

CHAPTER 17-1

RULES OF ADMINISTRATIVE PROCEDURES PROCEEDINGS

PART I

DESCRIPTION OF ORGANIZATION

- 17-1.01 Agency Description.
- 17-1.02 Address, Office Hours and Copies of Documents.
- 17-1.03 Statutes Affecting Agency Operations.
- 17-1.04 Delegation of Authority by Secretary.
- 17-1.05 General Description of Agency Organization and Operations.

PART II

RULES GOVERNING PRACTICE
AND PROCEDURE
RULEMAKING PROCEEDINGS

- 17-1.06 General.
- 17-1.07 Rule Adoption.
- 17-1.08 Manner of Notice.
- 17-1.09 Content of Notice.
- 17-1.10 Legal Objections.
- 17-1.11 Hearing.
- 17-1.12 Filing and Effective Date.
- 17-1.13 Emergency Rule.
- 17-1.14 Judicial Review.
- 17-1.15 Notice.
- 17-1.16 Public Participation.
- 17-1.17 Smoking Prohibited.
- 17-1.18 Recording of Rulemaking Proceedings.

PART III

RULES GOVERNING PRACTICE
AND PROCEDURE
DEPARTMENT DECISIONS
(ADJUDICATORY) DETERMINING
SUBSTANTIAL INTERESTS
OF AFFECTED PERSONS

- 17-1.19 General.
 - A. Parties.

- 17-1.20 Parties to Proceedings.
- 17-1.21 Who May Appear: Criteria for Authorized Representation.
- 17-1.23 Staff Personnel.
 - B. Pleadings.
 - 17-1.24 Form.
 - 17-1.25 Filing and Service.
 - 17-1.26 Signature, Verification and Certificate of Service.
 - 17-1.27 Construction of Pleadings.
 - 17-1.28 Time for Filing.
 - 17-1.29 Extension of Time for Filing.
- 17-1.30 Amendments.
- 17-1.31 Copies Required.
- 17-1.32 Computation of Time.
- 17-1.33 Pleadings in Adjudicatory Proceedings.
- 17-1.34 Initial Pleadings.
- 17-1.35 Responsive Pleadings.
- 17-1.36 Orders for Corrective Action.
- 17-1.37 Consent Order.
- 17-1.38 Motion for Orders.
- 17-1.39 Motion for Extension of Time for Compliance.
- 17-1.40 Petition for Reconsideration.
- 17-1.41 Stipulation as to Fact.
- 17-1.42 Order to Show Cause.
 - C. Hearings and Conferences.
 - 17-1.43 Public Hearing; Waiver.
 - 17-1.44 Notice of Hearing.
 - 17-1.45 Pre-Hearing Conference.
 - 17-1.46 Adjudicatory Hearing Procedure.
 - 17-1.47 Continuance of Hearing.
 - 17-1.48 Witness Subpoenas.
 - 17-1.49 Witness Fees.
 - 17-1.50 Official Record of Hearing.

- 17-1.51 Hearing Before an Examiner.
 17-1.52 Authority of Department and Hearing Officers in Adjudicatory Proceedings.
 17-1.53 Informal Conferences.
 17-1.54 Judicial Review.
 D. Discovery.
 17-1.55 Discovery.
 E. Rights of Parties and Intervenors.
 17-1.56 Due Process.
 17-1.57 Petitions and Applications for Variances or Exemptions.
 17-1.58 Administrative Enforcement Actions.
 17-1.585 Department Approval of Testing and Research Programs.
 17-1.59 Burden of Proof; Order of Presentation.
 17-1.60 Petitions for Interlocutory Review.
 17-1.61 Power Plant Siting.
 17-1.62 Petition for Administrative Hearing; Notice of Application and Proposed Agency Action; Waiver of Right to Administrative Proceeding.
 17-1.63 Uniformity in Approval and Denial of Applications for Department Permits and Certification.
 17-1.64 Designation, Preparation and Transmittal of Record for Administrative Appeals, Judicial Review and Other Judicial Proceedings.
 17-1.65 Videotaped Depositions.
 17-1.66 Hearings To Be Held Within 120 Days.
 17-1.67 Suspension and Revocation of Department Permits, Certifications or Certificates.
 17-1.68 Agency Action on Recommended Orders.
 17-1.681 Designation of Official Reporter for Subject Matter Index.
 17-1.682 Designation of Agency Clerk; Duties.
- PART IV
 APPEALS-ENVIRONMENTAL
 REGULATION COMMISSION
- 17-1.69 General.
 17-1.70 Final Agency Action.
 17-1.71 Parties to Appeals; Amicus Curiae; Intervenors.
 17-1.72 Initiation of Appeal; Request for Record; Contents of Notice; Compliance and Enforcement; Public Notice.
 17-1.73 Initiation of Cross-Appeals.
 17-1.74 Briefs.
 17-1.75 Oral Argument.
 17-1.76 Proposed Orders.
 17-1.77 Record.
 17-1.78 Scope of Review.
 17-1.79 Decisions.
 17-1.80 Ex Parte Communications.
 17-1.81 Petitions for Rehearing.
 17-1.82 Settlement.
 17-1.83 Certificate of Service.
 17-1.84 Copies.
 17-1.85 Motions.
 17-1.86 Orders.
 17-1.861 Effect of Repeal.
- PART V
 APPEALS-BOARD OF TRUSTEES
 OF THE INTERNAL IMPROVEMENT
 TRUST FUND
- 17-1.87 General.
 17-1.88 Final Agency Action.
 17-1.89 Parties to Appeals.
 17-1.90 Initiation of Appeal; Request for Record; Contents of Notice; Compliance and Enforcement; Public Notice.
 17-1.91 Initiation of Cross-Appeals.

- 17-1.92 Briefs.
- 17-1.93 Oral Argument.
- 17-1.94 Proposed Orders.
- 17-1.95 Record.
- 17-1.96 Scope of Review.
- 17-1.97 Decisions.
- 17-1.98 Ex Parte Communications.
- 17-1.99 Settlement.
- 17-1.100 Certificates of Service.
- 17-1.101 Copies.
- 17-1.102 Motions.
- 17-1.103 Orders.
- 17-1.104 Meetings.

PART VI
FINAL ACTION ON
STANDARDS STRICTER THAN
FEDERAL STANDARDS UNDER
SECTION 403.804(2),
FLORIDA STATUTES

- 17-1.105 General.
- 17-1.106 Hearing Nature; Record.
- 17-1.107 Notice of Hearing; Public Meetings.
- 17-1.108 Participation in Proceedings; Notice.
- 17-1.109 Briefs and Oral Arguments.
- 17-1.110 Filing.
- 17-1.111 Motions.
- 17-1.112 Computation of Time.
- 17-1.113 Copies.
- 17-1.114 Membership of Florida Cabinet; Presiding Officer; Quorum; Agendas; Distribution of Agendas; Recording of Proceedings; Agency Action; Voting; Amendment to Rules; Parliamentary Matters; Minutes; Order of Procedure.

- PART VII
AGENDA AND SCHEDULING
OF MEETINGS AND WORKSHOPS
- 17-1.115 Notice of Meetings.
 - 17-1.116 Agenda of Meetings and Workshops.

- 17-1.117 Smoking Prohibited.
- 17-1.118 Emergency Meeting and Workshop.

PART VIII
DECLARATORY STATEMENTS

- 17-1.119 Purpose and Use of Declaratory Statements.
- 17-1.120 Petition.
- 17-1.121 Department Disposition.

PART IX
LIST OF FORMS AND INSTRUCTIONS

- 17-1.122 List of Approved Forms and Instructions.
- 17-1.1221 Forms.
- 17-1.200 Approved Forms and Instructions.
- 17-1.201 General and Multi-Purpose Forms.
- 17-1.202 Air Pollution.
- 17-1.203 Dredge and Fill.
- 17-1.204 Industrial Waste.
- 17-1.205 Domestic Waste.
- 17-1.206 Solid Waste.
- 17-1.207 Hazardous Waste.
- 17-1.208 Drinking Water.
- 17-1.209 Underground Injection Control.
- 17-1.210 Operators and Contractors.
- 17-1.211 Power Plant Certification.
- 17-1.212 Transmission Line Application.
- 17-1.213 Water Well.
- 17-1.214 Water Restoration.
- 17-1.215 Stormwater.
- 17-1.216 Ground Water.
- 17-1.217 Wastewater Management Grants.

PART X
WATER RESOURCES RESTORATION
AND PRESERVATION

- 17-1.123 Purpose.
- 17-1.124 Application of Rules.
- 17-1.125 Definitions.
- 17-1.126 General.

- 17-1.127 Limitations on Funding.
- 17-1.128 Application for Funds.
- 17-1.129 Criteria for Selection of Proposals and for Allocation of Funds.
- 17-1.130 Award of Funds.
- 17-1.131 Application Form.

PART XI SMOKING POLICY

- 17-1.132 Definitions.
- 17-1.133 Purpose.
- 17-1.134 Restricted Areas.
- 17-1.135 Action by Department Officials and Employees.
- 17-1.136 Specific Areas.

PART XII LEASES FOR REAL PROPERTY

- 17-1.137 Definitions.
- 17-1.138 Review and Approval.
- 17-1.139 Escalation Clauses Prohibited.
- 17-1.140 Right to Terminate Clause Required.
- 17-1.141 Standard Lease Agreement Form.
- 17-1.142 Filing of Leases.
- 17-1.143 Standard Notice of Renewal.
- 17-1.144 Turnkey (Lease) Construction Program.
- 17-1.145 Leases of 2,000 Square Feet or More.
- 17-1.146 Disclosure Statements.
- 17-1.147 Leases for Less than 2,000 Square Feet of Space.
- 17-1.148 Waiver Committee.
- 17-1.149 Fire Code Compliance in Leased Space.
- 17-1.150 Legal Review.

PART I DESCRIPTION OF ORGANIZATION

17-1.01 Agency Description.

(1) The Department of Environmental Regulation is a component of the executive branch of the State

of Florida authorized by Section 20.261, Florida Statutes. It was created by the Florida Environmental Reorganization Act of 1975, (Chapter 75-22, Laws of Florida).

(2) The Secretary, pursuant to Subsection 20.261(1), Florida Statutes, is the head of the Department of Environmental Regulation, and is appointed by the Governor and confirmed by the Senate. In addition to the powers and duties delegated to the Secretary by Chapter 75-22, Laws of Florida (1975), the Secretary may exercise those powers delegated to heads of state departments by Section 20.05, Florida Statutes. The Secretary has authority to adopt, by rule, all procedures followed, and forms used, by the Department, in addition to the exercise of the Department's rule-making powers under Chapter 373, Florida Statutes.

(3) The Environmental Regulation Commission was created by the Florida Environmental Reorganization Act as part of the Department. It is composed of seven citizens, appointed by the Governor and confirmed by the Senate, who represent various geographical regions and interest groups of the state. The Commission adopts all Department standards relating to air, water quality, noise and solid waste management, and gives final state approval on applications for and disbursements of federal grants.

Specific Authority: 120.53(1)(a),
F.S. Law Implemented: 120.53(1)(a),
F.S. History: New 2-6-78.

17-1.02 Address, Office Hours and Copies of Documents.

(1) The address of the Department is:

2600 Blairstone Road
Twin Towers Office Building
Tallahassee, Florida 32301
(904) 488-4807

(2) Office Hours are:

Office hours are 8:00 a.m.
until 5:00 p.m. each weekday except
holidays.

(3) Copies of Documents:

Information or requests for
copies of rules, orders, publica-
tions or documents issued by the
Department may be obtained at the
above address.

The Department also has dis-
trict, subdistrict, and branch
offices throughout the state, and
copies of documents they have may be
obtained there. The following map
gives the address and telephone num-
ber of the Department's headquarters
and field offices. (Figure 1)

Specific Authority: 120.53(1)(a),
F.S. Law Implemented: 120.53(1)(a),
F.S. History: New 2-6-78, Amended
4-28-81.

**17-1.03 Statutes Affecting
Agency Operations.** The Department
of Environmental Regulation has
responsibility for regulating cer-
tain activities or carrying out
statutory duties which affect the
quality of Florida's environment,
including: dredging and filling in
navigable waters under Chapter 253,
Florida Statutes administration of
the Water Resources Act of 1972,
Chapter 373, Florida Statutes; which
includes general supervision of the
water management districts and
licensing of water well contractors
for formation of drainage and water
management districts under Chapter
298, Florida Statutes; and adminis-
tration of Chapter 403, Florida

Statutes, which includes regulation
of air, water, and noise pollution,
solid waste management, power plant
siting, public drinking water sup-
plies, licensing of water and sewage
treatment plant operators, and state
pollution control bonds.

