



Processing State 404 Program Permits

August 18, 2020



Permit Processing

***Implementation of State 404 Program,
Chapter 62-331, F.A.C.***



ERP & State 404

Regulation

- **Environmental Resource Permitting (ERP)**
 - **Rule 62-330.020, F.A.C., (2) Unless the activity qualifies under subsection (1), above, a permit is required prior to the construction, alteration, operation, maintenance, removal, or abandonment of any project that, by itself or in combination with an activity conducted after October 1, 2013, cumulatively results in any of the following:**
 - **(a) Any project in, on, or over wetlands or other surface waters**
- **State 404 Program**
 - **Rule 62-331.020, F.A.C., (2) Unless an activity qualifies under subsection (1), above, a permit is required prior to conducting any dredge or fill activities in, on, or over state-assumed waters.**



Forms

404 Handbook 4.3

Authorizations Needed	404 Exemption	404 General Permit	404 Individual Permit
No ERP	Use form 62-330.050	Use form 62-330.402(1)	Use form 62-330.060
ERP Exemption	Use form 62-330.050	Use form 62-330.402(1)	Use form 62-330.060
ERP General Permit	Use form 62-330.402(1)	Use form 62-330.402(1)	Use form 62-330.060
ERP Individual Permit	Use form 62-330.060	Use form 62-330.060	Use form 62-330.060
ERP Conceptual Approval Permit	Use form 62-330.060	Use form 62-330.060	Use form 62-330.060

Table 4.3 – Application form matrix.



Fees

**No additional
processing fees**



OneDEP + *Implementation*

- **Department of Environmental Protection**
 - **District offices**
 - **Tallahassee Submerged Lands and Environmental Resource Coordination (SLERC), Mining and Reclamation, and Mitigation Banking Programs**
- **State 404 Program Applicants Handbook**
- **Interagency Coordination**



Certified Wetland Evaluator

- **Chapter 62-340, F.A.C.**
- **Chapter 62-345, F.A.C.**
- **Verify delineations and impacts associated with State 404 program permits**





Authorizations

Exemptions

General Permits

Individual Permits



State 404 Program

Requests for Authorization

- **Exemption**
 - **Verification of Exemption**
- **General Permit**
 - **Notice of Intent to Use a General Permit**
- **General Permit**
 - **No notice**
- **Individual Permit**
 - **Application for Individual and Conceptual Approval Environmental Resource Permit, State 404 Program Permit, and Authorization to Use State-Owned Submerged Lands**



Quick Review

When is State 404 Program authorization needed?

- Discharge...
- ...Of dredged or fill material
- From a point source
- Into state-assumed waters (~~WOTUS~~)



Sequence of Review

404 Handbook, section 8.2

(a) Determine whether the activity qualifies for a State 404 Program exemption or general permit. If it is not covered by an exemption or general permit, then:



Exemptions

Procedures for Processing State 404 Program Exemptions



40 CFR § 232.3

Definitions

- **Discharge of dredge material**

The term discharge of dredged material means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States.



