



Public Notice & EPA Oversight

October 20, 2020



Acronyms

- **PN – Public Notice**
- **EPA – Environmental Protection Agency**
- **MOA – Memorandum of Agreement**
- **USFWS – U.S. Fish and Wildlife Service**
- **SHPO – State Historic Preservation Office**
- **THPO – Tribal Historic Preservation Office(r)**
- **F.A.C. – Florida Administrative Code**
- **F.S. – Florida Statutes**
- **CWA – Clean Water Act**



Public Notice

***Required for certain permit types and
compliance activities***



Public Notice

Rule 62-331.060, F.A.C.

- **Who?**
- **What?**
- **Where?**
- **When?**
- **How?**



What Requires PN?

- **Applications for:**
 - Individual permits
 - Major modifications
 - Phases of a long-term planning project
- **Permit revocations and suspensions**
 - Section 62-331.052(3), F.A.C.
- **Proposed settlement actions**



What Does NOT Require PN?

- **Exemptions**
- **General permit verifications**
- **Minor modifications**



When to Send

**Within 10 days of declaring application
“administratively complete”**

- **Administratively complete = project is in anticipated final form**
- **Why?**
 - **If EPA comments during review period, no additional Requests for Additional Information (RAIs) and different timeclock applies (quirk of federal law)**
 - **Facilitates effective public comments**



Who Prepares PN?

404 Handbook, section 5.3.1

- **DEP permit or compliance processor**
- **“Public notices shall be prepared by the Agency and shall contain...”**



PN Contents

404 Handbook, section 5.3.1

- 1. The name and address of the applicant and, if different, the address or location of the activity(ies) regulated by the permit**
- 2. The name, address, and telephone number of a person to contact for further information**
- 3. A brief description of the comment procedures and procedures to request a public meeting, including deadlines**



PN Contents – 2

404 Handbook, section 5.3.1

- 4. A brief description of the proposed activity, its purpose and intended use, to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be erected on fills, and a description of the type, composition and quantity of materials to be used as fill**



PN Contents – 3

404 Handbook, section 5.3.1

- 5. A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area**



PN Contents – 4

404 Handbook, section 5.3.1

- 6. A paragraph describing the various evaluation factors on which decisions are based**
- 7. Any other information which would significantly assist interested parties in evaluating the likely impact of the proposed activity**



Long-Term Planning Projects

Section 62-331.060(8), F.A.C.

(8) Notice for subsequent phases of a long-term project permitted in accordance with section 5.3.2 of the 404 Handbook, or for permits to complete a project that was unable to be completed during the duration of the original permit, shall include only those changes not considered during permitting of a previous phase. Where there are no changes to the project, the notice shall provide the public an opportunity to submit comments, materials, or evidence pertaining to identification of material site changes or potential noncompliance.



Notice of Public Meeting

404 Handbook, section 5.3.1

(b) Notice of public meeting shall also contain the information in (a)1. through 7., above, and the following information:

- 1. Time, date, and place of meeting**
- 2. Reference to the date of any previous public notices relating to the permit**
- 3. Brief description of the nature and purpose of the meeting**



Publishing the PN

- **Mail/email to specific parties**
- **Publish on website**
 - Still working on publication solution
 - Will be presented in future webinar along with other technical solutions as they are completed
- **Public notice template**
 - Relationship to Technical Staff Report (TSR)



Who Gets PN?

Section 62-331.060(2), F.A.C.

(2) Public notice shall be prepared in accordance with section 5.3.1 of the 404 Handbook and provided as follows:

(a) The Agency shall mail and/or email the notice to the following parties:



Who Gets PN? – 2

Mail/Email

- 1. The applicant;**
- 2. Any other agency with jurisdiction over the activity or the project site, whether or not the agency issues a permit;**
- 3. Owners of property adjoining the property where the regulated activity is proposed or is permitted to occur;**
- 4. Any State or tribe whose waters may be affected by the proposed or permitted activity; and**



Who Gets PN? – 3

Mail/Email

- 5. All persons, other than those listed above, who have specifically requested copies of public notices. The Agency may require the use of an existing online notification system to request and receive such notices, except where the requestor asks to be notified by an alternative method because of a technical or financial hardship.**



