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NOTICE OF PROPOSED RULE

WATER MANAGEMENT DISTRICTS
South Florida Water Management District

RULE NO.:	RULE TITLE:
40E-61.010	Policy and Purpose
40E-61.011	Policy and Purpose
40E-61.020	Scope of Part I
40E-61.021	Definitions
40E-61.023	Basin and Sub-Basin Boundaries
40E-61.024	Works of the District within the Lake Okeechobee Basin
40E-61.030	Definitions
40E-61.031	Implementation
40E-61.041	Permits Required
40E-61.042	General Permits for Use of Works of the District Within the Lake Okeechobee Basin
40E-61.051	Exemptions
40E-61.101	Content of Application for Individual and Collective Permits
40E-61.200	Implementation of Nonpoint Source Discharger Requirements
40E-61.201	Permit Application Processing Fee
40E-61.220	Content of Water Quality Monitoring Plan (WQMP)
40E-61.250	Duration of WQMPs
40E-61.260	Modifications to WQMPs
40E-61.280	Implementation Procedures
40E-61.290	Remedial Action
40E-61.301	Conditions for Issuance for Individual and Collective Permits
40E-61.321	Duration of Permits
40E-61.331	Modification
40E-61.351	Transfer
40E-61.381	Limiting Conditions

PURPOSE AND EFFECT: To revise Chapter 40E-61, F.A.C., in accordance with section 373.4595, F.S., and HB5003 (2020), which limits the rule chapter to procedures for implementation of water quality monitoring required in lieu of implementation of best management practices.

SUMMARY: The District is proposing to change the title of the rule chapter to Northern Everglades Basins, add new rules 40E-61.010, 40E-61.030, 40E-61.200, 40E-61.220, 40E-61.250, 40E-61.260, 40E-61.280, and 40E-61.290, F.A.C., which pertain to implementing water quality monitoring, and repeal existing rules 40E-61.011, 40E-61.020, 40E-61.021, 40E-61.023, 40E-61.024, 40E-61.031, 40E-61.041, 40E-61.042, 40E-61.051, 40E-61.101, 40E-61.201, 40E-61.301, 40E-61.321, 40E-61.331, 40E-61.351, and 40E-61.381, F.A.C., which pertain to permitting requirements in the Lake Okeechobee Drainage Basin.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The agency has determined that this will not have an adverse impact on small business and is not likely to increase, directly or indirectly, regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A Statement of Estimated Regulatory Costs (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 SERC 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 those documents, the proposed rule amendment does not require legislative ratification pursuant to

DRAFT

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, 373.113, 373.4595, F.S.

LAW IMPLEMENTED: 373.4595, 403.067, F.S.

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: Steffany Olson, Supervisor, Environmental Analysts, Ecosystem Restoration & Capital Projects Division, telephone: (800) 432-2045, ext. 2759 or (561) 682-2759, or email: solson@sfwmd.gov.

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-61.010 Policy and Purpose.

The rules in this chapter establish criteria to ensure the South Florida Water Management District’s (District) ability to carry out the objectives of the legislative declarations of policy in Sections 373.016 and 403.067, Florida Statutes (F.S.); the state water policy in Chapter 62-40, Florida Administrative Code (F.A.C.); and the Northern Everglades and Estuaries Protection Program (NEEPP) in Section 373.4595, F.S., including the directive for the District to provide for a monitoring program for nonpoint source dischargers that are required to monitor water quality under Section 403.067, F.S., and provide for the results of such monitoring to be reported to the Florida Department of Environmental Protection (FDEP) and the Florida Department of Agriculture and Consumer Services (FDACS). Rulemaking Authority 373.044, 373.113, 373.4595 FS. Law Implemented – 373.4595, 403.067 FS. History–New _____.

40E-61.011 Policy and Purpose.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.451, 373.453, 373.4595 FS. History–New 11-1-89, Repealed _____.

PART I LAKE OKEECHOBEE DRAINAGE BASIN

40E-61.020 Scope of Part I.

Rulemaking Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4595, 668.003, 668.004, 668.50 FS. History–New 11-1-89, Amended 10-1-06, Repealed _____.

40E-61.021 Definitions.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086, 373.451, 373.453, 373.4595 FS. History–New 11-1-89, Repealed _____.

40E-61.023 Basin and Sub-Basin Boundaries.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086, 373.451, 373.453, 373.4595 FS. History–New 11-1-89, Repealed _____.

