modifications



62-330.060 & .090, F.A.C.

62-330.060 Content of Applications for Individual and Conceptual Approval Permits

- Updates name of application form and effective date

62-330.090 Processing of Individual and Conceptual Approval Permit Applications

- Creates subsection (8), recommending applicants waive the ERP issuance timeframes if project requires 404 authorization
 - o Allows for issuance of 404 and ERP permit at the same time
 - o Ensures consistency
 - o Reduces potential need for project modifications



62-330.201, F.A.C

62-330.201 Determinations of the Landward Extent of Wetlands and Other Surface Waters

- Removes the word “formal” from the section title
- Creates new subsection (1): requires staff to use a data form to document verifications of determinations of the landward extent of wetlands and other surface waters for formal determinations and applications for individual and conceptual approval permits
- Creates new paragraph (a): For delineation, requires that at least one data point along the delineation boundary be verified and documented using two data forms representing:
 - o Waterward area adjacent to the data point
 - o Landward or upland area adjacent to the data point
- Creates new paragraph (b): For identification/conclusions regarding absence/presence of surface waters, wetlands or uplands, requires at least one data point within homogenous areas of classification be verified and documented using one data form
- Changes subsection (1) to (2) and titles it “Formal determinations”
- Formats the rest of the section to conform with the added language
- Updates the effective date of the formal determination petition form



62-330.340, .360, & .402, F.A.C.

62-330.340 Transfer of Permit Upon Change in Ownership or Control

- Updates name of transfer form and effective date

62-330.360 Emergency Authorizations and Actions

- Updates effective date of emergency authorization form

62-330.402 Submittal and Processing of General Permits

- Updates name of general permit form and effective date
- Creates subsection (7), recommending that a general permit applicant waive the general permit issuance timeframes if the project also requires 404 authorization
 - o Allows for review of 404 and ERP general permit authorization at the same time
 - o Ensures consistency
 - o Reduces potential need for project modifications



Applicant's Handbook Volume I

- Clarifications and explanation of changes within 62-330
 - o Types of authorizations
 - o Determinations of the landward extent of wetlands and other surface waters



State 404 Program

Chapter 62-331, F.A.C.



State Assumed Waters

[T]hose waters of the United States in which the Corps suspends the issuance of section 404 permits upon approval of a State's section 404 permit program by the [EPA] Administrator under section 404(h).

40 CFR § 232.2



62-331.010, F.A.C.

62-331.010 Intent, Purpose, and Implementation

- State 404 Program governs all dredging and filling in assumed waters
- Chapter 62-340 used to determine assumed waters boundary
- Term “Agency” applies to DEP or District, as applicable
- Used in conjunction with:
 - o Chapter 62-330
 - o ERP Applicant’s Handbook Volume I
 - o State 404 Program Applicant’s Handbook
 - Modeled after ERP Applicant’s Handbook
 - Includes explanations and clarifications of this chapter
 - o Chapter 62-342
- If there is a conflict between this chapter and the above rules, this chapter controls
- Applicants must receive authorizations for both ERP and 404 permits prior to beginning an activity



62-331.020 through .030, F.A.C.

62-331.020 Regulated Activities

- Permit required prior to conducting any dredge or fill activities in, on, or over assumed waters, unless qualifies for federal exemption
- Two types of permits available:
 - o General
 - o Individual

62-331.030 Definitions

- Terms used in this chapter are defined in the State 404 Program Applicant's Handbook



62-331.040 through .051, F.A.C.

62-331.040 Procedures for Review and Agency Action on Exemption Requests

- Notice not required for exempt activity unless required under Chapter 62-330
- ERP exemptions not applicable
- Follow ERP procedures for verification of qualification to conduct exempt activity

62-331.050 Individual Permits

- Required if doesn't qualify for an exemption or general permit

62-331.051 Application for an Individual Permit

- All activities reasonably related to the same project should be included in application



62-331.052, F.A.C.