Who Gets PN? – 4

Mail/Email

- 6. The Seminole Tribe of Florida Environmental Resource Management Department (ERMD) for any activity that is within six miles of the Seminole Tribe of Florida's Big Cypress or Brighton Reservations; within two miles of the Seminole Tribe of Florida's Immokalee, Lakeland, or Fort Pierce Reservations; within one mile of the Seminole Tribe of Florida's Tampa, Coconut Creek, or Hollywood Reservations; within the Seminole Tribe's reserved rights areas, including but not limited to: within Big Cypress National Preserve; within Big Cypress National Preserve addition lands; within Everglades National Park; within Rotenberger Wildlife Management Area; or within Water Conservation Area 3-A.**



Who Gets PN? – 5

Mail/Email

- 7. The Seminole Tribe of Florida's Tribal Historic Preservation Office (THPO) for activities in the State of Florida.**



Who Gets PN? – 6

Mail/Email

- 8. The Miccosukee Tribe of Indians of Florida for any activity that is within two miles of the Miccosukee Federal Reservation; Miccosukee Reserve Area; Krome Avenue, Dade Corners, Cherry Ranch, or Sherrod Ranch Reservations; and Coral Way, Lambick, or Sema Trust Properties. Also for any activity within the Miccosukee Tribe's reserved rights areas, including but not limited to: within Big Cypress National Preserve; within Big Cypress National Preserve addition lands; within Everglades National Park; within Rotenberger Wildlife Management Area; or within Water Conservation Area 3-A.**



Who Gets PN? – 7

Agency Website

- **The public**
- **(b) Notice shall be published on the Agency website**



Who Gets PN? – 8

EPA MOA, section II, B., (3)

- **(3) FDEP shall supply the EPA Regional Administrator with copies of public notices for permit applications for which permit review has been waived whenever requested by EPA, pursuant to 40 C.F.R. §233.50(a)(1).**



PN Timeframes

- **30 days – most projects**
- **15 days**
 - 1. Mosquito control activities including rotary ditching;**
 - 2. Erosion control activities not to exceed 0.2 acre of fill;**
 - 3. Restoration efforts required by the Agency that do not exceed 0.5 acre of dredge or fill activities into state-assumed waters;**



PN Timeframes – 2

- **15 days (continued)**

- 4. The placement of fill material in freshwater wetlands for residential development, not to exceed 0.2 acre, except within the following areas:**
 - a. Wetlands in or adjacent to Outstanding Florida Waters (OFWs)**
 - b. Wetlands in or adjacent to National Parks, National Wildlife Sanctuaries, National Preserves, and National Marine Sanctuaries**
 - c. Wetlands in Areas of Critical State Concern**
 - d. Timicuan Ecological and Historical Preserve in Duval County**
 - e. Golden Gate Estates, Collier County, south of Alligator Alley**
 - f. The Florida Keys**



PN Timeframes – 3

- **15 days (continued)**
 - **EPA still has 30 days to notify of intent to comment or provide comments!**



PN Timeframes – 4

Public Meeting

Section 62-331.060(3)(c), F.A.C.

(c) The public notice comment period shall automatically be extended to the close of any public meeting, if one is held. The presiding officer may also extend the comment period at the public meeting.



Public Meeting

Section 62-331.060(4), F.A.C.

(4) The Agency may hold a public meeting for a proposed project, modification, revocation, or suspension if it is determined that there is a significant degree of public interest in the application. A public meeting may also be held at the discretion of the Agency, when the Agency determines a public meeting may be useful to a decision on the permit application. Interested parties may request a public meeting during the comment period in subsection (3), above.



Public Meeting – 2

(a) Any request for a public meeting shall be in writing and shall state the nature of the issues proposed to be raised at the public meeting.

(b) The Agency shall provide notice of a public meeting at least 30 days prior to the scheduled public meeting date.



Public Meeting – 3

(c) Any person may submit oral or written statements or data concerning the permit application at the public meeting. Public meetings shall be reported verbatim. Copies of the record of proceedings may be obtained from the Agency or the reporter of such meeting. A copy of the transcript (or, if none is prepared, a recording of the proceedings) shall be made available for public inspection at the local Agency office.



Public Comments

Section 62-331.060(3), F.A.C. – From the date of publication, interested parties may express their views concerning the permit application, modification, revocation, or suspension for a period of: ...



Public Comments – 2

Section 62-331.060(5), F.A.C. – Any state whose waters may be affected by the proposed activity, or any tribe whose waters or resources, including historical resources, may be affected by the proposed activity, may submit written comments and suggest permit conditions within the public notice comment period provided in subsection (3), above. If the Agency does not accept the recommendations of the state or tribe, the Agency shall notify the state or tribe and EPA in writing, prior to permit issuance, of the Agency's failure to accept the recommendations, with the reasons for so doing. The application shall then be subject to the review process in paragraph 62-331.052(3)(b), F.A.C.



