

NOTICE OF PROPOSED RULE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

RULE NO.: RULE TITLE:

40E-4.091 Publications, Rules and Interagency Agreements Incorporated by Reference

PURPOSE AND EFFECT: In 2020, the Legislature passed Senate Bill 712 (SB 712) (a.k.a. the Clean Waterways Act, now in Chapter 2020-150, Laws of Florida). SB 712 directed the Florida Department of Environmental Protection (FDEP) and the water management districts (WMDs) to: (1) update the Environmental Resource Permit (ERP) stormwater design and operation regulations, using the latest scientific information to increase the removal of nutrients from stormwater discharges, and (2) consider and address low-impact design best management practices (BMPs) and design criteria that increase removal of nutrients from stormwater, and measures to reduce pollutant loadings by consistent application of the net water quality improvement performance standard. The South Florida Water Management District (SFWMD) proposes to amend the “Environmental Resource Permit Applicant’s Handbook Volume II: For Use Within the Geographic Limits of the South Florida Water Management District” (SFWMD’s Applicant’s Handbook Vol. II) to conform to FDEP’s amendments to Chapter 62-330, F.A.C., and “Environmental Resource Permit Applicant’s Handbook Volume I (General and Procedural)” (FDEP’s Applicant’s Handbook Vol. I), which applies statewide and is incorporated in Chapter 62-330, F.A.C.

SUMMARY: The proposed amendments to SFWMD’s Applicant’s Handbook Vol. II include: (1) removing all water quality volumetric criteria because these criteria will now be covered in Chapter 62-330, F.A.C., and FDEP’s ERP Applicant’s Handbook Vol. I General and Procedural (FDEP’s Applicant’s Handbook Vol. I), which applies statewide; (2) updating and clarifying SFWMD’s remaining criteria for various BMPs; (3) eliminating dry detention as a BMP due to its low ability to remove nutrients; (4) updating and conforming dam safety criteria with FDEP’s changes to its dam safety rules; (5) updating Appendix B “Above Ground Impoundments” to add design criteria for above ground facilities that could impound water; (6) removing Appendix C, which contains isohyetal maps, and adding a hyperlink to those maps in Section 5.6.2(a); (7) updating Appendix D, which will now be Appendix C, to remove the map of “SFWMD Basins for Cumulative Impact Assessments & Mitigation Bank Service Areas” because it is duplicative of the map contained in FDEP’s Applicant’s Handbook Vol. I, and replacing it with criteria for “Exfiltration System Trench Design”; (8) updating Appendix E, which will now be Appendix D, to remove “Procedure for Environmental Resource Permit Water Quality Evaluations for Applications Involving Discharges to Outstanding Florida Waters and Water Bodies that Do Not Meet State Water Quality Standards” because this criteria will be included in FDEP’s Applicant’s Handbook Vol. I, and replacing with criteria for “Soil Storage Values”; (9) adding the National Oceanic and Atmospheric (NOAA) Atlas 14 Volume 9 Version 2.0 and incorporating it by reference in Rule 40E-4.091, F.A.C., and (10) making other miscellaneous minor edits, clarifications, and conforming changes throughout. The SFWMD also proposes to update its incorporation of Chapter 62-302, F.A.C. (effective 11/17/2016) and Chapter 62-550, F.A.C. (effective 8/5/2016) to the current rules.

The proposed amendments to the “Environmental Resource Permit Applicant’s Handbook Volume II for Use Within the Geographic Limits of the South Florida Water Management District” are available online at: <https://www.sfwmd.gov/doing-business-with-us/rules>.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this rule will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied

upon and described herein:

The District completed the Governor's Office of Fiscal Accountability and Regulatory Reform's (OFARR) form, "Is a SERC Required?" and prepared a summary of the proposed rule amendments, both of which are available upon request. Based on these documents, the proposed rule amendment does not require legislative ratification pursuant to subsection 120.541(3), F.S.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY (formerly "Specific Authority"):

373.044, 373.103, 373.113, 373.413, 373.4131, 373.418, 373.441, FS

LAW IMPLEMENTED: 373.016, 373.046, 373.413, 373.4131, 373.414, 373.4142, 373.416, 373.418, 373.426, 373.429, 373.439, 373.441, FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jesse Markle, P.E., Bureau Chief, Regulation, jmarkle@sfwmd.gov, or (561) 682-6274.

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-4.091 Publications, Rules and Interagency Agreements Incorporated by Reference.