40 CFR § 232.3 – 2

Definitions

- **Incidental fallback**

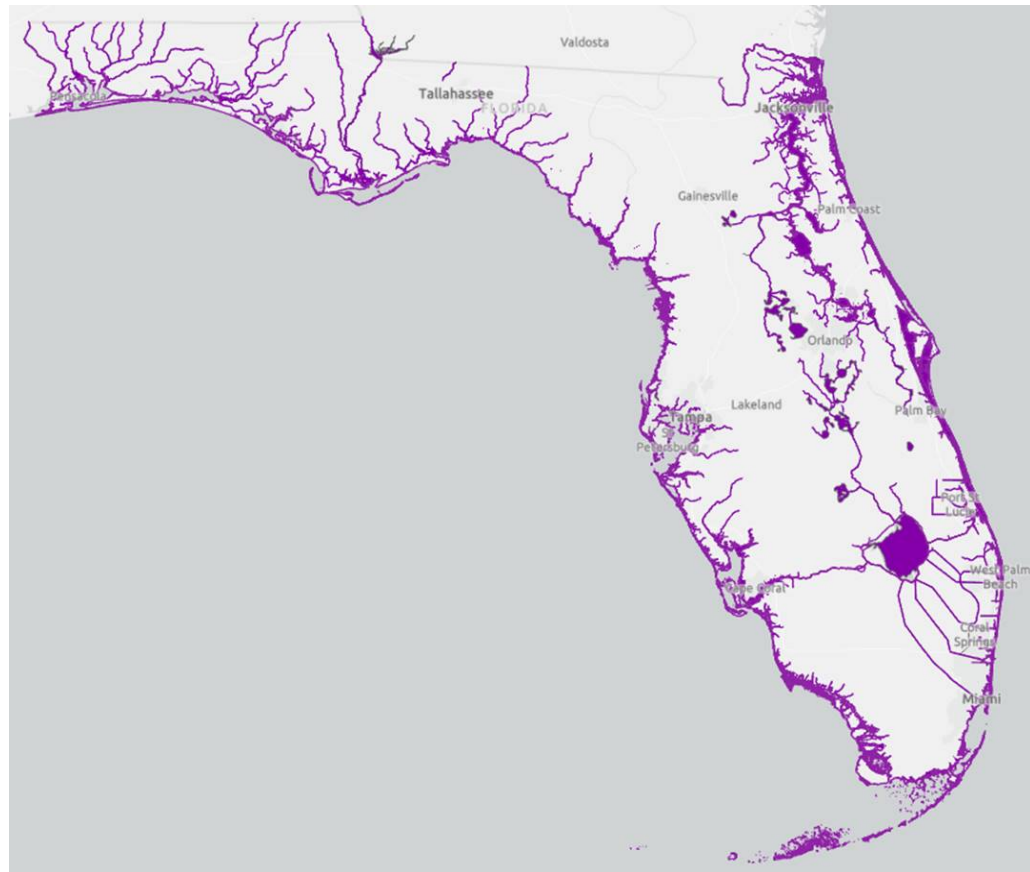
Any incidental addition, including redeposit, of dredged material associated with any activity that does not have or would not have the effect of destroying or degrading an area of waters of the U.S.



40 CFR § 232.3 – 3

Definitions

- **Retained Waters of the United States**
- **State Assumed Waters**





40 CFR § 232.3 – 4

Definitions

- **Not Included**

The term discharge of dredged material does not include the following:

- discharges subject to section 402 of the Clean Water Act
- Incidental fallback
- Certain discharges, such as those associated with normal farming, silviculture, and ranching activities



The Kickouts

40 CFR § 232.3(a)

- **Toxic pollutants**
- **Section 307 CWA**
 - **404 Handbook Appendix D**
- **Requires a permit**



The Kickouts – 2

40 CFR § 232.3(b)

- **Any discharge of dredged or fill material incidental to any of the exempt activities must have a permit if the purpose of the activity is to convert an area of the waters of the United States into a use to which it was not previously subject.**
- **Where the proposed discharge will result in significant discernable alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.**
- **New Use**
- **Impaired flow or circulation**



The Kickouts – 3

40 CFR § 232.3(b)

- **New Use**

A conversion of section 404 wetland to a non-wetland is a change in use of an area of waters of the U.S. and a permit is required.



The Kickouts – 4

40 CFR § 232.3(b)

- **Impaired flow or circulation**

A discharge which elevates the bottom of waters of the U.S. without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the U.S.



The Kickouts – 5

40 CFR § 232.3(b)

- **Reach of waters reduced**

An activity associated with a discharge of dredged material destroys an area of waters of the U.S. if it alters the area in such a way that it would no longer be a water of the U.S. (e.g., filling a water to convert it to upland, or any alteration that results in no WOTUS).



The Kickouts – 6

40 CFR § 232.3(b)

- **Biological Integrity**

An activity associated with a discharge of dredged material degrades an area of waters of the U.S. if it has more than a *de minimis* (i.e., inconsequential) effect on the area by causing an identifiable individual or cumulative adverse effect on any aquatic function.



The Kickouts – 7

40 CFR § 232.3(a),(b)

- **Example**

The conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the U.S. in conjunction with construction of dikes, drainage ditches or other works or structures used to affect such conversion.