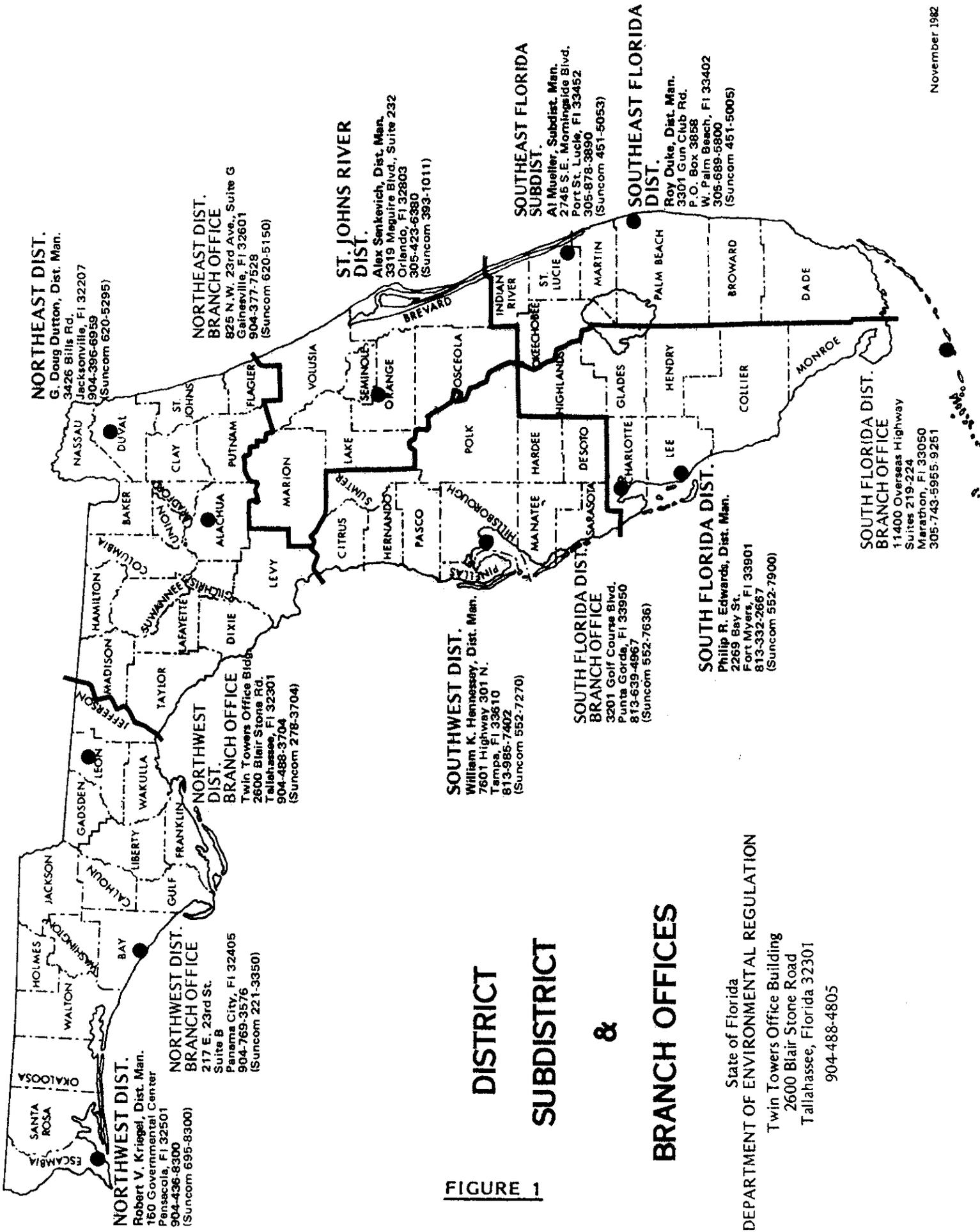
Pursuant to Section 370.0211
and Section 23.0114(2)(b), Florida
Statutes, the Department is also
responsible for the development of
and submittal to the Legislature of
a coastal zone management program
which complies with the requirements
of the federal Coastal Zone Man-
agement Act of 1972. In addition,
the Department is responsible for
performing the State's obligations
under several federal statutes, in-
cluding the Federal Water Pollution
Control Act Amendments of 1972
(Public Law 92-500), the Clean Air
Act (Public Law 91-604, Public Law
92-157, Public Law 93-15, Public Law
93-319, Public Law 95-95), the Safe
Drinking Water Act (Public Law
93-523), the Noise Control Act of
1972 (Public Law 92-574), the Water
Resources Planning Act (Public Law
89-80, Public Law 91-512), and the
Coastal Zone Management Act of 1972
(Public Law 92-583).

Specific Authority: 120.53(1)(a),
F.S. Law Implemented: 120.53(1)(a),
F.S. History: New 2-6-78.

**17-1.04 Delegation of Authority
by Secretary.** The Secretary, as
head of the Department, has delegat-
ed authority as follows:

(1) To the Assistant Secretary
of the Department to act on behalf
of the Secretary in all matters dur-
ing the absence of the Secretary,
including the signing of contracts.

(2) To the Director, Division



NORTHEAST DIST.
G. Doug Dutton, Dist. Man.
3426 Bills Rd.
Jacksonville, FL 32207
904-396-6959
(Suncom 620-5295)

NORTHEAST DIST. BRANCH OFFICE
825 N.W. 23rd Ave., Suite G
Gainesville, FL 32601
904-377-7528
(Suncom 620-5150)

ST. JOHNS RIVER DIST.
Alex Senkevich, Dist. Man.
3319 Maguire Blvd., Suite 232
Orlando, FL 32803
305-423-6380
(Suncom 393-1011)

SOUTHEAST FLORIDA SUBDIST.
Al Mueller, Subdist. Man.
2746 S.E. Morningside Blvd.
Port St. Lucie, FL 33452
305-878-3890
(Suncom 451-5053)

SOUTHEAST FLORIDA DIST.
Roy Duke, Dist. Man.
3301 Gun Club Rd.
P.O. Box 3858
W. Palm Beach, FL 33402
305-689-5800
(Suncom 451-5005)

SOUTHWEST DIST.
William K. Hennessey, Dist. Man.
7601 Highway 301 N.
Tampa, FL 33610
813-985-7402
(Suncom 552-7270)

SOUTH FLORIDA DIST. BRANCH OFFICE
3201 Golf Course Blvd.
Punta Gorda, FL 33950
813-639-4967
(Suncom 552-7636)

SOUTH FLORIDA DIST.
Phillip R. Edwards, Dist. Man.
2269 Bay St.
Fort Myers, FL 33901
813-332-2667
(Suncom 552-7900)

SOUTH FLORIDA DIST. BRANCH OFFICE
11400 Overseas Highway
Suites 219-224
Marathon, FL 33050
305-743-5955-9251

NORTHWEST DIST.
Robert V. Krieger, Dist. Man.
160 Governmental Center
Pensacola, FL 32501
904-436-8300
(Suncom 695-8300)

NORTHWEST DIST. BRANCH OFFICE
217 E. 23rd St.
Suite B
Panama City, FL 32405
904-769-3576
(Suncom 221-3350)

NORTHWEST DIST. BRANCH OFFICE
Twin Towers Office Bldg.
2600 Blair Stone Rd.
Tallahassee, FL 32301
904-488-3704
(Suncom 278-3704)

FIGURE 1

**DISTRICT
SUBDISTRICT
&
BRANCH OFFICES**

State of Florida
DEPARTMENT OF ENVIRONMENTAL REGULATION
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32301
904-488-4805

of Administrative Services, to act on behalf of the Secretary on all purchasing, office space leasing, personnel and budget matters.

(3) To the General Counsel, to accept service of process on lawsuits filed against the agency.

(4) To the Division of Environmental Permitting, District and Subdistrict Managers, authority to act on the following types of permit applications other than projects which qualify as a Development of Regional Impact pursuant to Chapter 380, Florida Statutes:

(a) To complete, sign and submit to the appropriate authority applications and all other necessary documents relating to the laboratory use of alcohol by the District and Subdistrict Offices pursuant to Section 6 of Chapter 75-22 (Laws of Florida), and Section 20.05, Florida Statutes. This authority is also delegated to the Chief of the biological section, relating to the use of alcohol by the biological laboratory.

(b) To approve or deny engineering plans and related documents covering proposed public water supply improvement projects, e.g., new water treatment plants or modifications, distribution system extensions, and water well installations. Sections 403.850 through 403.864, Florida Statutes.

(c) To approve or deny permits, including execution of notices of intent to approve or deny such permits, to construct public water supply wells. Sections 403.850 through 403.864, Florida Statutes.

(d) To approve or deny short form permits for those types of projects in Section 403.813(1), Florida

Statutes, and Sections 17-4.28 and 17-4.29, Florida Administrative Code, including execution of notices of intent to issue or deny such permits.

(e) With regard to wastewater treatment and industrial waste treatment facilities, air pollution control equipment, and sanitary landfills the following authority is delegated:

1. To approve and deny construction, operation and temporary operation permits under Chapter 403, Florida Statutes, including execution of notices of intent to approve or deny such permits;

2. To approve and deny requests for extensions of expiration dates of construction permits, including execution of notices of intent to take such action;

3. To approve and deny requests for the renewal of operation permits where the subject facility or operation is meeting Department standards and requirements, including execution of notices of intent to take such action;

4. To approve, deny and order modifications of operation permits, including execution of notices of intent to take such actions;

5. To approve and deny requests for the extension or revision of compliance dates and conditions in temporary operation permits after public notice, where a good faith effort has been made by the applicant to meet the deadlines and requirements in the temporary operation permit, including execution of notices of intent to take such action; and

6. To issue the appropriate public notice on forms over the

Secretary's signature for all of the types of permits delegated to the districts and subdistricts.

(f) To issue Notices of Intent to Deny, or Approve and to issue Final Orders of Denial when no administrative hearing has been requested for short form dredge and fill applications, and other applications described in paragraph (e) above.

(g) To complete, sign and submit to the appropriate authority applications and all other necessary documents relating to the laboratory use of alcohol by the District and Subdistrict Offices of the Department of Environmental Regulation in carrying out their statutory duties.

(h) In addition to the authority to act on permit applications described herein, the authority to execute consent orders and notices of violation which have been approved by the Office of the General Counsel.

(5) To the Director of Permitting, or, at his discretion, the Chief of the Bureau of Permitting, to issue letters of intent to approve and intent to deny standard applications for dredge and fill projects pursuant to Chapters 403 and 253, Florida Statutes, and Sections 17-4.28 and 17-4.29, Florida Administrative Code.

(6) To the Chief of the Bureau of Permitting, certification of NPDES permits pursuant to Public Law 92-500, Section 401.

(7) To the approved Local Programs, the Water Management Districts, and other state agencies according to specific agreements, to function as agents for the Department in those activities designated

by the Department, which, in the judgment of the Department, may be performed individually by each program, district or agency at a level required by applicable statutes or rules relating to these activities. These specific agreements are on file with the Department and available for public inspection.

(8)(a) To the South Florida Water Management District, the Southwest Florida Water Management District, the St. Johns River Water Management District, the Suwannee River Water Management District, and the Northwest Florida Water Management District the authority to administer and enforce those provisions of Chapter 373, Florida Statutes, water quality and other functions of the Department, and the rules of the Department as has been delegated from time to time to the Districts by order of the Secretary, after fourteen (14) days notice to the Governing Board and publication in the Florida Administrative Weekly. Authority delegated shall be listed in this section subsequent to delegation. The following Districts are authorized to administer and enforce the following laws and rules, including Section 373.103(1), F.S., to the extent necessary to fully implement authority specifically delegated.

1. South Florida Water Management District: 373.026(1) through (5), and 373.026(6) to the extent necessary to conduct or participate in laboratory research; 373.033; 373.042; 373.046; 373.103(2) through (7); 373.191; Part II, Chapter 373; 373.309; 373.313; 373.316; 373.319; 373.323(6); 373.326; 373.333; Chapter 403, to the extent necessary to

adopt, implement, and enforce Rule 16K-4.035, F.A.C.; Part IV, Chapter 373; Chapter 17-21, F.A.C.

2. Southwest Florida Water Management District: 373.026(1) through (5), and 373.026(6) to the extent necessary to conduct or participate in laboratory research; 373.033; 373.042; 373.046; 373.103(2) through (7); 373.191; Part II, Chapter 373; 373.309; 373.313; 373.316; 373.319; 373.323(6); 373.326; 373.333; Part IV, Chapter 373; Chapter 17-21, F.A.C.

3. St. Johns River Water Management District: 373.026(1) through (5), and 373.026(6) to the extent necessary to conduct or participate in laboratory research; 373.033; 373.042; 373.046; 373.103(2) through (7); 373.191; Part II, Chapter 373; 373.309; 373.313; 373.316; 373.319; 373.323(6); 373.326; 373.333; Part IV, Chapter 373; Chapter 17-21, F.A.C.

4. Suwannee River Water Management District: 373.026(1) through (5), and 373.026(6) to the extent necessary to conduct or participate in laboratory research; 373.033; 373.042; 373.046; 373.103(2) through (7); 373.191; Part II, Chapter 373; 373.309; 373.313; 373.316; 373.319; 373.323(6); 373.326; 373.333; Part IV, Chapter 373; Chapter 17-21, F.A.C.