(1) The following publications, rules and interagency agreements are incorporated by reference herein:

(a) "Environmental Resource Permit Applicant's Handbook, Volume II For Use Within the Geographic Limits of the South Florida Water Management District (*effective date*), ~~May 19, 2016~~, {insert URL} <https://www.flrules.org/Gateway/reference.asp?No=Ref-06805>, which incorporates the following forms or materials by reference:

1. U.S. Department of Agriculture, Soil Conservation Service, "Rainfall Frequency Atlas of Alabama, Florida, Georgia and South Carolina for Durations from 30 Minutes to 24 Hours and Return Periods from 1 to 100 years" (1978), <http://www.flrules.org/Gateway/reference.asp?No=Ref-02975>, referenced in Section ~~5.6.2(d)~~ ~~5.7.2(e)~~;

2. Florida Department of Transportation "Drainage Manual, Appendix B: IDF-Curves, Precipitation Data, Rainfall Distributions" (August 2001), <http://www.flrules.org/Gateway/reference.asp?No=Ref-02981>, referenced in Section ~~5.6.2(e)~~ ~~5.7.2(d)~~;

3. U.S. Department of Agriculture, Natural Resources Conservation Service, "National Engineering Handbook, Section 4, Part 630, Chapter 10" (2004), <http://www.flrules.org/Gateway/reference.asp?No=Ref-02983>, referenced in Section ~~5.6.6(b)~~ ~~5.7.6(b)~~;

4. Chapter 27, Article XIII, Wellfield Protection Ordinance, Broward County Code of Ordinances, last amended September 28, 1999, <http://www.flrules.org/Gateway/reference.asp?No=Ref-00052>, reference in Section ~~4.1.1(b)6.b.~~ ~~4.2.2(b)6.b~~;

5. Dade County Wellfield Protection Ordinance contour showing maximum limits (Section 24-43 Protection of Public Potable Water Supply Wells; Chapter 24 Environmental Protection; Code of Metropolitan Dade County, Florida; Codified through Ordinance No. 11-01, enacted January 20, 2011 (Supp. No. 68)), <http://www.flrules.org/Gateway/reference.asp?No=Ref-00053>, referenced in Section ~~4.1.1(b)6.c.~~ ~~4.2.2(b)6.e~~.

6. National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Volume 9 Version 2.0: Southeastern States (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi) {insert URL}, referenced in Section ~~5.6.2(f)~~.

(b) No Change.

(c) State water quality standards set forth in Chapter 62-4, F.A.C., (2/17/2016) [<http://www.flrules.org/Gateway/reference.asp?No=Ref-06802>], Chapter 62-302, F.A.C., (11/17/2016) {insert URL} [<http://www.flrules.org/Gateway/reference.asp?No=Ref-06803>], Chapter 62-520, F.A.C., (7/12/2009) [<http://www.flrules.org/Gateway/reference.asp?No=Ref-02977>], and Chapter 62-550,

F.A.C., (8/5/2016 ~~7/7/2015~~) {insert URL} http://www.flrules.org/Gateway/reference.asp?No=Ref_06804]. The state water quality standards are also defined and incorporated in Section 2.1.19 of the Applicant's Handbook, Volume II.

(d) No Change.

(e) No Change.

(2) The documents listed in subsection (1) can also be obtained at no cost by contacting the South Florida Water Management District Clerk's Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, ~~1(800) 432-2045, ext. 6436, or (561) 686-8800 -682-6436.~~

PROPOSED EFFECTIVE DATE: This rule will become effective on July 1, 2023, or upon the date that any related amendments to Chapter 62-330, F.A.C., proposed by the Florida Department of Environmental Protection in the Notice of Rule Development published in the Florida Administrative Register on November 19, 2020 (Vol. 46, No. 236) take effect, whichever is later.

Rulemaking Authority 373.044, 373.103, 373.113, 373.413, 373.418, 373.4131, 373.441 FS. Law Implemented 373.016, ~~373.042~~, 373.429, 373.439, 373.046, 373.413, 373.4131, 373.414, 373.4142, 373.416, 373.418, 373.426, 373.441 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(1), Amended 5-1-86, 7-1-86, 3-24-87, 4-14-87, 4-21-88, 11-21-89, 11-15-92, 1-23-94, 4-20-94, 10-3-95, 1-7-97, 12-3-98, 5-28-00, 8-16-00, 1-17-01, 7-19-01, 6-26-02, 6-26-02, 4-6-03, 4-14-03, 9-16-03, 12-7-04, 2-12-06, 10-1-06, 11-20-06, 1-23-07, 7-1-07, 7-22-07, 11-11-09, 7-1-10, 7-4-10, 12-15-11, 5-20-12, 10-1-13, 8-10-14, 5-22-16 (1)(c), 5-22-16 (1)(a),_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jesse Markle, P.E., Bureau Chief, Regulation

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2023

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: December 18, 2020