Verification

Requirements

- A permit is not required for activities listed in Appendix B
- Activities that qualify for a State 404 exemption and an ERP exemption that does not require prior notice to the Agency may be conducted without notice.
- Notice is not required to conduct an exempt activity, except where the activity also requires an ERP authorization.
 - ERP Applicants Handbook 4.2.1



Exempt Activities

Appendix B: 40 CFR § 232.3(c)

- **(1) Normal farming, silviculture, and ranching activities**
- **(2) Maintenance of currently serviceable structures (dikes, dams, levees, riprap, etc)**
- **(3) Construction and Maintenance of farm or stock ponds or irrigation ditches or maintenance of drainage ditches**
- **(4) Construction of temporary sedimentation basins on a construction site**
- **(5) State approved 208(b)(4) Programs/BMPs**
- **(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment.**
- **Federal Construction Projects specifically authorized by Congress that qualify under 404(r) (232.3(e))**



Example

Repair and replacement of riprap

- **Appendix B: 40 CFR § 232.3**
- **(c)(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures.**
- *****Maintenance does not include any modification that changes the character, scope, or size of the original fill design.*****
- **Section 62-330.051(12), F.A.C.**
- **(b) The restoration of a seawall or riprap under section 403.813(1)(e), F.S., where:**
 - 1. The seawall or riprap has been damaged or destroyed within the last year by a discrete event, such as a storm, flood, accident, or fire**
- **** Restoration shall be no more than 18 inches waterward of its previous location.****