5. Northwest Florida Water Management District: 373.026(1) through (5), and 373.026(6) to the extent necessary to conduct or participate in laboratory research; 373.033; 373.042; 373.046; 373.103(2) through (7); 373.191; Part II, Chapter 373; 373.309; 373.313; 373.316; 373.319; 373.323(6); 373.326; 373.333; Part IV, Chapter

373; Chapter 17-21, F.A.C.

(b) In making the foregoing delegations of authority, the Department continues to retain and exercise general supervisory authority over the water management districts, and no delegation is intended to divest the Department or the Districts of the authority to take action pursuant to those provisions of Chapter 373 which provide independent authority to the Districts or the Department.

(c) Applications for permits to construct and operate injection wells involve provisions of Chapter 373, Florida Statutes, administered by the various water management districts, and Chapter 403, Florida Statutes, administered by the Department. Efforts have been made by the Department and districts to coordinate this permit review process, and applicants should contact the district and Department offices for specific information on the permit coordination procedures.

(9) To those counties or municipalities, pursuant to Section 403.1815, Florida Statutes, the authority to regulate the construction of water distribution mains and sewage collection laterals of ten inches (10") or less which may be connected to any water system or sewerage system owned by the county or municipality, as has been delegated from time to time by order of the Secretary, after fourteen (14) days public notice in the Florida Administrative Weekly and in a newspaper of general circulation in the county or municipality to whom delegation is proposed. Any authority delegated shall be listed in this section subsequent to delegation.

(10) Aquatic Weed Control Discharge Permit. Pursuant to 403.061 (27), Florida Statutes, the Department of Environmental Regulation delegates to the Department of Natural Resources (DNR) the authority to issue, deny, modify, revoke, and suspend permits authorizing persons to discharge into waters, in accordance with Section 403.088(1), Florida Statutes, chemicals, biological agents and other substances for the purpose of the control of aquatic weeds or algae, provided:

1. the discharge is in accordance with a program approved by DNR pursuant to 16C-20, Florida Administrative Code; and

2. DNR conforms to the requirements of Chapter 120, Florida Statutes and Chapters 17-1, Part III and 28-5, Florida Administrative Code, the processing of all permit applications; and

3. the Department is allowed to intervene as of right in any DNR licensing proceeding involving this delegation.

Specific Authority: 120.53(1)(a), 373.103, 373.308, 403.061, 403.1815, 403.812, F.S. Law Implemented: 120.53(1)(a), 403.088, F.S. History: New 2-6-78, Amended 4-28-81, 6-30-81, 6-3-82.

17-1.05 General Description of Agency Organization and Operations.

The agency is composed of three operating divisions, supporting staff offices, and district, subdistrict, and branch offices located around the state to make agency services accessible to the citizens of Florida. The internal structure of the Department of Environmental Regulation is reflected graphically on the organization chart (Figure 2).

(1) Office of the Secretary.

This office includes the Secretary, who exercises those powers and duties delegated to the head of the Department by Florida law, and the Assistant Secretary, who acts as agency head in the Secretary's absence and carries out such other duties as assigned by the Secretary. Additional functions carried out by personnel located in this office include coordination of the Department's water management, legislative, industrial development, and federal grant programs.

(a) Office of the General Counsel. The Office of General Counsel is headed by the General Counsel who is appointed by and serves at the pleasure of the Secretary. All Department attorneys are located in this office and are directly supervised by three (3) deputy general counsels. This office provides all of the legal support to the Department of Environmental Regulation and provides legal advice to the Governor and Cabinet and Environmental Regulation Commission on Department legal matters. Within the Office of General Counsel is the Office of Enforcement, headed by the Enforcement Administrator, which provides overall direction for the enforcement activities of the Department.

(b) Office of Grant Coordination. This Office is responsible for screening all grant applications, developing the annual Water Program Plan, and coordinating the development of all other Department program plans.

(c) Industrial Development Coordination Section. This Section, in cooperation with the Department of Commerce, Division of Economic Development, communicates with prospective new industries, or existing industries wishing to expand, to aid

DEPARTMENT OF ENVIRONMENTAL REGULATION

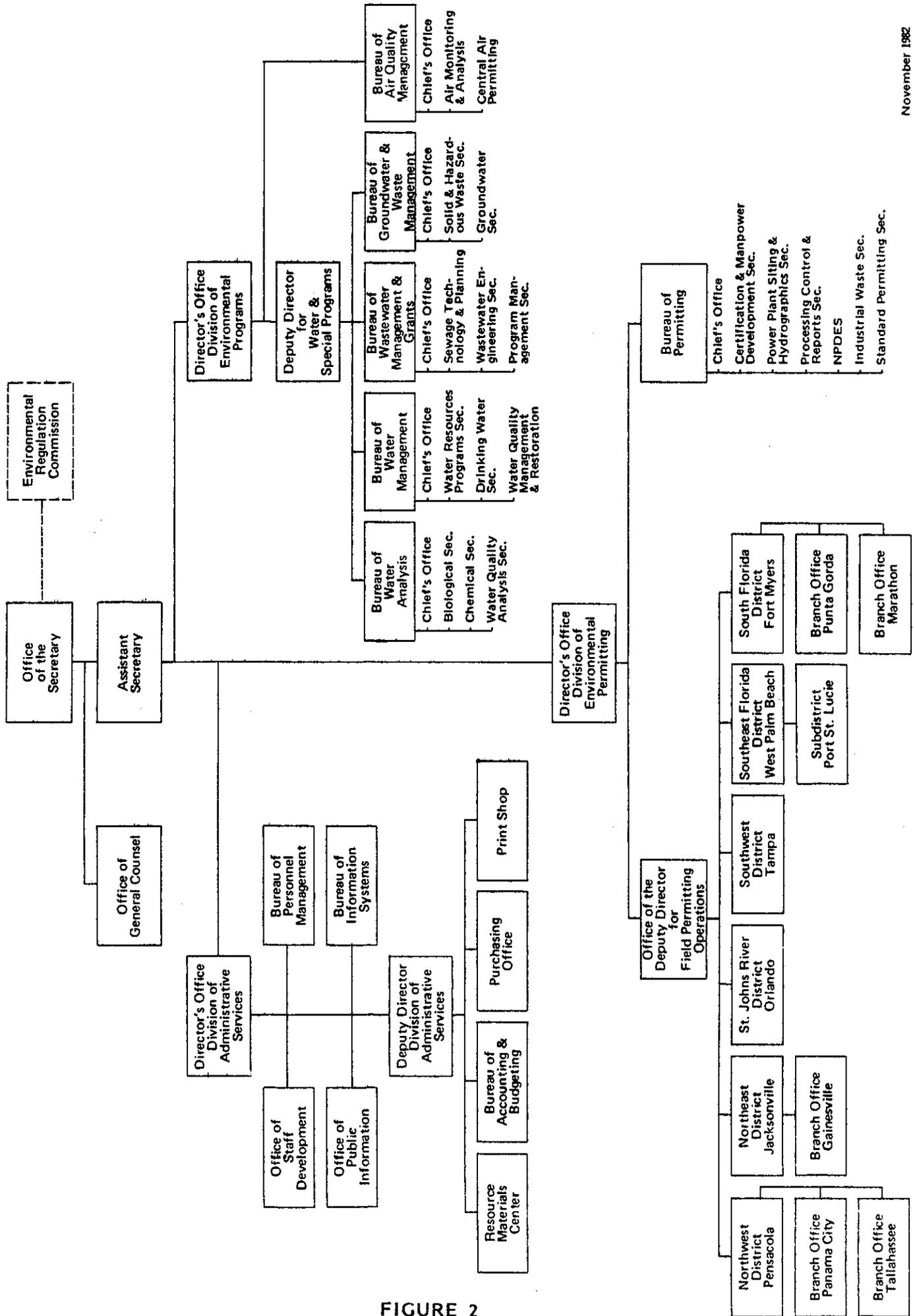


FIGURE 2

them in selecting sites and procedures that will minimize environmental problems.

(2) Division of Administrative Services. The Division of Administrative Services is headed by the Director of Administrative Services, who is appointed by and serves at the pleasure of the Secretary. The division performs four broad functions: provides centralized administrative services for the Department; coordinates the flow and analysis of program status information from district, subdistrict, and water management offices to the central office in Tallahassee; disseminates information to the public concerning the activities of the Department and facilitates citizen involvement in efforts to protect the environment; and develops and administers Department-wide staff development programs.

(a) Office of Administrative Services. This office is responsible for providing overall direction and supervision for all administrative services support activities of the Department through the offices of Finance and Accounting, Personnel, Purchasing, and General Services. The Office includes the Planning and Budgeting Coordinator who is responsible for coordinating and developing the Department's legislative budget request and state and federal grant applications, and monitoring the expenditure of state and federal funds.

1. Personnel Office. This office is headed by the Personnel Officer, who serves as this agency's management representative in collective bargaining activities and supervises all personnel actions for agency employees. Employment appli-

cations and information regarding current vacancies may be obtained from the Personnel Office at 2600 Blair Stone Road, Twin Towers Office Building, Tallahassee, Florida 32301, telephone (904)488-0450.

2. Finance and Accounting Office. This office is headed by the Finance and Accounting Director and provides financial management to the Department accounts for the Department's operating appropriations, state bond loan program, revolving loan program, and monies appropriated for the water management districts, and is responsible for the Department's property management and payroll.

3. Purchasing Office. This office is headed by the Purchasing Director and is responsible for all purchasing services throughout the state on behalf of the Department.

4. General Services Office. This office is responsible for the receipt and distribution of incoming mail, the pick-up and processing of outgoing mail, and supply room, reproduction services, central files, graphics, and library functions, all of which are located at the central office. These activities are carried out under the direction of the office operations supervisor.

(b) Office of Program and Data Analysis. This office provides activity/resource analysis and data systems coordination.

(c) Office of Public Information. The Office of Public Information coordinates programs designed to provide information and education concerning environmental problems and activities in Florida.

(d) Office of Staff Development. This office develops and administers Department-wide in-service training programs for DER

personnel.

(3) Division of Environmental Programs. The Division of Environmental Programs is headed by the Director of Environmental Programs, who is appointed by and serves at the pleasure of the Secretary. This division is composed of the Bureau of Wastewater Management and Grants, the Bureau of Water Analysis, the Bureau of Drinking Water and Special Programs, the Bureau of Water Management, and the Bureau of Air Quality Management.

(a) The Office of the Director includes:

1. The Office of Economic Analysis is responsible for compiling and evaluating information on the economic impacts of proposed Department rules and for developing an economic evaluation system for all Department programs.

2. The Office of Coastal Zone Management, which is responsible for the Department's powers, duties, and functions relating to coastal zone planning and management in Florida, including developing a comprehensive state plan for the protection, development, and zoning of the coastal zone, making maximum use of any federal funding for this purpose. The office works closely with all levels of state and local government in the development of the Florida Comprehensive Coastal Management Program.

(b) Bureau of Wastewater Management and Grants.

The bureau provides for the technical review and certification to the United States Environmental Protection Agency of wastewater treatment projects originating within the state that are eligible for federal grants, provides the technical review of projects to be

constructed from the proceeds of the sale of State Pollution Control Bonds, provides technical expertise relating to wastewater treatment, design capabilities of various wastewater control systems, disposal systems, and experimental treatment methods, and reviews and develops rules for industrial and domestic wastewater as needed to meet changing criteria. New domestic and industrial wastewater processes and new industries are reviewed for statewide acceptance.

1. Sewage Technology and Planning Section. This section administers the facility planning (step 1) portion of Public Law 92-500, which provides construction funding for wastewater treatment works which have completed adequate economic, environmental and engineering planning, provides technical and administrative guidelines and approval of the planning process, reviews and evaluates new and innovative technology being developed in the area of domestic wastewater treatment, and is responsible for rule development related to domestic sewage treatment requirements.

2. Wastewater Engineering Section. This section reviews plans and specifications as part of applications for construction grant funds and certifies these to the United States Environmental Protection Agency and provides engineering support and reviews documents required during the construction phase for ongoing grant projects.

3. Program Management Section. This section is responsible for scheduling projects to coincide with federal funding allowances and to ensure proper utilization of federal funds as they become available, conducting preliminary review of user

charge and industrial cost recovery systems and technical reviews of sewer use ordinances and coordinating Environmental Protection Agency Needs Surveys, Priority Systems and Lists, 106 commitments, allocations to ensure project completion.

(c) Bureau of Drinking Water and Special Programs.

1. Office of the Bureau Chief.

This bureau supervises and manages the statewide programs for public water supply, solid waste disposal, noise control, and ground water control and applies for and manages federal or state monies to further the objectives and goals of these programs.

2. Drinking Water Section.

This section is responsible for planning, developing and coordinating the activities of the Department for effective management of the drinking water program.