62-331.052 Processing of Individual Permit Applications

- Review for administrative and technical completeness within 30 days of receipt
 - o Administratively complete - application that contains all the items required under the public noticing requirements of section 62-331.060
 - o Technically complete – application where each application item is adequate to allow the Agency to determine if the proposed project complies with Chapter 62-331. If a project requires both an ERP and a State 404 Program authorization, the State 404 Program review shall not be considered complete until the ERP review is complete
- Timeframes for completeness review and RAI described in ERP Handbook Vol I apply
- ERP timeframes for issuance don't apply
- Default issuance provisions in Chapter 120 don't apply



62-331.052, F.A.C. (Cont-1)

- Public notice provided within 10 days of determining that application is administratively complete
- If public notice sent to EPA, EPA has 30 days from receipt to *respond*
- If EPA doesn't respond, the final permit decision is made within 60 days after either:
 - Close of public comment period OR
 - Project declared technically complete (whichever occurs later)
- If EPA does respond, or if the Agency fails to accept recommendations from affected state or tribe, permit not issued until:
 - After receipt of recommendations OR
 - Within 90 days of EPA's receipt of notice (whichever occurs first)



62-331.052, F.A.C. (Cont-2)

- If EPA objects or includes requirements for a permit condition, the Agency may not issue a 404 permit unless steps required by EPA to eliminate the objection have been taken
- EPA may hold a public meeting on objection/requirement; request must be done within 90 days after Agency receipt of objection/requirement
- After the meeting, and once EPA gives the Agency notice of its decision, the Agency has 30 days to:
 - If EPA withdrew the objection/requirement, and the application is technically complete, issue the 404 permit OR
 - If EPA hasn't withdrawn its objection/requirement, either:
 - Issue a permit that satisfies EPA's objection;
 - Deny the permit; OR
 - Take no action (Corps processes the 404 permit)



62-331.053, F.A.C.

62-331.053 Additional Conditions for Issuance of State 404 Program Individual Permits

- Subject to 62-330.301 and .302
- Alternatives analysis to look at practicable alternatives
 - o Practicable alternatives include:
 - Activities that don't involve dredging or filling
 - Locations that would have less adverse impact
 - o Alternative = practicable if available and capable of being done after taking into consideration cost, existing technology, and logistics
- Special aquatic site presumption
- Proposed activity shall not adversely affect aesthetics



62-331.053, F.A.C. (Cont-1)

- Permit cannot be issued when:
 - o Inconsistent with this chapter and CWA
 - o Appropriate steps haven't been taken to minimize potential adverse impacts
 - o EPA's objection to issuance hasn't been resolved
 - o Proposed activity would be located in a restricted area pursuant to 404(c) of the CWA
 - o Corps determines that anchorage and navigation of any navigable waters would be substantially impaired



62-331.054, F.A.C.

62-331.054 General Conditions for State 404 Program Individual Permits

- Shall contain ERP conditions, modified where necessary to contain applicable references to this chapter
- Any permit violation constitutes a violation of the CWA, Part IV of Chapter 373, and this chapter



62-331.060, F.A.C.

62-331.060 Public Notice

- Public notice provided:
 - o Within 10 days of determining application is administratively complete
 - o Within 10 days of notifying permittee of revocation/suspension of permit
 - o Within 10 days of issuing an emergency field authorization
 - o Prior to any scheduled public meeting for such projects
- Public notice given to:
 - o Any agency with jurisdiction over activity/project site
 - o Owners of property adjoining proposed project site
 - o State or tribe that may be affected by proposed activity
 - o Persons who have requested copies of public notices



62-331.060, F.A.C. (Cont-1)

- Commenting period lasts for 30 days after the date the notice is published, except for certain projects like mosquito control activities, which have a 15 day commenting period
- Public meeting
 - Can be held at Agency discretion or requested by the public during commenting period
 - Must be noticed at least 30 days prior to scheduled date
 - Public commenting period extended to the close of public meeting, or later if presiding officer chooses
- Any potentially affected state or tribe may submit comments during the public commenting period; if recommendations not accepted, Agency must notify the state/tribe and EPA



62-331.070, F.A.C.