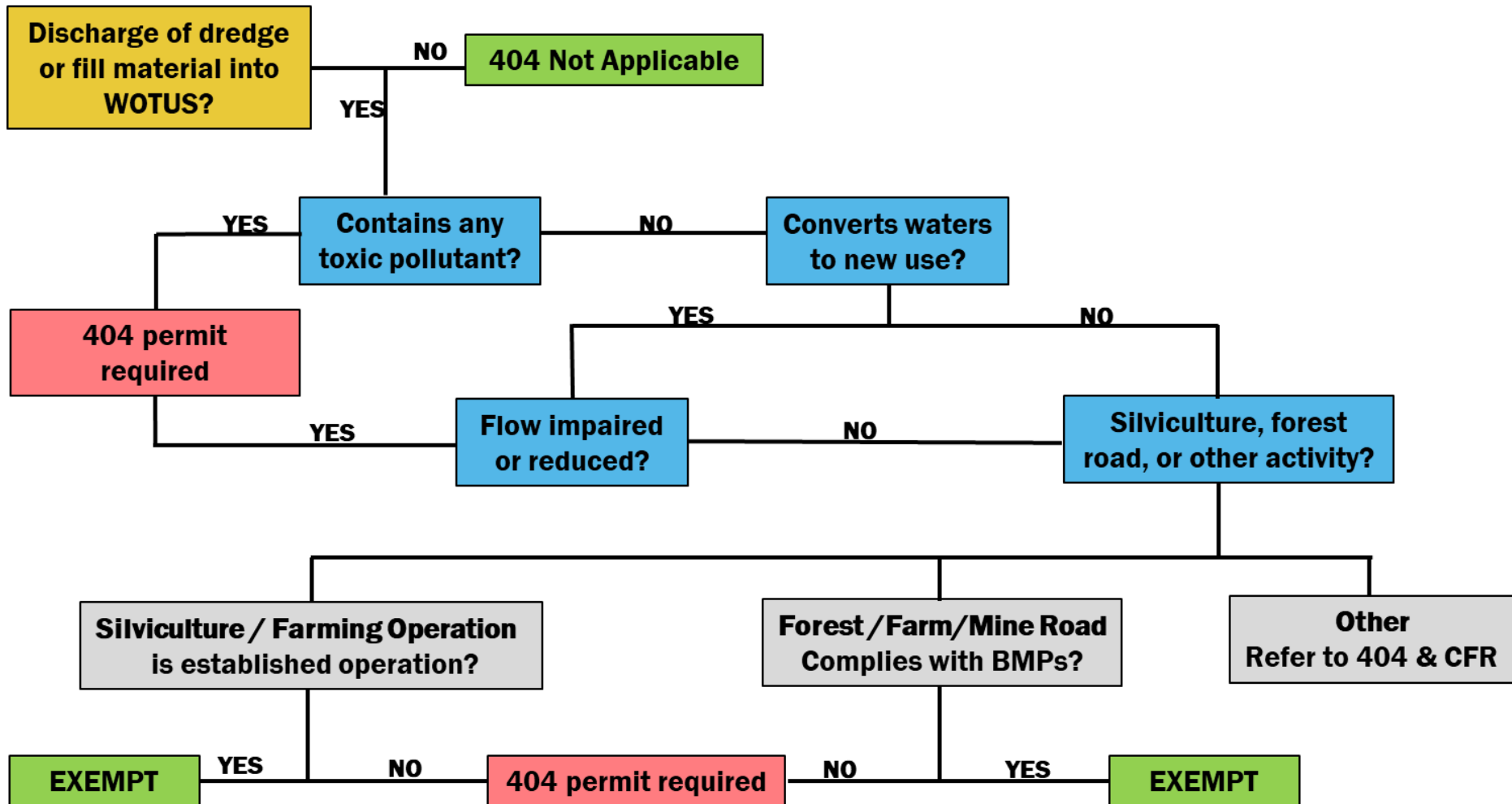
Example – 2

Main. of transportation structures

- 40 CFR § 232.3(c)(2)
- Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures.
- ***Maintenance does not include any modification that changes the character, scope, or size of the original fill design.***
- Section 62-330.051(4)(e), F.A.C.
- Repair, stabilization, paving, or repaving of existing roads, and the repair or replacement of vehicular bridges that are part of the road
- 7. Notice of intent to use this exemption is provided to the Agency 30 days before performing any work.



Flow Chart





Review

Verification of Exemption

- **Handbook Appendix B**
- **Is verification required?**
- **Upon Request for Verification of Exemption**
 - **Project Screening**
 - **Within 30 days determine if activity meets exemption**
 - **Request for Additional Information (RAI)**
 - **Evaluate conditions for the requested exemption**
 - **Provide verification of exemption**
- **Water Management District (WMD) Coordination**
 - **Agricultural Exemptions 404 Handbook 5.2.1**



General Permits

Procedures for Processing State 404 Program General Permits



Clean Water Act

40 CFR §233.21

(a) Under section 404(h)(5) of the Act, States may, after program approval, administer and enforce general permits previously issued by the Secretary in State regulated waters.

NOTE: If States intend to assume existing general permits, they must be able to ensure compliance with existing permit conditions and any reporting monitoring, or prenotification requirements.

(b) The Director may issue a general permit for categories of similar activities if he determines that the regulated activities will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment. Any general permit issued shall be in compliance with the section 404(b)(1) Guidelines.



Clean Water Act – 2

40 CFR §233.21

(d) PredischARGE notification or other reporting requirements may be required by the Director on a permit-by-permit basis as appropriate to ensure that the general permit will comply with the requirement (section 404(e) of the Act) that the regulated activities will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment.

(e) The Director may, without revoking the general permit, require any person authorized under a general permit to apply for an individual permit. This discretionary authority will be based on concerns for the aquatic environment including compliance with paragraph (b) of this section and the 404(b)(1) Guidelines (40 CFR part 230.)



Clean Water Act – 3

- **“No general permit issued under this subsection shall be for a period of more than *five years* after the date of its issuance.”**
- **Rule 62-331.200(2), F.A.C.**
(Policy and Purpose of General Permits)



General Permit

404 Handbook, Section 3.2.1

- **Rule 62-331.210 through Rule 62-331.248, F.A.C.**
- **Checklist**
- **Drafts**
- **State 404 Program General Permits**
 - **Five-year limit**
 - **May require compensatory mitigation**
 - **Require interagency coordination**



General Permit – 2

Advantages

- **Faster Processing Time – majority of General Permits (GPs) allow applicants to start work 30 days after sending a Notice of Intent (NOI), unless the applicant receives an RAI**
- **Less paperwork – some GPs do not require notification**
- **Fewer processing hurdles**
- **Incentivizes project proponent to minimize impacts**
- **Allows DEP to focus resources on projects with larger impacts**



Review

General Permit

- **Project Screening**
- **Timing (30 days)**
- **Applicants Handbook Vol I, section 5.3**
 - **Notice of Intent to Use General Permit**
 - **Specific limits and conditions of GP**
 - **Conditions for General Permits**
 - **Interagency Coordination**
- **Application Complete, RAI**
 - **Review as Individual Permit**
- **Notification**
- **Certification of Compliance**



Notice of Intent (NOI)

Is required when:

- Indicated in the general permit
- Activity requires an ERP notification or authorization
- Activity is adjacent to the river segments identified in the National Rivers Inventory
- Activity is in the Florida Keys
- Adjacent to a federal project
- Adjacent to or may impact Tribal lands or Tribal Trust Resources
- Project within two miles of Miccosukee tribal resources
- The State Historic Preservation Office (SHPO) determines a historic property is within 50 meters of the project area
- When the applicant has knowledge of a historic property



Ex: NOI Required

Apply to General Permit

Rule 62-331.214, F.A.C., General Permit for Outfall and Intake Structures

(3) Notification: The permittee must submit a notice to the Agency prior to commencing the activity.