3. Solid Waste Management Section. This section is responsible for planning, guidance, and technical assistance to cities, counties, Department staff, and all persons in the State who are involved in the management of solid and hazardous waste, and provides liaison with federal, state and local agencies.

4. Ground Water Section. This section provides technical review and evaluation for other programs in the Department on all aspects of ground water availability, contamination, protection, and management. Overall ground water resource coordination is specifically provided to meet the needs of the Resource Conservation and Recovery Act (P.L. 94-580), the Toxic Substances Control Act (P.L. 94-469), Surface Impoundment Assessment (P.L. 93-523), 208 Planning, Wastewater Facility Planning (P.L. 92-500),

Drinking Water (P.L. 93-523), Water Analysis, Permitting, and Water Management. The section is responsible for the statewide water well construction and abandonment rules and regulations, salinity barrier lines, and minimum ground water levels (Chapter 373, Florida Statutes), and the development and implementation of the Florida Underground Injection Control Program (P.L. 93-523).

(d) Bureau of Water Management.

1. Office of the Bureau Chief.

This Bureau is responsible for coordinating Department powers and duties pursuant to Chapter 373, Florida Statutes, planning and coordination of the water quality management programs required by Sections 208 and 303 of Public Law 92-500; development of the Florida Water Use Plan, the State Water Use Plan, and a statewide Water Quality Management Plan; the periodic review of State Water Quality Standards, the restoration and recovery of polluted and degraded bodies of water, the State Public Works Program, the State Dam Safety Program, the State "298" District Review, coordination and management of Title III Water Resources Council funds, and other special projects relating to the water resources of the State of Florida.

2. Water Resources Restoration Section. This section administers state and federal funds relating to the restoration and recovery of polluted and degraded bodies of water.

3. Water Planning Section. This section is responsible for preparation of the State Water Use Plan and the Florida Water Plan, Section 208 planning in the non-designated portions of the state, periodically revising the state water quality

management plans and developing the state's continuing planning process as required by Section 303(e), Public Law 92-500, liaison with local drainage districts, technical review of water management districts' plans and rules, and participation in Northeast Gulf River Basins Study.

4. 208 Designated Area Coordination Section. This Section is responsible for coordinating the Section 208 planning efforts among the twelve planning agencies and with the federal government.

5. Federal Water Programs Section. This section is responsible for the coordination of various federal programs related to water resources management, including:

- (i) the State Public Works Program,
- (ii) the Southeast Basins Interagency Commission,
- (iii) the Interstate Conference on Water Problems,
- (iv) the Coastal Plains Regional Commission,
- (v) the Water Resources Council and administration of Title III planning assistance grants under Public Law 89-90,
- (vi) participation and coordination with cooperative investigations and Data Collection Programs with the United States Geological Survey,
- (vii) coordination of special projects related to Water Management with statewide impact, and
- (viii) formulation and implementation of a State Dam Safety Inspection Program and periodic update of the Inventory of Dams in Florida.

(e) Bureau of Air Quality Management. This bureau plans, coordinates, and implements the state air pollution control program and serves

as the liaison between the state and the United States Environmental Protection Agency (EPA) on matters related to air quality.

The bureau is organized into three operating groups:

1. Bureau Chief's Office (BCO), which plans and directs the activities of the bureau and the Office of Rules and Special Projects (ORASP), which coordinates air rule development work, maintains the State Implementation Plan (SIP), and provides coordination and technical assistance to Metropolitan Planning Organizations (MPO's) that have the responsibility for developing the transportation portions of the state's ozone or carbon monoxide nonattainment area SIP's.

2. Central Air Permitting (CAPS) composed of the Modeling Section and the New Source Review (NSR) Section. The CAPS group processes construction permit applications for major air sources, provides technical assistance to district and local air programs, provides computer modeling, and coordinates Best Available Control Technology (BACT) and Lowest Achievable Emission Rate (LAER) determinations, and the National Emissions Standards for Hazardous Air Pollutants (NESHAPS) program.

3. Air Monitoring and Analysis (AMA) group, composed of the Monitoring Section and the Quality Assurance Section, which manages the statewide ambient air monitoring program, provides technical assistance to district and local program air monitoring personnel, and conducts special stack tests on behalf of the Department.

(f) Bureau of Water Analysis.

1. Office of the Bureau Chief. This bureau is comprised of the

following sections: Biology, Chemistry, Water Quality Analysis, and Water Quality Monitoring. The primary responsibilities of the bureau are to assess the physical, biological and chemical integrity of the surface waters of the state and to develop effluent limitations for point sources to insure maintenance of state water quality standards, to coordinate a state toxics control program, and to provide guidelines and other information needed for the use of chemical dispersants during oil spills.

2. Biology Section. This section provides specialized biological monitoring and analyses, and technical assistance to the DER staff on matters relating to biological water quality parameters.

3. Chemistry Section. This section provides special analytical services, a statewide quality assurance program for laboratories performing chemical analyses on water and wastewater, and technical expertise to the department on matters relating to intensive surveys and water chemistry.

4. Water Quality Analysis Section. This section is responsible for assuring that state surface water quality is not degraded below state standards as a result of discharges from point sources. Water quality based effluent limitations (WQBEL) are developed using site-specific historical and intensive survey data and state-of-the-art water quality prediction tools such as numerical models and statistical analysis. These WQBEL or wasteload allocations may be required for permitting purposes by both state and federal law (Section 403.088, Florida Statutes, and Sections 301(b), 302(a), 303(d) and 401 of

Public Law 92-500 respectively).

5. Water Quality Monitoring Section. This section is primarily responsible for the design and coordination of Florida's surface water quality monitoring program and the evaluation of all water quality assessments for various bodies of water.

(4) Division of Environmental Permitting. The Division of Permitting is headed by the Director of Environmental Permitting who is appointed by and serves at the pleasure of the Secretary. This division is composed of the Bureau of Permitting, the Office of the Deputy Director, and the District Offices, as shown on Figure 1.

(a) Bureau of Permitting. This bureau is responsible for the review of standard (major) dredge and fill applications for permit, applications for power plant siting certifications and transmission line siting certifications, National Pollutant Discharge Elimination System (NPDES) applications for certification, applications for certification as wastewater/water treatment plant operator, and applications for licensure as a well drilling contractor. The bureau provides technical assistance in industrial wastewater regulations, treatment techniques for achieving water quality standards, and other related aspects, and maintains an extensive library of dredge and fill materials relating to past agency actions, including the actions taken by predecessor agencies. The bureau is subdivided into the following sections:

1. The Standard Permitting Section. The primary function of this section is to provide a technical, biological, and hydrographic

evaluation for each standard-form application filed for dredge or fill projects.

2. The Power Plant Site Certification Section. The Power Plant Siting Section coordinates the Department review and studies of applications for power plant site certification and transmission line siting certification. The section selects consultants and helps prepare the contracts for the detailed studies of the application.

3. National Pollutant Discharge Elimination System Section. This section prepares certification for all National Pollutant Discharge Elimination System (NPDES) permits prior to their issuance by the United States Environmental Protection Agency, and serves as the focal point for all communication to and from the Environmental Protection Agency concerning the issuance of NPDES permits.

4. Certification and Manpower Development Section. Statewide certification of wastewater and potable water treatment plant operators, as well as licensure of water well drilling contractors, is administered by this office. This section reviews applicant qualifications for certification examinations, prepares schedules, administers examinations, and responds to complaints concerning operator performance after certification or licensure.

5. Industrial Waste Section. This section is responsible for the industrial waste rulemaking process, for providing expert guidance and advice to the staff of the Department and local pollution control agencies in matters relating to modern manufacturing, wastewater treatment and experimental technologies and their design capabilities,

and for providing admissible expert testimony in support of the Department's position in agency permitting and in other formal administrative and judicial proceedings.

(b) Office of the Deputy Director. This portion of the Division includes the Deputy Director of the Division and his staff, and is responsible for processing relief petitions pursuant to chapter 403, F.S., and Chapter 17, F.A.C., coordinating the review, evaluation and public hearing proceedings with various sections of the Department, federal, local or State agencies, and the general public, review of and response to Notices of Application for subdividing land issued by the Division of Florida Land Sales, and for review or response to agencies requesting comments from the Department on Environmental Impact Statements, local comprehensive plans, Development of Regional Impact statements, and public works projects.

(c) District and Subdistrict Offices. Each office is headed by a manager who is appointed by and serves at the pleasure of the Director. These offices, together with designated branch offices (as shown on Figure 1), are responsible for all permitting activities except for those described in (a) above and in Subsection 17-1.05(3)(e) of this Code, and all enforcement activities except for those specifically described in Subsection 17-1.05(1)(a), F.A.C.

1. Permitting—the evaluation of applications and issuance or denial of permits for the construction, modification or temporary operation of wastewater treatment facilities, other water pollution sources, public drinking water systems,

shortform (as set forth in Sections 17-4.28 and 17-4.29, F.A.C.) dredge and fill projects, and air pollution sources, except for those issued or denied by the Bureau of Air Quality Management. Input is provided to the public as necessary concerning permit requirements, criteria, etc.

2. Monitoring/sampling—the systematic ambient and pollution source air and water sampling throughout the state; samples are analyzed, results evaluated, data stored, and results utilized for enforcement action, if necessary.

3. Enforcement—inspection of facilities as a result of noncompliance with conditions of permits (including NPDES and state permits), inspection of facilities or operations that are maintenance problems, investigation of complaints pertaining to possible pollution sources, location and identification of pollution sources which may be in violation of Department rules and regulations, including issuance of warning letters and input for the processing of administrative or judicial remedies. Information is provided to the public as necessary concerning the Department standards and requirements.

Specific Authority: 120.53(1)(a), F.S. Law Implemented: 120.53(1)(a), F.S. History: New 2-6-78, Amended 4-28-81.

PART II RULES GOVERNING PRACTICE AND PROCEDURE RULEMAKING PROCEEDINGS

17-1.06 General. Proceedings held by the Environmental Regulation Commission or the Secretary for the adoption, amendment or repeal of Department rules shall be conducted according to the provisions of this

rule Part, Section 120.54, Florida Statutes, and Chapter 28-3, Florida Administrative Code.

Specific Authority: 120.53(1)(b), 403.061(7), F.S. Law Implemented: 120.53(1)(b), F.S. History: Revised 10-20-73, Amended 2-6-78, Formerly 17-1.01.

17-1.07 Rule Adoption.

Specific Authority: 120.041(4), 403.061(7), F.S. Law Implemented: 403.051, F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.02.

17-1.08 Manner of Notice.

Specific Authority: 120.031, 403.061(7), F.S. Law Implemented: 120.041, 40.051, F.S. History: Revised 10-20-73, Amended 12-31-74, Repealed 2-6-78, Formerly 17-1.03.

17-1.09 Content of Notice.

Specific Authority: 120.031, 403.061(7), F.S. Law Implemented: 120.041, 403.051, F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.04.

17-1.10 Legal Objections. All objections to the notice of a scheduled hearing shall be filed with the Secretary at least ten (10) days after the defect became, or should have become, apparent. All other legal issues should be brought to the Secretary's attention and an attempt made to resolve them prior to the hearing.

Specific Authority: 120.53(1)(b), 403.061(7), F.S. Law Implemented: 120.53(1)(b), F.S. History: Revised 10-20-73, Amended 2-6-78, Formerly 17-1.05.

17-1.11 Environmental Regulation Commission; Quorum. A quorum of the commission shall consist of a

majority of the members of the Commission. A majority vote of those present shall be required to adopt, repeal or amend a proposed rule, or take other official action.

Specific Authority: 120.53(1), 403.061(7), F.S. Law Implemented: 120.53(1), F.S. History: Revised 10-20-73, Amended 2-6-78, Formerly 17-1.06.

17-1.12 Filing and Effective Date.

Specific Authority: 120.031, 403.061(7), F.S. Law Implemented: 120.041, 403.051, F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.07.

17-1.13 Emergency Rule.

Specific Authority: 120.031, 403.061(7), F.S. Law Implemented: 120.041(3), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.08.

17-1.14 Judicial Review.

Specific Authority: 120.30, 403.061(7), F.S. Law Implemented: 120.30, 403.061(7), F.S. Law Implemented: 120.30, 403.171, F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.09.

17-1.15 Notice.

(1) Notice of the Commission's or Secretary's intent to adopt, amend, or repeal a proposed rule shall be given in accordance with Section 120.54, Florida Statutes, and Chapter 28-3, Florida Administrative Code, and applicable federal regulations, and a copy of the notice shall be mailed to each Commissioner on the same day the notice is forwarded to the Florida Administrative Weekly.

(2) When a proposed rule is directed toward a particular class of persons, a copy of the notice required by Section 120.54(1), Florida Statutes, shall be mailed to each person whose name and address is listed with the Department as a member of such class at least twenty-one (21) days prior to the intended action.