40E-61.024 Works of the District within the Lake Okeechobee Basin.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086, 373.451, 373.453, 373.4595 FS. History–New 11-1-89, Repealed _____.

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40E-61.030 Definitions.

When used in this chapter:

(1) “Basin Management Action Plan” or “BMAP” means FDEP’s comprehensive set of strategies developed for restoring impaired waters by reducing pollutant loadings to meet the allowable loadings established in a Total Maximum Daily Load.

(2) “Best Management Practice” or “BMP” means a practice or combination of practices determined by the Coordinating Agencies, based on research, field- testing, and expert review, to be the most effective and practicable on- location means, including economic and technological considerations, for improving water quality in agricultural and urban discharges. Best management practices for agricultural discharges shall reflect a balance between water quality improvements and agricultural productivity.

(3) “Caloosahatchee River watershed” means the Caloosahatchee River, its tributaries, its estuary, and the area within which surface water flow is directed or drains, naturally or by constructed works, to the river, its tributaries, or its estuary.

(4) “Coordinating Agencies” means the Florida Department of Environmental Protection, the Florida Department of Agriculture and Consumer Services, and the South Florida Water Management District.

(5) “Lake Okeechobee watershed” means Lake Okeechobee, its tributaries, and the area within which surface water flow is directed or drains, naturally or by constructed works, to the lake or its tributaries.

(6) “Nonpoint source discharger” means either a) the person responsible for the nonpoint source discharge, or b) the owner of the property from which the nonpoint source discharge originates.

(7) “Northern Everglades watersheds” means the combined areas of the Lake Okeechobee watershed, Caloosahatchee River watershed, and St. Lucie River watershed.

(8) “Parcel” means total contiguous land area such as a tract or plot under single ownership, typically consistent with county tax identification numbers.

(9) “Pollutant” means, for the purposes of this chapter, a constituent monitored by the District in surface water runoff, contributing to an impaired water body identified in a BMAP.

(10) “St. Lucie River watershed” means the St. Lucie River, its tributaries, its estuary, and the area within which surface water flow is directed or drains, naturally or by constructed works to the river, its tributaries, or its estuary.

(11) “Total Maximum Daily Load” or “TMDL” means the water quality targets designed to address verified impairments for specific pollutants.

(12) “Water Quality Monitoring Plan” or “WQMP” means an approved plan to implement monitoring to verify that discharges from a nonpoint source discharger complies with the water quality criteria for the parameters addressed by the BMAP.

Rulemaking Authority 373.044, 373.113, 373.4595 FS. Law Implemented – 373.4595, 403.067 FS. History-New _____.

40E-61.031 Implementation.

Rulemaking Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.085, 373.086, 373.451, 373.453, 373.4595, 668.003, 668.004, 668.50 FS. History–New 11-1-89, Amended 10-1-06, Repealed _____.

40E-61.041 Permits Required.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086, 373.451, 373.453, 373.4595 FS. History–New 11-1-89, Amended 6-30-97, Repealed _____.

40E-61.042 General Permits for Use of Works of the District Within the Lake Okeechobee Basin.

Rulemaking Authority 373.044, 373.113, 373.118, 668.003, 668.004, 668.50 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4595, 668.003, 668.004, 668.50 FS. History–New 11-1-89, Amended 10-1-06, Repealed _____.

DRAFT

40E-61.051 Exemptions.

Rulemaking Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4595 FS. History—New 11-1-89, Amended 3-4-90, Repealed _____.

40E-61.101 Content of Application for Individual and Collective Permits.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4595 FS. History—New 11-1-89, Repealed _____.

40E-61.200 Implementation of Nonpoint Source Discharger Requirements.

(1) A nonpoint source discharger that discharges to or within the Northern Everglades watersheds, and is required to monitor under section 403.067(7)(b)2.g., F.S., and subsection (2) of this rule section, must submit for District approval a Water Quality Monitoring Plan (WQMP) to demonstrate attainment of the water quality criteria for the parameters addressed by the appropriate BMAP. Any WQMP submitted must meet all the requirements of this chapter and Chapter 62-160, F.A.C.

(2) All lands located within a BMAP are presumed to discharge surface water runoff into the Northern Everglades watersheds. Lands for which a landowner contests this presumption may submit information demonstrating that the land does not discharge surface water runoff into the Northern Everglades watersheds. At a minimum, the landowner's information must include the location of the lands in relation to the watershed, a description and site plan for stormwater drainage, applicable hydrologic boundaries, and information described under Rule 40E-61.220, F.A.C. The District will review the information submitted and other information available to the District and issue a written statement of final determination within 90 days of the submittal date.