Ex: NOI Required – 2

Activities Within a General Permit

Rule 62-331.210, F.A.C., General Permit for Maintenance or Removal

(3) Notice of intent to use this general permit is required for activities authorized by paragraph (1)(e), the notice must include information regarding the original design capacities and configurations of the outfalls, intakes, and small impoundments.



Ex: NOI Required – 3

Certain General Permit Conditions

- **62-331.216 General Permit for Bank Stabilization**
 - (2) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity if the bank stabilization activity:**
 - (a) Involves dredging or filling into special aquatic sites;**
 - (b) Is in excess of 500 feet in length;**
 - (c) Will involve filling greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the mean or ordinary high water line; or**
 - (d) The project is in the following rivers, creeks, and their tributaries: ...**



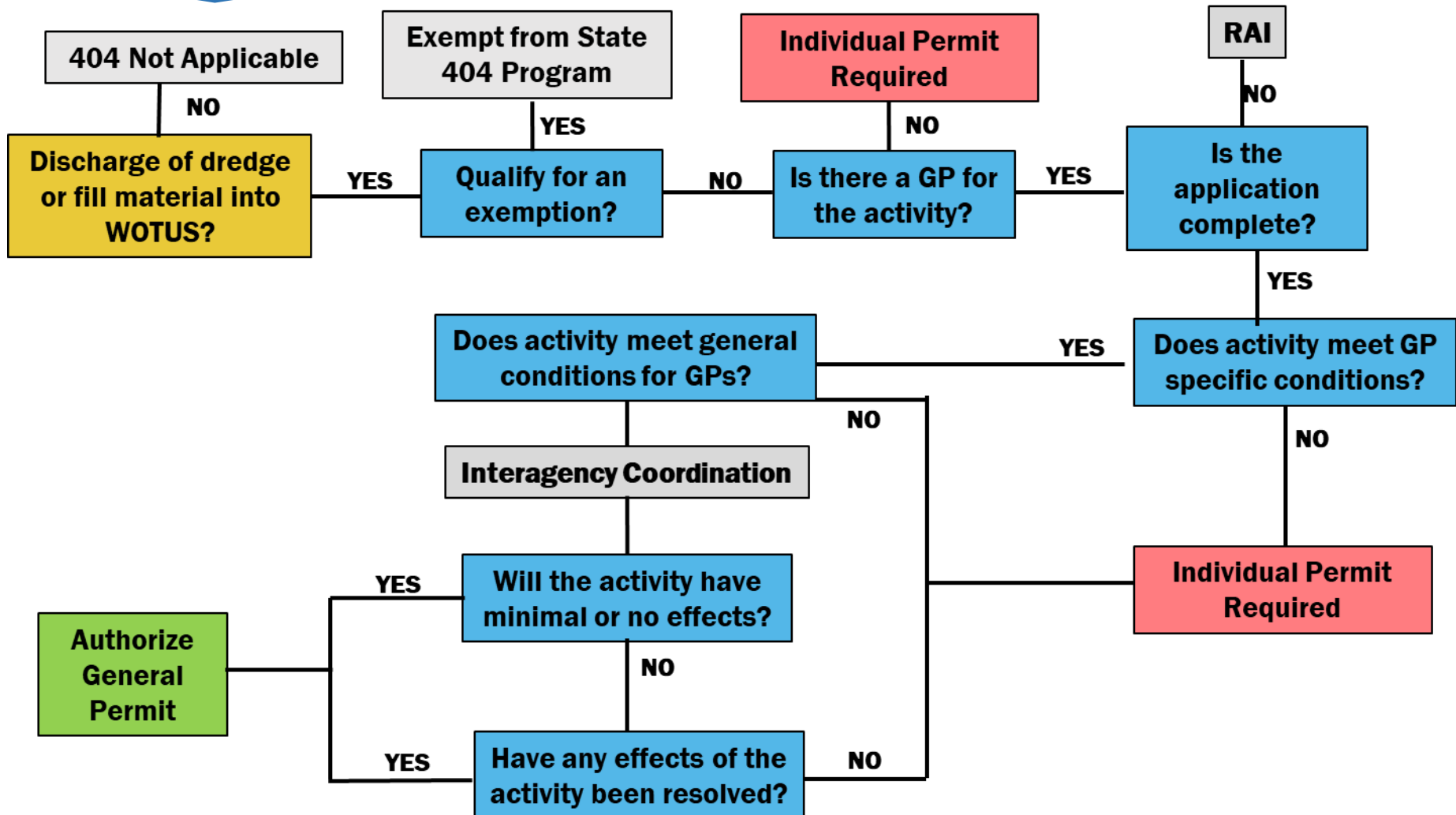
Conditions For GPs

Unique to State 404 Program

- **Aquatic Life Movements**
- **Spawning Areas**
- **Migratory Bird Breeding Areas**
- **Shellfish Beds**
- **Suitable Material**
- **Water Supply Intakes**
- **Fills Within 100-year Floodplains**
- **Single and Complete Project**
- **Wild and Scenic Rivers**
- **Tribal Rights**
- **Listed Species**
- **Migratory Birds and Bald and Golden Eagles**
- **Historic Properties**
- **Manatees**
- **Sea turtles, smalltooth sawfish, Gulf sturgeon, or shortnose sturgeon**
- **Use of Multiple General Permits**
- **Activities Affecting Federal Projects**



Flow Chart





No-Notice GPs

404 Handbook, Section 3.2.1.1

Notice to the Agency is not required for those activities covered under a general permit where notice is not specifically required in the language of the general permit, or by Rule 62-331.200, F.A.C. Special attention should be made by the permittee to ensure that all of the conditions for the general permit are met, including any requirements for coordination with other agencies or tribes.



Individual Permits

Procedures for Processing State 404 Program Individual Permits



Sequence of Review

404 Handbook, Section 8.2

Upon receipt of a technically complete application, the Agency will follow the sequence of review for processing applications... The sequence is simplified for purposes of illustration. The actual process followed may be iterative, with the results of one step leading to a re-examination of the previous steps. The Agency must address all the applicable State 404 Program permitting conditions in reaching a permitting decision for a project.



Sequence – 2