(3) When the Secretary determines that a proposed rule which has been agendaed for public hearing before the Commission is complex or controversial, or is likely to engender proposed amendments to the rule as noticed, the following procedure shall be followed, provided however, that failure to comply with these procedures shall not be a basis for invalidating a rule adopted in accordance with Chapter 120, F.S.:

(a) the notice and mailings referred to in subsections (1) and (2) above should be given and mailed at least forty (40) days prior to the intended action, unless the Secretary determines that this requirement would unduly delay consideration of a proposed rule,

(b) a copy of the notice referred to in subsection (1) above, a copy of the proposed rule, a copy of the economic impact statement required by Section 120.54(2), Florida Statutes, and a list of all persons whose names are listed in accordance with this paragraph shall also be mailed at least forty (40) days prior to the intended action to all persons who have caused their names and addresses to be listed with the Department for the specific purpose of receiving copies of the proposed rule and complying with the procedural requirements of this

subsection.

Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1), F.S.
History: New 2-6-78, Amended
6-3-82.

17-1.16 Public Participation.

(1) All affected persons and the public shall be given an opportunity to be heard; however, the Environmental Regulation Commission or Secretary of the Department may set fair and reasonable limitations on presentations by parties, intervenors, or the public to insure an orderly and fair hearing. All witnesses shall be sworn.

(2) After publication of notice of intended rulemaking in accordance with Section 120.54, F.S., any proposed amendments to the rule as noticed or other comments or objections should be submitted to the Commission, the Department, and those persons whose names have been listed in accordance with Section 17-1.15(3)(b), in writing no later than fifteen (15) days before the hearing, to allow sufficient time to evaluate the proposed amendments and facilitate greater public participation. Nothing herein shall be considered to abridge the right of any affected person to participate at a hearing conducted by the Commission or Secretary.

Proposed amendments submitted in accordance with this section shall:

(a) Be submitted on paper with numbered lines and clearly identify the portion of the rule which is proposed to be amended;

(b) Indicate deletions from the rule as noticed by double struck through type (e.g., ~~struck through~~) and additions by double underlining (e.g., underlining); and

(c) Include an explanation of the reasons for the proposed amendment and objections to the language of the rule as noticed.

Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1), F.S.
History: New 2-6-78, Amended
6-3-82.

17-1.17 Smoking Prohibited.

Smoking, igniting, or burning of tobacco or any other substances shall be prohibited at any public workshop, hearing, or meeting conducted by the Department or Commission for the purpose of considering a proposed rule. Smoking in Department buildings is governed by Part XI of this chapter. Smoking in other state buildings is governed by the rules of the agency responsible for the building. At reasonable intervals, persons who desire to smoke shall be provided an opportunity to do so in a location which will not affect persons who choose not to smoke.

Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1), F.S.
History: New 2-6-78, Amended
4-28-81.

17-1.18 Recording of Rulemaking Proceedings. Rulemaking proceedings before the Commission shall be recorded by shorthand reporting by a person certified as a shorthand reporter pursuant to Chapter 457, Florida Statutes. The Department shall make appropriate arrangements to ensure that the Commission rulemaking proceedings are recorded and preserved by shorthand reporting. A written transcript of the rulemaking proceeding shall be prepared, if requested, at the cost of the requesting party. Rulemaking proceedings before the Secretary shall be

mechanically recorded and preserved. The operator of the recording equipment shall certify, under oath, that the recording is a true and accurate record of the proceeding. A written transcript of the recording shall be prepared, if requested, at the cost of the requesting person.

Specific Authority: 120.53(1)(a), F.S. Law Implemented: 120.53(1)(a), F.S. History: New 2-6-78.

**PART III
RULES GOVERNING PRACTICE
AND PROCEDURES
DEPARTMENT DECISIONS
(ADJUDICATORY) DETERMINING
SUBSTANTIAL INTERESTS
OF AFFECTED PERSONS**

17-1.19 General. All proceedings determining the substantial interests of a person, except rule-making proceedings, under statutes which the Department is required to implement, shall be pursuant to Section 120.57, Florida Statutes, Chapter 17-1, Part III, and Chapter 28-5, Florida Administrative Code, as amended.

Specific Authority: 120.53(1), F.S. Law Implemented: 120.53(1), F.S. History: Revised 10-20-73, Amended 2-6-78, Formerly 17-1.10.

A. Parties

17-1.20 Parties to Proceedings.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(7), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.11.

**17-1.21 Who May Appear:
Criteria for Authorized Representation.**

(1) A party may be represented by an attorney or other qualified representative or may appear on his own behalf.

(2) If a party is not represented by an attorney, or does not appear on his own behalf, the presiding officer, as early as possible in the proceedings, but prior to the final hearing, shall make diligent inquiry of the representative under oath, to assure that the representative is qualified to appear in the agency proceeding and capable of preserving the rights of the party. This inquiry shall include consideration of the nature of the legal skills, knowledge and experience of the representative, including the representative's ability to apply concepts relating to the rules of evidence and hearsay, the ability of the representative to apply and interpret Chapter 120, Florida Statutes, including Section 120.57, Florida Statutes, and Chapters 17 and 28, F.A.C., the representative's ability to identify the issues in the proceeding, the representative's knowledge of and experience with the statutes and rules at issue in the proceeding, the nature and complexity of the factual and legal issues present in the proceeding, and the representative's experience in dealing with these issues, the representative's interest in the proceeding, whether the party is aware of the nature and extent of the representation which the representative can provide, whether the party is aware

of the right to be represented by an attorney, and any other matter deemed relevant by the presiding officer. The presiding officer shall authorize the representative to appear in the proceeding if the presiding officer is reasonably assured that the representative is capable of providing competent, responsible and ethical representation of the party's substantial interests in a manner which will not impair the fairness of the proceeding or the correctness of the action to be taken. The presiding officer may reconsider, for specific cause relative to their criteria established by this subsection, a ruling on this issue at any time during the proceedings.

(3) All attorneys and qualified representatives appearing in proceedings shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Florida as specified in the Florida Code of Professional Responsibility, and presiding officers shall require such compliance. Failure to comply shall authorize presiding officers to disqualify any attorneys or qualified representatives appearing before them in a proceeding.

(4) An attorney or other qualified representative (approved by the presiding officer) for any party to a proceeding who has filed an initial pleading or notice of appearance for that party shall remain the attorney or representative of record and shall receive pleadings until a motion to withdraw has been served on the represented party and approved by the presiding officer, or until disqualified by the presiding officer.

(5) Notice of appearance by any

successor or associated attorney or other qualified representative shall be filed prior to the filing of any pleading with, or appearance before, the agency or presiding officer.

Specific Authority: 120.53(1), 120.62(2), F.S. Law Implemented: 120.53(1), 120.62(2), F.S. History: Revised 10-20-73, Formerly 17-1.12, Amended 4-28-81.

17-1.22 Practice by Attorneys.

Specific Authority: 120.53(1), F.S. Law Implemented: 120.53(1), F.S. History: Revised 10-20-73, Amended 2-6-78, Formerly 17-1.13, Repealed 4-28-81.

17-1.23 Staff Personnel.

Staff personnel of the Department should appear solely on behalf of the general public interest. Their duty is to reasonably insure that all facts touching upon the general public interest are clearly brought before the Department. Where staff personnel appear as witnesses they shall be sworn and subject to examination.

Specific Authority: 120.53(1), F.S. Law Implemented: 120.53(1), F.S. History: Revised 10-20-73, Formerly 17-1.14.

B. Pleadings

17-1.24 Form. All pleadings in adjudicatory proceedings shall be printed, typewritten, or otherwise duplicated in legible form on white paper. Unless printed, the impression shall be on one side of the paper only, and the lines shall be double spaced, except quotations of two or more lines, which shall be single spaced and indented. Standard legal size paper or standard letter size paper may be used;

however, a left margin of not less than one and one-half inches, and a top margin of at least two inches must be provided.

Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1), F.S.
History: Revised 10-20-73, Formerly 17-1.15.

17-1.25 Filing and Service.

(1) Filing of the initial pleading required to be filed by the Department, such as a petition for hearing, petition for declaratory statement, petition for rule or other pleading or document which initiates a proceeding, or of a notice of appeal, shall be deemed complete upon receipt, during regular business hours, by the Office of General Counsel of the Department in Tallahassee, Florida.

(2) Service of a subsequent pleading, motion, or other document shall be deemed complete upon being properly addressed, stamped and deposited in the United States Mail.

(3) If a hearing officer has been assigned to conduct the proceedings, pursuant to Section 120.57, Florida Statutes, the original and one copy of each subsequent pleading, motion, or other document shall be filed with the hearing officer, and a copy served on the designated Department attorney and all parties of record.

Specific Authority: 120.53, F.S.
Law Implemented: 120.53, F.S.
History: Revised 10-20-73, Amended 2-6-78, Formerly 17-1.16, Amended 4-28-81.

17-1.26 Signature, Verification and Certificate of Service.

Pleadings shall be signed by one of the parties, or an official thereof if the party is a corporation or

association, or by the party's attorney. Initial pleadings filed pursuant to Section 403.412, Florida Statutes, shall be verified. Pleadings filed by the Department will be signed by the Secretary, Department Counsel, or other designee of the Secretary. All pleadings shall include a Certificate of Service as provided in the Florida Rules of Civil Procedures, except initial pleadings.

Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1), F.S.
History: Revised 10-20-73, Amended 2-6-78, Formerly 17-1.17.

17-1.27 Construction of Pleadings.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.18.

17-1.28 Time for Filing.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.19.

17-1.29 Extension of Time for Filing.

The hearing officer, or Secretary of the Department, if no hearing officer is presiding, may, for good cause shown, grant an extension of time for the filing of any pleading required or permitted by this part, or Parts IV or V. Requests for such extensions must be served on all parties and filed with the Department. Such requests for extensions of time shall contain a certificate that the moving party has consulted with the opposing party, or his counsel, concerning the extension, and whether or not the opposing party, or his attorney,

objects to such an extension, and will promptly file objection. Written objections may be filed within five (5) days of service of the request for extension. A timely request for extension of time shall toll the running of the applicable time period until the request is acted upon.

Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1), F.S.
History: Revised 10-23-77, Amended 2-6-78, Formerly 17-1.20, Amended 4-28-81.

17-1.30 Amendments.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.21.

17-1.31 Copies Required.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.22.

17-1.32 Computation of Time.

Except for the filing of notices of appeal, the time within which any pleading, motion, notice, brief or exceptions may be filed, or the time within which any act is required to be performed, as provided by any rule or order of the Department, shall be computed in accordance with the Florida Rules of Civil Procedure.

Specific Authority: 120.53, F.S.
Law Implemented: 120.53, F.S.
History: Revised 10-20-73, Amended 2-6-78, 4-28-81, Formerly 17-1.16.

17-1.33 Pleadings in Adjudicatory Proceedings.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented:

120.23, 403.051(1), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.24.

17-1.34 Initial Pleadings.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.088(4), 403.121(2)(c), 403.201, F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.25.

17-1.35 Responsive Pleadings.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.26.

17-1.36 Orders for Corrective Action.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.121(2)(c), F.S. History: New 10-20-73, Repealed 2-6-78, Formerly 17-1.27.

17-1.37 Consent Order.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.28.

17-1.38 Motion for Orders.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.29.

17-1.39 Motion for Extension of Time for Compliance.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.30.

17-1.29 -- 17-1.39(History)

17-1.40 Petition for Reconsideration.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.31.

17-1.41 Stipulation as to Fact.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.061(10), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.32.

17-1.42 Order to Show Cause.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.33.

C. Hearings**17-1.43 Public Hearing;****Waiver.**

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.061(8), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.34.

17-1.44 Notice of Hearing.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.061(8), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.35.

17-1.45 Pre-Hearing Conference.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented:

120.25, 403.051(1), 403.061(8), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.36.

17-1.46 Adjudicatory Hearing Procedure.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.24, 403.051(1), 403.061(8), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.37.

17-1.47 Continuance of Hearing.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.051(1), 403.061(8), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.38.

17-1.48 Witness Subpoenas.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.25, 403.051(5), 403.061(8), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.39.

17-1.49 Witness Fees.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.25, 403.051(5), 403.061(8), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.40.

17-1.50 Official Record of Hearing.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.24, 403.051(2), 403.061(8), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.41.

17-1.51 Hearing before an Examiner.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.25, 403.051(1), 403.061(9), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.42.

17-1.52 Authority of Department and Hearing Officers in Adjudicatory Proceedings.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.25, 403.051, 403.061(9), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.43.

17-1.53 Informal Conference.

(1) If the Department deems it advisable in reaching a prompt resolution of a controversy or dispute with a party or parties, it may arrange an informal conference between the party or parties and the Department. Unless otherwise specified, an informal conference shall be requested within ten (10) days of service of the initial pleading. An attempt shall be made to resolve the controversy or dispute in an amicable manner.

