

CHAPTER 40E-61
Northern Everglades Basins

40E-61.010 Policy and Purpose. (new)

40E-61.030 Definitions. (new)

40E-61.200 Implementation of Nonpoint Source Discharger Requirements. (new)

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

40E-61.250 Duration of WQMPs. (new)

40E-61.260 Modifications to WQMP. (new)

40E-61.280 Implementation Procedures. (new)

40E-61.290 Remedial Action. (new)

DRAFT

40E61.010 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).

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.

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 not implementing Best Management Practices (BMPs) as required under a BMAP, 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 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) An entity in compliance with the permit(s) set forth in the Everglades Program under Chapter 40E-63, F.A.C., may elect to use that permit in lieu of the requirements of this chapter.

(4) A WQMP must be received by the District within 180 days of the date of written notification by a Coordinating Agency of the requirement of the nonpoint source discharger to either implement BMPs or monitor.

(5) 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 _____.

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 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.

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 implement an appropriate rule-adopted BMP program in lieu of 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 implementing 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.

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.

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 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.

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. The District may refer the nonpoint source discharger to FDEP for enforcement of the applicable BMPs required under the BMAP.