Review practicable alternatives to the proposed activity. Alternatives may include not dredging or filling in state-assumed waters (avoidance) or dredging or filling in an alternative aquatic site with potentially less damaging environmental consequences. The applicant shall submit an alternatives analysis as required by Rule 62-331.053, F.A.C. Guidance for completing the alternatives analysis can be found in Appendix C.



Sequence – 3

Review the proposed project area boundaries. For the purposes of the State 404 Program only, the project area includes all areas of dredging or filling in state-assumed waters, and any proposed mixing zones, where applicable. Mixing zones shall be reviewed in accordance with Chapter 62-331, F.A.C., and as provided in Rule 62-4.242, and subsection 62-4.244(5), F.A.C.



Sequence – 4

Evaluate the various physical and chemical components which characterize the non-living environment of the proposed site, the substrate and the water including its dynamic characteristics consistent with Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C.



Sequence – 5

Identify and evaluate any special or critical characteristics of the proposed project site and surrounding areas which might be affected by use of such site, related to their living communities or human uses consistent with Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C.



Sequence – 6

Review the information submitted with the application to determine whether the information provided by the applicant is sufficient to provide reasonable assurance that the applicable provisions of Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C., will be met.



Sequence – 7

Evaluate the material to be dredged or used as fill to determine the possibility of the presence of contaminants, including chemical contamination, that may violate state water quality standards listed in paragraph 62-330.301(1)(e), F.A.C., or any toxic effluent standard or prohibition under section 307 of the CWA. Check for physical incompatibility of the material to be used as fill.



Sequence – 8

If there is a reasonable probability that contaminants are present, including chemical contamination, the Agency shall require the applicant to conduct appropriate sediment, elutriate, and/or water quality tests, as applicable.



Sequence – 9

Identify appropriate and practicable changes to the project plan to avoid or minimize the environmental impact of the activity, as described in Volume I, section 10.2.1, except 10.2.1.2, which is not applicable to the State 404 Program. Avoidance should be considered first, and then minimization only if avoidance is not practicable.



Sequence – 10

Complete a Technical Staff Report (TSR) to document how the project addresses the requirements of Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C.