(2) A respondent's rights will not be adjudicated at such a conference, and the right to request a public hearing on the alleged violations or the orders for corrective action subsequently issued will not be affected by requesting and participating in an informal conference. The Department staff members participating in such informal conference shall file with the Department a report concerning matters covered in the informal conference. Unless otherwise specified, in writing, by the Department, a responsive plead-

ing or demand for hearing shall be filed within ten (10) days from the completion of the informal conference, unless a longer time is provided by Section 17-1.58, Florida Administrative Code, or Chapter 403, Florida Statutes. Failure to file responsive pleading or demand for hearing within that time period shall be deemed a waiver thereof.

Specific Authority: 120.53(1), F.S. Law Implemented: 120.53(1), F.S. History: Revised 10-20-73, Amended 2-6-78, Formerly 17-1.44.

17-1.54 Judicial Review.

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.31, 403.121(3), 403.171, F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.45.

D. Discovery**17-1.55 Discovery.**

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.23, 403.061(8), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.46.

E. Rights of Parties and Intervenors**17-1.56 Due Process.**

Specific Authority: 120.23, 403.061(7), F.S. Law Implemented: 120.26, 403.051, 403.061(8), 403.121(2)(c), F.S. History: Revised 10-20-73, Repealed 2-6-78, Formerly 17-1.47.

17-1.57 Petitions and Applications for Variances or Exemptions.

(1) A petition for a variance, pursuant to Section 403.201, Florida Statutes, of the Florida Air and

Water Pollution Control Act, shall be in accordance with these rules. Upon reviewing a petition within a reasonable time, the Department shall address at least the following factors which also shall be addressed specifically by the petitioner.

(a) The act, rule, or regulation and sections thereof from which a variance is sought.

(b) The facts which show that a variance should be granted because of one of the following reasons as set forth in Section 403.201, Florida Statutes.

1. There is no practicable means known or available for the adequate control of the pollution involved.

2. Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason shall prescribe a timetable for the taking of the measures required.

3. To relieve or prevent hardship of a kind other than those provided for in paragraphs 1 and 2 above. Variances and renewals thereof granted under authority of this paragraph shall be limited to a period of twenty-four (24) months.

(c) The period of time for which the variance is sought, including the reasons and facts in support thereof,

(d) The damage or harm resulting or which may result to applicant from a compliance with such rule or regulations,

(e) The requirements which applicant can meet and the date when applicant can comply with such requirements,

(f) The steps the applicant is taking to meet the requirements from

which the variance is sought and when compliance will be achieved,

(g) Any beneficial or adverse impact to residents and the environment in the affected area resulting from the Department's requiring compliance or granting a variance,

(h) The economic or social impacts of granting or denying the variances.

(2) Renewals of variances, pursuant to Section 403.201, Florida Statutes, shall be applied for in the same manner as for the initial variance.

(3) Petitions or applications for variances or exemptions shall be granted or denied by the Secretary of the Department, subject to appeal to the Environmental Regulation Commission under Part IV, except for applications for variances submitted under the Power Plant Siting Act, which shall be granted or denied by the Governor and Cabinet.

(4) An application for a variance or exemption, pursuant to Section 403.854, Florida Statutes, of the Florida Safe Drinking Water Act, shall be in accordance with Section 17-22.09, Florida Administrative Code. The variance provisions of Section 403.201, Florida Statutes, do not apply to the Florida Safe Drinking Water Act or rules promulgated thereunder.

(5) The Department shall publish notice of intent in the Florida Administrative Weekly. The petitioner shall publish such notice in a newspaper of general circulation in the area affected by the proposed variance. Notice shall be in accordance with Fla. Admin. Code Rule 17-1.62, and shall read substantially as set forth in Fla. Admin. Code Rule 17-1.62(3)(c).

Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1), F.S.
History: New 2-6-78, Amended 7-8-82.

17-1.58 Administrative Enforcement Actions.**(1) Notice of Violation.**

A notice of violation is the appropriate initial administrative pleading which shall be issued by the Department when, after investigation, it has reason to believe that a person has, or is presently engaged in an activity in violation of the provisions of Chapters 403, 373, or 253, Florida Statutes, or Department rules. Such notice shall be served on the respondent(s) by certified mail, return receipt requested, and shall identify the provision of law, rule, or Department permit alleged to have been violated, and shall include a brief statement of the facts constituting such alleged violation.

A notice of violation shall be issued by the Secretary, or Assistant Secretary. Unless a responsive pleading and request for a Section 120.57 administrative hearing is filed within twenty (20) days after service of the notice, or as otherwise provided by Section 17-1.53 (Informal Conference), the notice of violation, and the allegations contained therein, shall become binding and final, and the right to an administrative hearing shall be deemed waived.

(2) Orders for Corrective Action.

Orders for corrective action may accompany and be served with a notice of violation upon the alleged violator of provisions of law, rule, or a Department permit. The orders shall include a description of remedial action, with implementing time-table, which is required, and set forth any damages, costs of investigation, or other demands the Department is authorized by law to recover. Unless a responsive pleading and request for a Section 120.57

administrative hearing is filed within twenty (20) days after service of the notice, or as otherwise provided by Section 17-1.53 (Informal Conference), the orders for corrective action shall become final and effective, and shall constitute a final adjudication of the matters alleged, subject only to judicial review under Section 120.68, Florida Statutes.

Orders for corrective action, which constitute final agency action, shall be enforceable pursuant to sections 403.161(1)(b), 403.131, 403.412, 403.860, and 120.69, Florida Statutes.

(3) Consent Order.

A consent order is a final agency order wherein all parties and the Department, by negotiation, have arrived at a mutually acceptable resolution of alleged violations of law for the purpose of achieving full and expeditious compliance with Chapters 253, 403, and 373, Florida Statutes, and Department rules promulgated thereunder. A consent order, executed by all parties to an enforcement action, shall have the same force and effect as a final order entered by the Department after a formal Section 120.57 administrative hearing and the submission of hearing officer's recommended order, and shall be enforced in like manner. The Secretary, or his authorized designee, may enter consent orders, copies of which shall be served on all parties. If a notice of violation is issued, in accordance with Section 17-1.58, Florida Administrative Code, no consent order shall be entered until ten (10) days after the filing of the notice.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 2-6-78.

17-1.585 Department Approval of Testing and Research Programs.

(1) Upon receiving a petition for authorization to conduct testing, demonstration of new or innovative technologies, and/or research programs relating to pollution and its causes, effects, prevention, abatement and control, the Department may, in its discretion, issue an order authorizing the testing, demonstration, or research program as a temporary source of air pollution.

(a) The petition shall be filed with the Secretary of the Department and shall include at least the following information:

1. The name and address of the person or entity requesting authorization;

2. A description of the substance of the proposed testing, demonstration, or research program;

3. A list of all rules, permit or certification conditions, and other requirements of law that might be temporarily violated as a result of the testing, demonstration, or research program.

4. The proposed duration of the program; and

5. The purpose of the proposed program.

(b) The Department shall, after due notice, hold a public hearing on each petition.

(2) The order of the Department authorizing an air testing, demonstration or research program shall contain such conditions as are necessary to assure that state and federal ambient air quality standards, applicable Prevention of Significant Deterioration increments, Standards of Performance for New Sources contained in 40 C.F.R., Part 60, and National Emissions

Standards for Hazardous Air Pollutants contained in 40 C.F.R., Part 61, will not be violated; and that the program will not interfere with attainment of ambient air quality standards in nonattainment areas. The order shall authorize the construction and/or operation of a temporary source of pollution subject to such interim emission limitations, sampling and monitoring requirements, reporting requirements, and any other requirement different from that established by rule, permit or certification condition, or Department Order.

(3) No condition, contained in an order issued pursuant to this Section, which is different from any requirement established by rule, permit or certification condition, or Department Order, shall be effective for more than two years, provided however, the order may be renewed by the Department.

Specific Authority: 120.53, F.S.
Law Implemented: 120.53, 403.061(8), 403.061(18), F.S. History: New 4-6-80.

17-1.59 Burden of Proof; Order of Presentation.

(1)(a) In licensing (permit) proceedings, including variance, exception, exemption, site specific alternative criteria, or other similar proceedings, the applicant shall have the burden of establishing, by a preponderance of the evidence, entitlement to the requested license, variance, exception, exemption, site specific alternative criteria, or other relief.

(b) The order of presentation in proceedings described in Section 17-1.59(1)(a) shall be applicant, any party who supports issuance of the license or granting of other

relief, the Department (whether it proposes to issue or deny the license or other relief), and any party who supports denial of the license or other relief. Rebuttal testimony and public comment shall be submitted as directed by the presiding officer. The parties may agree to, or for good cause the presiding officer may direct, any other order of presentation.

(2) In enforcement, license revocation, or other similar proceedings, the Department shall have the burden of proof. In these proceedings, the order of presentation shall be the Department, any party who supports the action proposed by the Department, any party against whom the proceeding has been initiated and any party who opposes the action proposed by the Department. Rebuttal testimony and public comment shall be submitted as directed by the presiding officer. The parties may agree to any other order of presentation.

Specific Authority: 403.087, 403.088, 120.53, F.S. Law Implemented: 120.53, F.S. History: New 2-6-78, Amended 4-28-81.

17-1.60 Petitions for Interlocutory Review.

Specific Authority: 120.53, F.S. Law Implemented: 120.53, F.S. History: New 2-6-78, Repealed 4-28-81.

17-1.61 Power Plant Siting.

Where there are conflicts between the requirements of this part and Chapter 17-17, Florida Administrative Code, procedural rules promulgated to implement the Florida Electrical Power Plant Siting Act, the latter rules shall govern.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S. History: New 2-6-78.

17-1.62 Petition for Administrative Hearing; Notice of Application and Proposed Agency Action; Waiver of Right to Administrative Proceeding.

(1)(a) Any person substantially affected by proposed or final agency action may file a petition for administrative proceeding. A petition shall be in the form required by this Chapter and Chapter 28-5, F.A.C., and shall be filed (received) in the Office of General Counsel of the Department within fourteen (14) days of receipt of notice of agency action or receipt of notice of proposed agency action.

(b) Failure of a substantially affected person to file a petition within fourteen (14) days of receipt of notice of agency action or fourteen (14) days of receipt of notice of proposed agency action, whichever notice first occurs, shall constitute a waiver by that person of any right to request an administrative proceeding under Chapter 120, F.S.

(2)(a) "Receipt of notice of agency action" means written or other notice of final agency action, and includes knowledge which would lead a reasonable person to conclude, or upon diligent inquiry to discover, that the Department has taken final agency action.

(b) "Receipt of notice of proposed agency action" means receipt of written notice (such as a letter of intent) that the Department proposes to take certain action, or the publication pursuant to this rule of notice of proposed agency action, whichever first occurs.

(3)(a) All applicants for construction permits for domestic,

wastewater treatment plants, or industrial wastewater treatment plants, solid waste disposal facilities, standard form dredge and fill projects, major air pollution sources and drinking water treatment facilities shall publish, at the applicant's expense, a Notice of Proposed Agency Action. The Department may require other applicants to publish notice of proposed agency action where, in the judgment of the Department, the project is reasonably expected to result in a heightened public concern or likelihood of request for administrative proceedings because of the project's size, potential effect on the environment or natural resources, controversial nature or location. The applicant shall cause the notice to be published as soon as possible after notification by the Department of its intended action, and no later than fourteen (14) days prior to final agency action. The Department shall notify the applicant of its intended action within ninety (90) days of a completed application, and the provisions of Section 120.60(2), F.S., shall be held in abeyance until fourteen (14) days after publication.

(b) The notice shall be published one time only in the legal ad section of a newspaper of general circulation in the county where the activity is proposed, and the applicant shall provide proof of publication to the Department within seven (7) days of publication. The notice shall be prepared by the Department and shall contain:

1. name of applicant, brief description of the proposed activity, and its location;
2. location of the application and its availability;

3. statement of the Department's intended action; and

4. notification of administrative hearing opportunity.

(c) The notice shall read as follows:

Notice of Proposed Agency Action

The Department of Environmental Regulation gives notice of its intent to (issue)(deny) a permit to (name of applicant) to (brief description of project).

A person who is substantially affected by the Department's proposed permitting decision may request a hearing in accordance with Section 120.57, Florida Statutes, and Chapters 17-1 and 28-5, Florida Administrative Code. The request for hearing must be filed (received) in the Office of General Counsel of the Department at 2600 Blair Stone Road, Twin Towers Office Building, Tallahassee, Florida 32301, within fourteen (14) days of publication of this notice. Failure to file a request for hearing within this time period shall constitute a waiver of any right such person may have to request a hearing under Section 120.57, Florida Statutes.

The application is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).

(4)(a) Notice to substantially affected persons concerning applications for Department permits is an essential and integral part of the state environmental licensing process. Therefore, no application for a permit for which publication of notice is required shall be granted until and unless proof of publication of Notice is furnished to the appropriate Department permitting

office.