Public Comments – 3

Section 62-331.060(6), F.A.C. – The Agency shall consider all comments received in response to the public notice, and public meeting if a meeting is held. All comments, as well as the record of any public meeting, shall be made part of the official record on the application.



Public Comments – 4

If No Comments Received

If no comment from public or EPA received within 30 days of publication:

- **Proceed to technical completeness and final agency action**
- **Additional RAI is allowed as needed**



Public Comments – 5

Public Comment Received

If public comments, but no EPA comments/notifications are received within 30 days of publication:

- **Review comments and address with applicant as necessary**
- **Once addressed, proceed to technical completeness and final agency action**
- **Additional RAI is allowed if needed**



Public Comments – 6

Section 62-331.052(3)(a), F.A.C.

(a) If the EPA does not comment on, provide notice to the Agency of its intent to comment on, object to, make recommendations with respect to, or notify the Agency that it is reserving its right to object to, a permit application within 30 days of the date EPA receives the notice, the Agency shall make a final permit decision within 60 days after either the close of the public comment period described in subsection 62-331.060(3), F.A.C., or the project is declared technically complete, whichever occurs later.



Public Comments – 7

EPA Review

Additional EPA review requirements/timeframes apply if:

- **DEP does not take recommendations of an affected state or tribe**
- **EPA notifies DEP of intent to comment on, object to, make recommendations with respect to, or notifies DEP that it is reserving its rights to do so**
- **No additional RAIs allowed**



EPA Oversight & Review

EPA MOA

Section 62-330.052(3), F.A.C.
404 Handbook, section 5.2.5



EPA MOA

Coordination

- **Contains requirements for oversight activities for permitting and compliance**
- **Contains non-waiver categories**
- **Pull up and review highlights of the EPA MOA**



Permitting Oversight

EPA will have oversight authority over State 404 permitting, including:

- **Reviewing certain categories of permit applications**
- **Emergency permits**
- **Periodic auditing**



Waiver of Review

404 Handbook, section 5.2.5

(a) Waiver of review – 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 Categories

404 Handbook, section 5.2.5

- 1. Draft general permits. These are drafts of any general permit that the State intends to add to Chapter 62-331, F.A.C. The term “draft general permit” does not mean each project subsequently authorized under an approved general permit.**
- 2. Projects with reasonable potential for affecting endangered or threatened species as determined by the USFWS/NMFS;**



Non-Waiver Categories – 2

404 Handbook, section 5.2.5

- 3. Projects with reasonable potential for adverse impacts on waters of another state or tribe;**
- 4. 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 Categories – 3

404 Handbook, section 5.2.5

- 5. Projects located in proximity of a public water supply intake. For the purpose of the State 404 Program, proximity means 1,000 feet from the intake;**
- 6. 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 Categories – 4

404 Handbook, section 5.2.5

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



In Addition...

404 Handbook, section 5.2.5

In addition, the following projects shall be reviewed by EPA, even if they would otherwise not require EPA review under 1. through 8., above:

- 1. Any project that EPA requests to review within 30 days of receipt of the public notice under section 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.**



EPA Review

Processes

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

(2) Within 10 days of the Agency determining that an application is administratively complete pursuant to subsection 62-331.060(1), F.A.C., the Agency shall provide public notice as described in subsection 62-331.060(2), F.A.C. In addition, the Agency shall send a copy of the public notice to EPA for those projects that EPA reviews, in accordance with section 5.2.5 of the 404 Handbook.



EPA Review – 2

Processes

Section 62-331.052(3), F.A.C.

(3) For those projects that are subject to federal review in accordance with section 5.2.5 of the 404 Handbook:

(a) If the EPA does not comment on, provide notice to the Agency of its intent to comment on, object to, make recommendations with respect to, or notify the Agency that it is reserving its right to object to, a permit application within 30 days of the date EPA receives the notice, the Agency shall make a final permit decision within 60 days after either the close of the public comment period described in subsection 62-331.060(3), F.A.C., or the project is declared technically complete, whichever occurs later.



EPA Review – 3

Processes

Section 62-331.052(3)(b), F.A.C.

(b) If the EPA intends to comment on, object to, or make recommendations with respect to a permit application, or if EPA does not wish to comment but wishes to reserve the right to object based on any new information brought out by the public during the comment period or at a public meeting, EPA shall notify the Agency of its intent within 30 days of receipt of the public notice or the Agency's notice to EPA of failure to accept the recommendations of an affected state or tribe. Once the Agency is notified by EPA, or if the Agency fails to accept the recommendations of an affected state or tribe and EPA must review the reasons for failing to accept the recommendations, the following procedures shall apply:



EPA Review – 4

Processes

Section 62-331.052(3)(b)(1), F.A.C.