62-331.070 Water Quality and Coastal Zone Consistency Review

- Compliance with applicable state water quality standards and the Coastal Zone Management Program are required
- 404 permit will not be issued unless activity is exempt under Chapter 62-330 or applicable ERP permit is issued



62-331.080, F.A.C.

62-331.080 Modification, Suspension, or Revocation of Permits

- Modification conducted in accordance with Chapter 62-330 and ERP Applicant's Handbook Vol I, as applicable
- Suspension/revocation conducted in accordance with Chapter 373
- Also subject to the following:
 - o Agency may reevaluate permit
 - o Individual permits not extended beyond five years from effective date
 - o General permits will not be extended
 - o Minor modifications not subject to public noticing requirements
 - o Major modifications subject to public noticing requirements, but only conditions subject to modification re-opened
 - o Revocation/suspension effective immediately upon permittee's receipt of notification
 - o Public notice of revocation/suspension conducted in accordance with 62-331.060



62-331.090 through .100, F.A.C.

62-331.090 Duration of Permits

- 404 general permits effective for a fixed term not to exceed five years
- 404 individual permits expire no later than five years from effective date

62-331.100 Transfer of Permit Upon Change of Ownership or Control

- Transfers conducted in accordance with 62-330.340



62-331.110 through .120, F.A.C.

62-331.110 Emergency Authorizations

- May be issued to abate emergency condition
- Emergency conditions –pose an imminent or existing serious threat or danger and require immediate action to protect public health, safety, or welfare, or the water resources of the Agency
- Carelessness/lack of planning not sufficient
- Limited to time required to complete emergency action
- May be terminated at any time
- Notice published no later than 10 days after issuance date
- If required by emergency authorization, the permittee shall, within 90 days of authorization issuance, apply for a 404 permit

62-331.120 Fees

- No fees charged for State 404 Program



62-331.130, F.A.C.

62-331.130 Mitigation

- Accomplished in accordance with ERP Applicant's Handbook Vol I
- Mitigation hierarchy, in order of most preferred method:
 - o Mitigation bank credits
 - o Corps in-lieu fee program credits
 - o Permittee-responsible mitigation under a watershed approach
 - o Permittee-responsible mitigation through on-site and in-kind mitigation
 - o Permittee-responsible mitigation through off-site and/or out-of-kind mitigation



62-331.130, F.A.C. (Cont-1)

- Federal credits from mitigation banks or in-lieu fee programs accepted when appropriate
- Mining reclamation activities may be appropriate mitigation
 - o Additional mitigation required if onsite reclamation activities don't fully offset adverse impacts
 - o If additional mitigation required, must follow mitigation hierarchy
 - o Time lag provisions in existing state law not applicable to mitigation for 404 permits or compliance actions



62-331.140, F.A.C.

62-331.140 Mitigation Banks

- Reviewed and processed in accordance with Chapters 62-330 and 62-342, with additional provisions
- Interagency Review Team (IRT)
 - Review documentation for establishment and management of mitigation banks
 - Facilitate establishment of mitigation banks through development of mitigation bank instruments
 - Review requests for credit releases
 - Chaired by the Agency, co-chaired by the Corps (when appropriate), and includes federal and state representatives
- Mitigation bank credits may be available to provide mitigation for impacts permitted by the Corps when the instrument has been signed by the Corps



62-331.160 & .200, F.A.C.

62-331.160 Use of Formal Determinations

- Valid formal determination in accordance with ERP rules may be used in a 404 permit application

62-331.200 Policy and Purpose of General Permits

- Minimal individual and cumulative adverse impacts
- Mitigation may be required
- Notice to the Agency may be required
- Valid for a set five-year period



62-331.201 through .242, F.A.C.

62-331.201 Conditions for State 404 Program General Permits

- Subject to ERP general conditions for all general permits (except for language re: permit duration)
- Subject to other conditions, such as:
 - o Aquatic life movements
 - o Water supply intakes
 - o Manatees and sea turtles

62-331.210 through .242 General Permits

- 33 general permits
- Based on Corps nationwide permits



Questions/Comments?

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Comments due June 15, 2018