(b) Notwithstanding any other provision in this Chapter, should a substantially affected person who fails to timely request a hearing under Section 120.57, F.S., administratively appeal the final Department action or order, the record on appeal should be limited to:

1. the application, and accompanying documentation submitted by the applicant prior to the issuance of the agency's intent to issue or deny the requested permit.

2. the materials and information relied upon by the agency in determining the final agency action or order;

3. any notices issued or published; and

4. the final agency action or order entered concerning the permit application.

(c) In such cases where persons do not timely exercise their rights accorded by Section 120.57(1), Florida Statutes, the allegations of fact contained in or incorporated by the final agency action shall be deemed uncontested and true, and appellants may not dispute the truth of such allegations upon subsequent appeal.

(5) Each person who files an application for a Department permit may publish, or may be required to publish, and provide proof of publication to the Department, at his own expense, a Notice of Application in a newspaper of general circulation in the county in which the activity will be located or take place. Publication of a Notice of Application shall be required for those projects which, because of their size, potential effect on the environment or natural resources, controversial nature, or location, are reasonably

expected by the Department to result in a heightened public concern or likelihood of request for administrative proceedings. If required, the notice shall be published one time only within fourteen (14) days after a complete application is filed and shall contain:

(a) name of applicant, a brief description of the project and its location;

(b) where the application file is located and when it is available for public inspection;

(c) the notice shall be prepared by the Department and shall comply with the following format:

Notice of Application

The Department of Environmental Regulation announces receipt of an application for permit from (name of applicant) to (brief description of project). This proposed project will be located at (location) in (county) (city).

This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).

(6)(a) Any applicant may elect to publish notice of proposed agency action in the manner provided by subsection (3). Any applicant who elects to publish notice of proposed agency action, upon presentation of proof of publication to the Department, prior to final agency action, shall be entitled to the same benefits under this rule as an applicant who is required to publish notice of proposed agency action.

(b) The notices required by this rule may be combined with other notices required by the Department pursuant to Chapter 403 or 253,

F.S., or Chapter 17, F.A.C.

(7) Any applicant may challenge the Department's request for additional information by filing with the Office of General Counsel an appropriate petition for administrative proceeding following receipt by the applicant of the Department's notification, pursuant to Section 120.60, F.S., and Section 17-1.222, F.A.C., that additional information is required.

Specific Authority: 120.53, 403.0876, 403.815, F.S. Law Implemented: 120.53, F.S. History: New 9-20-79, Amended 4-28-81.

17-1.63 Uniformity in Approval and Denial of Applications for Department Permits and Certifications.

To the extent possible and consistent with the public interest, the Department approves and denies applications for permits and certifications on a uniform and consistent basis. Final Department actions on applications for permits and certifications shall be consistent with prior Department actions, unless deviation therefrom is explained by the Department in writing or the hearing officer who submits a recommended order to the Department for final agency action in accordance with Section 120.57, Florida Statutes.

Specific Authority: 120.53(1), F.S. Law Implemented: 120.53(1), 120.68 (12), F.S. History: New 2-6-78.

17-1.64 Designation, Preparation and Transmittal of Record for Administrative Appeals.

When any Department action or order is the subject of an administrative appeal under Part V, Chapter 17-1, Florida Administrative Code, the following requirements shall apply:

(1) Designation of Record.

Within fifteen (15) days of rendition of the Department's final order, the appellant shall designate to the Department, in writing, with copies to other parties, those documents or things under the control of or in the possession of the Department which the appellant desires to have included in the record, and which were received or considered in the Department proceeding below. If a proceeding was reported by mechanical recording devices, the appellant shall designate those portions of the proceeding for which it requires written transcription or tapes for transcription. Any other party may designate other portions of the record in the manner provided herein. Such cross-designation shall be filed with the Department, with copies provided other parties, within seven (7) days after receipt of the designation by the appellant.

(2) Original Record. The Department shall thereupon include in the record all of the designated portions of the original papers and exhibits in the proceedings or matter from which administrative appeal is taken, together with a copy of any such parts of the proceedings as were stenographically reported or transcribed from tapes, and as have been designated by the parties and certified by a notary public, the reporter, or other officer for inclusion in the record on appeal or review, and certified copies of the order, if any, of which review is sought. The Department may, at its discretion, substitute certified copies for original papers or documents in its possession.

(3) Preparation of Record. Upon tender or deposit by appellant of the estimated cost of preparation, the Department shall prepare the record in accordance with the designations of the parties. The cost of

preparation, and reproduction, shall be borne by the party requesting the designated portions of the record.

(a) The Department routinely provides mechanical recording devices at all hearings. The recording tapes shall be made available to any party upon request for their information or copying, or for forwarding to the court reporter of their choice for transcription. Any party desirous of having a court reporter present shall make arrangements with the reporter of his choice. Original written transcriptions or copies may be ordered directly from the court report at the requesting party's expense.

(b) Should any party decide to appeal any decision made by the Department, or take exception to any finding of fact of the hearing officer with respect to any matter considered at a hearing of the Department, that party may need to ensure that a verbatim record of the proceedings is made. Such a record shall include the testimony and evidence upon which the appeal is to be based.

(4) **Transmittal of Record.** Upon preparation, and payment of associated costs, the administrative appeals clerk of the Department's Office of General Counsel shall transmit the record to the appropriate tribunal and serve notice of said transmittal and filing on all parties to the proceeding below.

(5) **Extensions of Time in Which to Prepare Record.** In administrative appeals under Part V, Chapter 17-1, Florida Administrative Code, a timely motion may be filed with the Secretary of the Department requesting an extension of time, for a definite period, within which to comply with the above requirements. Otherwise, the record on appeal shall be transmitted no later than the time

by which appellant is required to file its main brief under Part V, Chapter 17-1, Florida Administrative Code. Failure of the appellant to follow the above requirements may subject the appeal to dismissal by the administrative appellate body.

(6) Copies of all public records may be inspected and examined by members of the public at reasonable times and under reasonable conditions. The Department shall furnish copies of public records upon payment of the actual cost of duplication. When the reproduction of records requires extensive clerical or supervisory assistance, the Department may charge an additional reasonable fee based on the actual salary rate of the personnel providing the service. Reproduction requests totaling more than 100 copies shall be presumed to require an additional fee for personnel service. Copies of rules which the agency implements may be obtained without cost to members of the public.

Specific Authority: 119.07, 120.53, 403.061(7), F.S., Chapter 286.0105, Laws of Florida. Law Implemented: 119.07, 120.53, 253.76, F.S. History: New 2-6-78, Amended 4-28-81, 4-1-82.

17-1.65 Videotaped Depositions.

(1) Depositions for the purpose of discovery or any other use allowed by the Florida Rules of Civil Procedure may be recorded upon videotape after notice appropriate under the Rules of Civil Procedure.

(2) Such depositions may be utilized, without transcription, in any proceeding before the Department.

(3) The originals of any deposition so recorded shall be filed with the Clerk of the Office of General Counsel who shall make appropriate provision for their

the Governor and Cabinet for final action.

(b) date, time and location of the hearing before the Governor and Cabinet.

(c) notice as to the applicability and availability of these rules of procedure.

(2) Regular public meetings of the Governor and Cabinet shall be at 10:00 a.m. on the first and third Tuesday of each month in the Haydon Burns Auditorium, Tallahassee, Florida, or at such other time and place as may be designated by the Governor or majority of the Cabinet. A meeting shall not be held on holidays, election days or when the number present fails to constitute a quorum except that special meetings may be held at any place or time at the call of the Governor or a majority of the members of the Cabinet. Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 403.804(2), F.S. History: New 3-2-77, Formerly 17-1.92.

17-1.108 Participation in Proceedings; Notice.

(1) Persons who wish to participate in the appellate proceedings before the Governor and Cabinet may do so by submitting briefs in support of or in opposition to a proposed standard and/or offering oral argument.

(2) Such persons shall file Notice of Participation no later than fifty (50) days before the hearing, which notice shall include:

(a) name and address of person requesting argument;

(b) standard which the person intends to address;

(c) a statement as to whether

the person opposes or supports said standard;

(d) a short summary of the basis for the opposition or support; and

(e) a statement indicating whether the person intends to submit briefs and/or participate in oral argument.

(3) Persons not filing a notice pursuant to paragraph (2) above shall not be permitted to file briefs or present oral argument.

(4) Oral arguments and briefs presented to the Governor and Cabinet shall be based solely on and specifically reference the record as defined in section 17-1.91. A copy of such record shall be furnished to any interested person upon request to the Department at no more than the cost of reproduction.

(5) Not later than forty (40) days prior to the hearing, the Department shall mail to all person filing a notice pursuant to paragraph (2) above, a memorandum listing all persons filing said notice, a statement as to their position in support of or in opposition to said standard, and their indication as to paragraph (2)(e) above. The memorandum shall advise persons of the right to obtain a copy of any briefs submitted for cost of reproduction upon request to the Department.

(6) Except for the oral presentation by the Department of Environmental Regulation, no briefs or oral arguments will be entertained on a standard on which no notice indicating opposition or support is received.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 403.804(2), F.S. History: New 3-2-77, Formerly 17-1.93.

17-1.07(1)(a) -- 17-1.08(History)

(b) Where the phrase "Executive Director" appears, the phrase "Secretary of the Department of Environmental Regulation" is substituted;

(c) The last two sentences in section 16-4.06 are irrelevant and therefore excluded from incorporation herein;

(2) The Secretary of the Department of Environmental Regulation shall keep the official minutes of the meeting of the Board of Trustees of the Internal Improvement Trust Fund, transcribe them into writing, and have them approved at a meeting of the Board of Trustees of the Internal Improvement Trust Fund within two subsequent meetings. The minutes, when approved, of each meeting of the Board of Trustees of the Internal Improvement Trust Fund shall be part of the official record of the meeting. The minutes, before being submitted for approval, shall be checked against the electronic recordings of each meeting to ascertain their accuracy.

Specific Authority: 20.05, 120.53, F.S. Law Implemented: 120.53, 253.76, F.S. History: New 6-24-76, Formerly 17-1.87.

**PART VI
FINAL ACTION ON
STANDARDS STRICTER THAN
FEDERAL STANDARDS UNDER
SECTION 403.804(2),
FLORIDA STATUTES**

17-1.105 General. The procedural rules found in this part govern final action by the Governor and Cabinet on Department standards adopted by the Environmental Regulation Commission which are stricter or more stringent than those which have been set by Federal agencies pursuant to Federal law or regulation.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 403.804(2), F.S. History: New 3-2-77, Formerly 17-1.90.

17-1.106 Hearing; Nature; Record.

(1) Upon adoption of the proposed standard by the Environmental Regulation Commission, the Governor and Cabinet shall consider such Department standard at a hearing which shall be appellate in nature. No evidence shall be offered or admitted which was not in the record before the Environmental Regulation Commission at its consideration of the proposed standard.

(2) The record shall consist of the following:

(a) A copy of the standard submitted for final action.

(b) All exhibits and documentary evidence presented to the Environmental Regulation Commission at hearings held on the standard.

(c) The official transcription of the hearing(s).

(d) All pleadings and motions submitted in the proceedings before the Commission.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 403.804(2), F.S. History: New 3-2-77, Formerly 17-1.91.

17-1.107 Notice of Hearing; Public Meetings.

(1) Notice of the hearing before the Governor and Cabinet shall be published in the Florida Administrative Weekly, and mailed to all persons on the official Department mailing list no later than sixty-five (65) days prior to the scheduled hearing, which notice shall contain at least:

(a) description of the department standard which will come before

17-1.104(1)(b) -- 17-1.107(1)(a)

member to whom the communication was directed. Copies shall be served on all parties and amicus curiae. Any party and amicus curiae shall be allowed to rebutt the communication, if a request to do so is served within ten (10) days after service of the communication.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.81.

17-1.99 Settlement. Nothing in this part shall preclude the parties to an appeal from disposing of any or all matters on appeal by a settlement agreement entered into by all of the parties to the appeal.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.82.

17-1.100 Certificates of Service.

(1) The notice of appeal shall contain a certificate of service stating that a copy of the notice has been served on all of those persons who were designated in the written document representing final agency action as having been sent copies of that document.

(2) All other documents, pleadings, motions, briefs, proposed orders, and orders shall contain a certificate of service on all parties and amicus curiae to the appeal.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.83.

17-1.101 Copies. All pleadings, motions, briefs, and other material, filed with the department

shall be accompanied by seven copies thereof in addition to copies served on amicus curiae and parties.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.84.

17-1.102 Motions. The Board, or, where appropriate, the Secretary, may entertain motions to effectuate the purpose and requirement of this part.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.85.

17-1.103 Orders. The Board, and Secretary where appropriate, shall issue such orders and take such action as may be necessary to effectuate and enforce the provisions of this part.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.86.

17-1.104 Meetings; Notice; Presiding Officer; Quorum Agendas; Distribution of Agendas; Recording of Proceedings; Minutes; Order of Procedure; Agency Action; Voting; Amendment to Rules; Parliamentary Matters.