Sequence – 11

Make and document a finding of either compliance or noncompliance with the requirements of Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C. This is a determination of whether the project, including any mitigation, is permittable under the State 404 Program.



Sequence – 12

Prepare a written determination on each application outlining the permitting decision and the rationale for the decision. The determination shall be dated, signed, and included in the official record prior to final action on the application. The Technical Staff Report from step 10 (subsection (j)), above, shall be included in or attached to the determination.



Waiver of Review

404 Handbook, Section 5.2.5

EPA has oversight authority over the State 404 Program and may review individual permit applications and draft general permits. Federal law provides that EPA may waive review of certain categories of permits. EPA has waived review of all but the following categories of permits:



Non-Waiver

- **Projects with reasonable potential for affecting endangered or threatened species as determined by the U.S. Fish and Wildlife Service (USFWS)/National Marine Fisheries Service (NMFS)**
- **Projects with reasonable potential for adverse impacts on waters of another state or tribe**
- **Projects that include discharges of dredged or fill material known or suspected to contain toxic pollutants in toxic amounts or hazardous substances in reportable quantities**



Non-Waiver – 2

- **Projects located in proximity of a public water supply intake. For the purpose of the State 404 Program, proximity means 1000 feet from the intake.**
- **Projects within critical areas established under state or federal law, including but not limited to national and state parks; fish and wildlife sanctuaries or refuges; national and historical monuments; wilderness areas and preserves; sites identified or proposed under the National Historic Preservation Act; and components of the National Wild and Scenic Rivers System.**



Non-Waiver – 3

- **Projects impacting compensatory mitigation sites, including mitigation banks, in lieu fee program sites, and permittee responsible mitigation sites**
- **Projects impacting sites that are owned or managed by federal entities, and activities by an applicant that is a federal entity**



EPA Review

In addition, the following projects shall be reviewed by EPA, even if they would otherwise not require EPA review:

- 1. Any project that EPA requests to review within 30 days of receipt of the public notice under Rule 62-331.060, F.A.C.;**
- 2. Any project that the Agency requests EPA to review, at the Agency's discretion; and**
- 3. Any project where the Agency fails to accept the recommendations of an affected state or tribe received during the public comment period.**



Completeness

Two kinds of application completeness:

- **Administratively Complete**
- **Technically Complete**



Administratively Complete

404 Handbook, Section 2.0

“Administratively complete” means an application that contains all the items required under the public noticing requirements of Rule 62-331.060, F.A.C.



Admin Complete – 2

Rule 62-331.060, F.A.C.

An administratively complete application, as defined and described in Sections 2.0 and 8.1, respectively, of the 404 Handbook, shall include the following information:

- (a) Name, address, and telephone number of the applicant**
- (b) Name(s) and address(es) of owners of property adjoining the property where the activity is proposed to occur**
- (c) Self-addressed, stamped envelopes and/or email addresses for each adjoining property owner. These will be used by the Agency to send the public notice. Do not include a return address; it will be added by the Agency**



Admin Complete – 3

(d) A complete description of the activity including necessary drawings, sketches, or plans sufficient for public notice; the location, purpose, and intended use of the proposed activity; the long-term conceptual plan described in 404 Handbook, section 5.3.2, if applicable; scheduling of the activity; the location and dimensions of adjacent structures; and a list of authorizations required by other agencies including federal, interstate, state, or local agencies for the work, including all approvals received or denials already made



Admin Complete – 4

(e) A description of the type, composition, source, and quantity of the material to be dredged or used as fill; construction methods; and the site and plans for disposal of any dredged material including a description of spoil cells, dredged material management areas (DMMAs), and final disposal plans if the dredged material is not proposed to remain onsite

(f) A summary of proposed wetland and other surface water impacts and compensatory mitigation including acres, habitat type, and Uniform Mitigation Assessment Method (UMAM) score developed pursuant to Chapter 62-345, F.A.C., for each assessment area



Admin Complete – 5

- (g) The alternatives analysis required by subsection 62-331.053(1), F.A.C.**
- (h) A certification that all information contained in the application is true and accurate and acknowledging awareness of penalties for submitting false information**
- (i) Any other information relevant to the project that would significantly assist the public and commenting agencies in reviewing, understanding, and commenting on the proposed project, including information needed for review of impacts to state or federal listed species**



Technically Complete

404 Handbook, Section 2.0

“Technically complete” means an application where each application item is adequate to allow the Agency to determine if the proposed project complies with Chapter 62-331, F.A.C. 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. This is to satisfy the requirement for reasonable assurance that State water quality standards and coastal zone consistency requirements will be met.