(3) Within 180 days of the effective date of this rule, or within 180 days of the date of written notification by a Coordinating Agency of the requirement to either submit a notice of intent to implement BMPs as required under the BMAP or submit a WQMP, a nonpoint source discharger must either provide verification to the District by electronic mail or in writing that they submitted to the appropriate Coordinated Agency a Notice of Intent to enroll in a BMP program under a BMAP, or submit a WQMP in accordance with this Chapter.

(4) Lake Okeechobee Drainage Basin Works of the District Permits issued prior to the effective date of this chapter are rescinded. The effective date of this chapter is _____.

Rulemaking Authority 373.044, 373.113, 373.4595 FS. Law Implemented – 373.4595, 403.067 FS. History-New _____.

40E-61.201 Permit Application Processing Fee.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086, 373.109, 373.451, 373.453, 373.4595 FS. History—New 11-1-89, Repealed _____.

40E-61.220 Content of Water Quality Monitoring Plan (WQMP).

The WQMP shall include:

(1) Date and signature of the applicant(s) submitting the application, and the name of the owner(s) of all parcels included under the WQMP;

(2) A description of the physical and hydrogeological characteristics of the property and the surrounding area, including, as applicable:

(a) General description, site plan, and map of the property area, including a clear delineation of the boundaries and acreage; surface water system layout and drainage features showing direction of flow, surface water flow onto the property from other landowners, areas or points of surface water flow off-site; and available data on existing water quality;

(b) The direction and rate of surface water and groundwater flow;

(c) Vertical permeability, thickness, competence, and extent of any confining beds;

(d) Topography, soil information, and surface water drainage systems surrounding the site;

(e) Identification and location of wells, surface water discharge points, and surface water intakes within 500 feet of the property and within the property boundary; and

(f) The locations of all surface waters and their classifications, including springs, within one quarter mile of the

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property, and onsite sinkholes with depths exceeding the seasonal high water table or that are perched;

(3) Proposed methodology used to determine attainment of water quality criteria and any deviations in the quality of the receiving water in downgradient monitoring locations;

(4) Proposed locations of monitoring used to determine attainment of water quality criteria;

(5) Proposed water quality indicators (chemical, physical, and biological);

(6) Proposed sampling methods and frequency;

(7) Proposed data management and assessment; and

(8) Proposed reporting schedule and deliverables.

Rulemaking Authority 373.044, 373.113, 373.4595 FS. Law Implemented – 373.4595, 403.067 FS. History-New _____.

40E-61.250 Duration of WQMPs.

(1) Approved WQMPs expire after 5 years. At least 180 days before expiration of an approved WQMP, the nonpoint source discharger shall resubmit for District approval a WQMP that meets all the requirements of this chapter and Chapter 62-160, F.A.C.

(2) A nonpoint source discharger with an approved WQMP may elect to enroll in an appropriate rule-adopted BMP program in lieu of implementing a WQMP at any time. The nonpoint source discharger must provide verification to the District by electronic mail or in writing that they are actively enrolled in a BMP program adopted under a BMAP. If the information submitted sufficiently demonstrates the nonpoint source discharger's participation in a BMP program adopted under a BMAP, the District will notify the nonpoint source discharger that its WQMP is no longer necessary.

(3) If the property operating under an approved WQMP is sold, the nonpoint source discharger must notify the District within 30 days. If the new property owner decides not to implement BMPs as required under a BMAP, the new owner must submit for District approval a WQMP to demonstrate attainment of the water quality criteria for the parameters addressed by the BMAP within 180 days of the sale.

Rulemaking Authority 373.044, 373.113, 373.4595 FS. Law Implemented – 373.4595, 403.067 FS. History-New _____.

40E-61.260 Modifications to WQMPs.

Modifications to WQMPs must be approved by the District. The nonpoint source discharger shall notify the District by electronic mail or in writing within 30 days of a change that requires a modification to the WQMP. WQMPs must be modified if any of the following occurs:

(1) New analytical methods, sampling or other field procedures, or instruments or equipment that affect data quality become available;

(2) The sampling or analysis contractor or subcontractor is changed;

(3) The scope of work is substantially altered;

(4) A change in property hydrology; or

(5) Other changes are made that affect the data quality objectives of the WQMP.