- 1. Subject to subparagraphs 2. through 5., below, the permit shall not be issued until after the receipt of such comments, objections, or recommendations, or within 90 days of EPA's receipt of the notice, whichever occurs first.**



EPA Review – 5

Processes

Section 62-331.052(3)(b)(2), F.A.C.

- 2. When the Agency has received an EPA objection or requirement for a permit condition under this section, the Agency shall not issue the permit unless the steps required by the EPA to eliminate the objection or condition the permit have been taken. If the Agency chooses not to perform the required steps, the Agency may still issue an ERP permit under Chapter 62-330, F.A.C., but shall not issue a permit under this Chapter. In such a case, the applicant is responsible for obtaining any necessary authorizations under section 404 of the CWA from the Corps.**



EPA Review – 6

Processes

Section 62-331.052(3)(b)(3), F.A.C.

- 3. Within 90 days after Agency receipt of an objection or a requirement for a permit condition from the EPA, the Agency or any interested party may request that the EPA hold a public meeting on the objection or requirement. EPA shall conduct a public meeting if requested by the Agency, or if warranted by significant public interest based on requests received.**



EPA Review – 7

Processes

Section 62-331.052(3)(b)(4), F.A.C.

- 4. If EPA does not hold a public meeting under subparagraph 3., above, the Agency shall, within 90 days of receipt of the objection or requirement for a permit condition, either issue the permit revised to satisfy EPA's objections or notify EPA of its intent to deny the permit.**

Notice there is no clause allowing for additional RAI time!



Go Back

Subparagraph (3)(a)

(a) If the EPA does not comment on, provide notice to the Agency of its intent to comment on, object to, make recommendations with respect to, or notify the Agency that it is reserving its right to object to, a permit application within 30 days of the date EPA receives the notice, the **Agency shall make a final permit decision within 60 days after either the close of the public comment period described in subsection 62-331.060(3), F.A.C., or the project is declared technically complete, whichever occurs later.**



EPA Review – 8

Processes

Section 62-331.052(3)(b)(5), F.A.C.

- 5. If EPA holds a public meeting under subparagraph 3., above, EPA shall reaffirm, modify, or withdraw the objection or requirement for a permit condition, and notify the Agency of that decision.**

Notice there is no timeframe in rule for EPA to notify DEP of their decision!



EPA Review – 9

Processes

Section 62-331.052(3)(b)(6), F.A.C.

- 6. If EPA holds a public meeting, the Agency shall have 30 days after EPA gives the Agency notice of its decision under subparagraph 4., above, to take one of the following actions:**
 - a. If EPA has withdrawn the objection or requirement for a permit condition, and the application is technically complete, the Agency may issue the permit; or**



EPA Review – 10

Processes

Section 62-331.052(3)(b)(6), F.A.C.

b. If EPA has not withdrawn the objection or requirement for a permit condition, the Agency shall do one of the following:

- (I) Issue a permit that includes the required permit condition and/or otherwise satisfies EPA's objection;**
- (II) Notify EPA of its intent to deny the permit; or**
- (III) Notify EPA and the applicant that the Agency intends to take no action, in which case, the Corps shall process the section 404 authorization.**



Remember!

EPA Involvement = No More RAI

- **If EPA involvement, no clause allowing for additional RAI after PN!**
- **EPA may become involved in any project**
- **This is why it is important to have the project in its expected final form before PN**
- **If EPA comment/objection/required condition – resolve with applicant within allowed timeframe**
 - **If cannot resolve within timeframe, applicant should withdraw and re-apply once resolved**
 - **If applicant will not withdraw, deny**



Compliance Oversight

EPA will have oversight authority over State 404 compliance, including:

- **Requiring report of status of compliance/enforcement actions in annual report**
- **Periodic auditing**
- **Non-waiver categories need to be coordinated with EPA**



Program Oversight

General Oversight

EPA MOA, section IV – “EPA may conduct periodic evaluations of the State 404 Program in accordance with Section 404(i) of the CWA.”



Program Oversight – 2

- **Reporting**
 - **Permitting**
 - **Compliance**
 - **Issues/challenges and resolutions**
- **Program Modifications**
 - **Must be approved by EPA**
 - **Rule changes within one year of changes in federal law**



Florida's Assumption

First in ~30 years

- **Leadership**
- **Lead by example**

We've got this! 😊



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