Processing

“Applications for individual permits shall be processed in accordance with Rule 62-331.052, F.A.C., this section, and section 8.0 of this Handbook.”



Processing Time

Rule 62-331.052, F.A.C.

- **Step 1 – Receive application**
- **Step 2 – 30 day review**
- **Step 3 – 90 day RAI**
 - ***Repeat Steps 2 and 3 until Administratively Complete***
- **Step 4 – Public Notice/EPA review**
- **Step 5 – Technical Completeness and Final Agency Action**



Initial 30-Day Review

Things to Do

- **Screen and send to commenting entities**

State/Tribal Historic Preservation Office (SHPO/THPO), Florida Fish and Wildlife Conservation Commission (FWC)/U.S. Fish and Wildlife Service (USFWS)

- **Run through sequence of review**

- **Schedule/coordinate site visit**

Certified Wetland Evaluator (CWE) verifies delineation/jurisdiction

- **Coordinate with WMD or local government**

- **Receive initial commenting entity input**

RAI questions, determinations, recommendations



90-Day RAI

Things to Do

- **Communicate with applicant**
- **Continue technical assistance with commenting entities (if not awaiting additional information for their review)**



30-Day Review

After Receipt of Additional Info

- **Send RAI info to commenting entities**
- **Send RAI info to WMD or local government (if coordinating)**
- **Run through sequence of review again as needed**
- **Determine if application is administratively complete**
 - **Yes – public notice w/in 10 days**
 - **No – additional RAI**



Public Notice

Things to Do

- **Publish within 10 days of determining “administratively complete”**
- **Determine Public Notice Period**
 - **30/15 days (most will be 30)**
- **If non-waiver category, send Public Notice to EPA**
- **Review all comments and requests for public meetings**



After Public Notice

Comments

- **If comments were received, and additional information is required, may send RAI**
- **If public meeting was requested, schedule**
 - **Commenting period extended to end of meeting or later if needed.**
- **If no comments, and EPA does not intend to comment:**
 - **Project Technically Complete?**
 - **Yes – 60 days to issue**
 - **No – work with applicant until technically complete.**



Comments

Adjacent State/Tribes

- **If a comment is received from an adjacent state or tribe, and DEP does not take the recommendations of the state/tribe, then send to EPA for review with reasons for failing to accept recommendations**
- **EPA will have 90 days from date of notice to review**



EPA Review

If EPA Reviews...

Within 30 days of notice – EPA may notify DEP of intent to comment/object/make recommendations

- **If EPA does not notify – review ends after 30 days**
- **If EPA notifies – EPA must provide comments/objections/recommendations within 90 days of receipt of notice**



EPA Review – 2

If DEP receives objection or requirement for a permit condition from EPA, DEP shall not issue the permit unless the steps required by EPA to eliminate the objection or condition the permit have been taken.



EPA Review – 3

- **If DEP chooses not to resolve the objection or condition the permit, the permit shall not be issued**
- **ERP may still be issued**
- **EPA may “federalize” the project, and send to the U.S. Army Corps of Engineers (USACE) for 404 permitting (*expected to be very rare*)**



EPA Review – 4

- **Within 90 days of receipt of objection or requirement from EPA, DEP or interested party may request EPA public meeting**
- **If no public meeting held, DEP shall:**
 - **Issue permit for the revised/conditioned project; or**
 - **Notify EPA of intent to deny the permit**



EPA Review – 5

- **If EPA holds a public meeting, EPA shall reaffirm, modify, or withdraw the objection or requirement for a permit condition, and notify DEP of decision. Then, within 30 days:**
- **If objection/condition withdrawn, DEP may issue the permit**
- **If not withdrawn, DEP may:**
 - **Issue permit that satisfies objection/includes condition**
 - **Notify EPA of intent to deny permit**
 - **Notify EPA and the applicant that DEP will take no action**



Homework

Read and Learn

- **62-331.040, F.A.C. – Procedures for Review and Agency Action on Exemption Requests**
- **62-331.052, F.A.C. – Processing of Individual Permit Applications**
- **62-331.060, F.A.C. – Public Notice**
- **62-331.200, F.A.C. – Policy and Purpose of General Permits**



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