Rulemaking Authority 373.044, 373.113, 373.4595 FS. Law Implemented – 373.4595, 403.067 FS. History-New _____.

40E-61.280 Implementation Procedures.

(1) As provided in an approved WQMP, a nonpoint source discharger must ensure that water samples are taken at the approved frequency at all locations set forth in the approved WQMP.

(2) The collected water samples must be analyzed in accordance with the approved WQMP within 90 days of District approval of the WQMP.

(3) Sample collections and analytical test methods on the collected samples shall be conducted in accordance with Chapter 62-160, F.A.C.

(4) Monitoring records must be retained onsite for at least 5 years and copies of the records must be provided to the District upon request.

(5) The nonpoint source discharger with an approved WQMP shall allow District staff and designated agents reasonable access to their property to verify compliance with the WQMP, monitor water quality, and collect data, as

DRAFT

applicable. The District will provide advance notice at least 48 hours prior to a site visit.

(6) The District will provide at least a one-week notice to the nonpoint source discharger of its intent to conduct a Quality Assurance (QA) field audit of sample collection procedures. The District will also provide the results of the QA field audit to the nonpoint source discharger.

(7) The nonpoint source discharger's data will be used to assess attainment annually with the water quality criteria for the parameters addressed by the BMAP. The nonpoint source discharger shall submit a water quality monitoring summary report by August 1 each year that includes all raw data in a District-approved format. If it is demonstrated that a nonpoint source discharger is not attaining the water quality criteria for the parameters addressed by the BMAP, then the District will notify nonpoint source dischargers of the requirement for remedial actions in accordance with Rule 40E-61.290, F.A.C.

(8) The District shall share the monitoring results provided by the nonpoint source dischargers with the Coordinating Agencies.

(9) The nonpoint source discharger must provide written notice within 30 days to the District if the property operating under an approved WQMP is sold or changes are made to the hydrology of the property.

Rulemaking Authority 373.044, 373.113, 373.4595 FS. Law Implemented – 373.4595, 403.067 FS. History-New _____.

40E-61.290 Remedial Action.

The District shall have all remedies available to it under Florida law, pursuant to Chapter 373, F.S., and the rules adopted thereunder to enforce compliance with this chapter. Compliance includes adherence to the rules in this chapter, such as implementation of the approved WQMP and timely submittal of required reports.

(1) If the District determines a nonpoint source discharger is not adhering to the rules in this chapter:

(a) The nonpoint source discharger will be subject to enforcement actions by the District upon written notice of non-compliance.

(b) All nonpoint source dischargers shall respond in writing to a notice of monitoring plan non-compliance from the District within 30 days of the date of the notice. The response must provide a plan that includes a schedule for achieving compliance with the rules within 90 days of the date of the District's notice. An extension may be approved by the District with justification based on the scope of the proposed activities. The plan may require submittal of a WQMP modification as described in Rule 40E-61.260, F.A.C.

(2) After 3 years of monitoring, if it is demonstrated that a nonpoint source discharger does not attain the water quality criteria for the parameters addressed by the BMAP based on the data collected under an approved WQMP or other District-collected data, the nonpoint source discharger shall implement appropriate BMPs or other measures as established under the applicable BMAP, and the District may refer the nonpoint source discharger to FDEP for enforcement.

Rulemaking Authority 373.044, 373.113, 373.4595 FS. Law Implemented – 373.4595, 403.067 FS. History-New _____.

40E-61.301 Conditions for Issuance for Individual and Collective Permits.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4595 FS. History–New 11-1-89, Repealed _____.

40E-61.321 Duration of Permits.

Rulemaking Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.451, 373.453, 373.4595, 668.003, 668.004, 668.50 FS. History–New 11-1-89, Amended 1-1-97, 10-1-06, Repealed _____.

40E-61.331 Modification.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4595 FS. History–New 11-1-89, Repealed _____.

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40E-61.351 Transfer.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4595 FS. History—New 11-1-89, Repealed _____.

40E-61.381 Limiting Conditions.

Rulemaking Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4595, 668.003, 668.004, 668.50 FS. History—New 11-1-89, Chapter 40E-61, Amended 10-1-06, Repealed _____.

Table 40E-61 (a., 1, 2, b, 3, 4)

NAME OF PERSON ORIGINATING PROPOSED RULE: Jennifer Reynolds, Division Director, Ecosystem Restoration & Capital Projects

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 11, 2021

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: October 22, 2019