(1) The provisions of sections 16-4.02, 16-4.03, 16-4.04, 16-4.05, 16-4.06, 16-4.07, 16-4.08, 16-4.10, 16-4.12, 16-4.13, 16-4.14, and 16-4.15, F.A.C., are incorporated herein with the following exceptions:

(a) Where the phrase "Department of Natural Resources" appears, the phrase "Board of Trustees of the Internal Improvement Trust Fund" is substituted;

17-1.94 Proposed Orders.

Parties may submit proposed orders to the Board. However, if a party desires to submit a proposed order, the proposed order shall be served within ten (10) days of the last day for filing the last brief by any party.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.77.

17-1.95 Record. Appeals shall be based solely upon a record developed pursuant to sections 120.57 and 120.565, F.S.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.78.

17-1.96 Scope of Review.

(1) If the Board finds that the agency has erroneously interpreted a provision of law or rule and that a correct interpretation compels a particular action, it shall:

(a) Set aside or modify the agency action, or

(b) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(2) If the agency's action depends on any fact found by the agency in a proceeding meeting the requirements of section 120.57, F.S., the Board shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The Board shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by competent, substantial evidence in

the record.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.79.

17-1.97 Decisions.

(1) The decision of the Board on an appeal shall be reduced to writing and served by the Secretary upon the parties and amicus curiae within fifteen (15) days of the making of the decision.

(2) The written decision shall reflect the vote of each Board member, and shall set forth the basis for each Board finding. The Board may adopt and incorporate by reference in its findings all or part of the agency's final order.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.80.

17-1.98 Ex Parte Communications.

(1) Upon the filing of a notice of appeal, no ex parte communication relative to the merits of the appeal, threat, or offer of reward shall be made to the Board, or Board member, by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter; or

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the agency action, or his authorized representative or counsel.

(2) Any ex parte communication shall be reduced to writing and placed in the record by the Board

the appeal under this part. Those portions of final agency action which are not contested shall be subject to compliance and enforcement regardless of the pendency of the appeal. However, the department shall not be precluded from seeking injunctive relief to prevent irreparable harm.

(5) The department shall publish notice in the Florida Administrative Weekly of each appeal filed under this part.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.73, Amended 4-28-81.

17-1.91 Initiation of Cross-Appeals. Cross-appeals are authorized and shall be initiated in the same manner and shall follow the same procedures as provided for appeals in this part.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.74.

17-1.92 Briefs.

(1) Within fifteen (15) days of the filing of the Notice of Appeal, the appellant shall file a main brief in support of the appeal.

(2) An appellee who desires to file a brief shall do so within fifteen (15) days of the service of the appellant's main brief. An amicus curiae shall file a brief within fifteen (15) days of the date of service of the order authorizing his appearance as an amicus curiae.

(3) An appellant who desires to file a reply brief shall do so within five (5) days of the service of the brief to which the reply brief is directed.

(4) Assignments of error not argued in a party's brief are deemed abandoned by that party.

(5) Briefs shall conform to the style and content requirements for briefs set forth in Rule 9.210, Fla. R. App. P.

(6) Motions for extensions of time for filing briefs may be granted by the Secretary for good cause shown, but such extensions shall not be for more than ten (10) days.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.75, Amended 4-28-81.

17-1.93 Oral Argument.

(1) Requests for oral argument, if desired, shall accompany the appellant's main brief and the appellee's and amicus curiae's briefs. Oral argument, including rebuttal, shall be limited to fifteen (15) minutes per appellant, appellee, and amicus curiae. However, the Board by majority vote of those members present, may extend or further limit the time for oral argument.

(2) Oral argument shall not be granted to anyone not filing a brief, and points not raised by a party's or amicus curiae's brief shall not be argued orally by that party or amicus curiae, except in response to questions by members of the Board.

(3) The granting of oral argument is discretionary with the Board, and may be dispensed with by a vote of the majority of the Board members present.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.76.

**17-1.89 Parties to Appeals;
Amicus Curiae; Intervenors.**

(1) Only parties of record to final agency actions subject to appeal may initiate an appeal.

(2) The Secretary may allow other persons to appear and participate as amicus curiae in accord with Rule 9.370, Fla. R. App. P., except that the time for filing a motion to appear as an amicus curiae shall be within fifteen (15) days of the filing of the notice of appeal. The motion may be heard and disposed of by the Secretary after reasonable notice of such hearing has been served on the attorneys in the cause.

(3) The Board may allow other persons to intervene as parties to the appeal who were not parties to the final agency action, if such persons demonstrate that:

(a) they have standing under section 120.57, F.S., and that

(b) they had no reasonable notice of the agency proceeding prior to the entry of the written document representing final agency action. Persons allowed to become parties to an appeal pursuant to this subsection shall be bound by the record on appeal and the status of the proceedings as they find them at the time they are permitted to become a party.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.72, Amended 4-28-81.

**17-1.90 Initiation of Appeal;
Request for Record; Contents of
Notice; Compliance and Enforcement;
Public Notice.**

(a) Appellate review under this part shall be initiated by the filing of a Notice of Appeal with the

Office of General Counsel of the Department of Environmental Regulation, on behalf of the Board, within fifteen (15) days of the service upon a party of the written document representing final agency action.

(2) A Notice of Appeal shall include the following:

(a) Style of the matter appealed, and the case, file, notice or permit number;

(b) Nature of action being appealed;

(c) Date of service of written document representing the final agency action being appealed;

(d) A statement, with particularity, of the reasons for the appeal; and

(e) Request, if any, for modification of action appealed.

(3) If no record was developed pursuant to section 120.57, F.S., prior to the final agency action, then a request for the development of a record shall accompany the notice of appeal. Such a request shall state which method of developing a record pursuant to Section 120.57, F.S., is desired, either a formal or informal proceeding or informal disposition by stipulation, agreed settlement or consent order. Thereupon, the times for further prosecution of the appeal shall be tolled until the requested record has been completely developed. Until such record has been completely developed, the appeal shall not be deemed received by the Board.

(4) Compliance and Enforcement. Those portions of final agency action which are contested in an appeal filed pursuant to this part shall not be subject to enforcement action by the department, nor shall compliance with said portions be required until final disposition of

17-1.83 Certificates of Service.

Specific Authority: 20.05(5), 403.061(7), 381.031(g)3., 381.271, 373.043, 403.805, 403.803(12), F.S. Law Implemented: 403.804(1), F.S. History: New 6-24-76, Formerly 17-1.64, Repealed 4-28-81.

17-1.84 Copies.

Specific Authority: 20.05(5), 403.061(7), 381.031(g)3., 381.271, 373.043, 403.805, 403.803(12), F.S. Law Implemented: 403.804(1), F.S. History: New 6-24-76, Formerly 17-1.65, Repealed 4-28-81.

17-1.85 Motions.

Specific Authority: 20.05(5), 403.061(7), 381.031(g)3., 381.271, 373.043, 403.805, 403.803(12), F.S. Law Implemented: 403.804(1), F.S. History: New 6-24-76, Formerly 17-1.66, Repealed 4-28-81.

17-1.86 Orders.

Specific Authority: 20.05(5), 403.061(7), 381.031(g)3., 381.271, 373.043, 403.805, 403.803(12), F.S. Law Implemented: 403.804(1), F.S. History: New 6-24-76, Formerly 17-1.67, Repealed 4-28-81.

17-1.861 Effect of Repeal.

The repeal of Part IV, Chapter 17-1, Florida Administrative Code, shall not affect any appeal currently pending before the Environmental Regulation Commission. Part IV shall continue to be applicable to the disposition of any appeal pending before the Environmental Regulation Commission on the effective date of Section 4, Chapter 80-66, Laws of Florida.

Specific Authority: 20.05(5), 403.061(7), 381.031(g)3., 381.271, 373.043, 403.805, 403.803(12),

F.S., Section 4, Chapter 80-66 (Laws of Florida). Law Implemented: 403.804(1), F.S., Section 4, Chapter 80-66 (Laws of Florida). History: New 4-28-81.

**PART V
APPEALS-BOARD OF TRUSTEES
OF THE INTERNAL IMPROVEMENT
TRUST FUND**

17-1.87 General. The following rules shall govern appeals from final agency action before the Board of Trustees of the Internal Improvement Trust Fund (Board) arising under section 253.76, F.S. Section 17-1.25 shall govern the filing and service of pleadings. The Florida Rules of Appellate Procedure shall govern the computation of time, except where inconsistent with this part.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.70, Amended 4-28-81.

17-1.88 Final Agency Action.

The final agency actions subject to appeal under this part are those final actions of the Secretary of the Department and of those persons designated by the Secretary to take such actions, and which involve:

(1) the issuance, denial, renewal, modification, and revocation of licenses arising under Chapters 253 and 258.

(2) Declaratory Statements involving Chapters 253 and 258, and issued by the Secretary pursuant to section 120.565, F.S.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 253.76, F.S. History: New 6-24-76, Formerly 17-1.71, Amended 4-28-81.

**17-1.71 Parties to Appeals;
Amicus Curiae; Intervenors.**

Specific Authority: 20.05(5),
403.061(7), 381.031(g)3., 381.271,
373.043, 403.805, 403.803(12), F.S.
Law Implemented: 403.804(1), F.S.
History: New 6-24-76, Formerly
17-1.52, Repealed 4-28-81.

**17-1.72 Initiation of Appeal;
Request for Record; Contents of
Notice; Compliance and Enforcement;
Public Notice.**

Specific Authority: 403.061(7),
120.53(1)(b), F.S. Law Implemented:
403.8043(1), 120.53(1)(b), F.S.
History: New 6-24-76, Amended
2-6-78, Formerly 17-1.53, Repealed
4-28-81.

**17-1.73 Initiation of Cross-
Appeals.**

Specific Authority: 20.05(5),
403.061(7), 381.031(g)3., 381.271,
373.043, 403.805, 403.803(12), F.S.
Law Implemented: 403.804(1), F.S.
History: New 6-24-76, Formerly
17-1.54, Repealed 4-28-81.

17-1.74 Briefs.

Specific Authority: 20.05(5),
403.061(7), 381.031(g)3., 381.271,
373.043, 403.805, 403.803(12), F.S.
Law Implemented: 403.804(1), F.S.
History: New 6-24-76, Formerly
17-1.55, Repealed 4-28-81.

17-1.75 Oral Argument.

Specific Authority: 20.05(5),
403.061(7), 120.53, F.S.
Law Implemented: 120.53, F.S.
History: New 6-24-76, Amended
26-78, Formerly 17-1.56, Repealed
4-28-81.

17-1.76 Proposed Orders.

Specific Authority: 20.05(5),
403.061(7), 381.031(g)3., 381.271,
373.043, 403.805, 403.803(12), F.S.
Law Implemented: 403.804(1), F.S.

History: New 6-24-76, Formerly
17-1.57, Repealed 4-28-81.

17-1.77 Record.

Specific Authority: 20.05(5),
403.061(7), 381.031(g)3., 381.271,
373.043, 403.805, 403.803(12), F.S.
Law Implemented: 403.804(1), F.S.
History: New 6-24-76, Formerly
17-1.58, Repealed 4-28-81.

17-1.78 Scope of Review.

Specific Authority: 20.05(5),
403.061(7), 381.031(g)3., 381.271,
373.043, 403.805, 403.803(12), F.S.
Law Implemented: 403.804(1), F.S.
History: New 6-24-76, Formerly
17-1.59, Repealed 4-28-81.

17-1.79 Decisions.

Specific Authority: 20.05(5),
403.061(7), 381.031(g)3., 381.271,
373.043, 403.805, 403.803(12), F.S.
Law Implemented: 403.804(1), F.S.
History: New 6-24-76, Formerly
17-1.60, Repealed 4-28-81.

17-1.80 Ex Parte Communications.

Specific Authority: 20.05(5),
403.061(7), 381.031(g)3., 381.271,
373.043, 403.805, 403.803(12), F.S.
Law Implemented: 403.804(1), F.S.
History: New 6-24-76, Formerly
17-1.61, Repealed 4-28-81.

**17-1.81 Petitions for
Rehearing.**

Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1), F.S.
History: New 6-24-76, Amended
2-6-78, Formerly 17-1.62, Repealed
4-28-81.

17-1.82 Settlement.

Specific Authority: 20.05(5),
403.061(7), 381.031(g)3., 381.271,
373.043, 403.805, 403.803(12), F.S.
Law Implemented: 403.804(1), F.S.
History: New 6-24-76, Formerly
17-1.63, Repealed 4-28-81.

120.59, Florida Statutes, the Secretary shall issue the Final Order of the Department in accordance with Section 120.57, Florida Statutes.

(3) Should a party desire to present oral argument before the Secretary in support of its Exceptions, a Request for Oral Argument shall accompany the Exceptions. The granting of oral argument and the time allowed is discretionary with the Secretary.

Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1), F.S.
History: New 2-6-78, Amended 4-28-81.

17-1.681 Designation of Official Reporter for Subject Matter Index. The Department designates Judicial and Administrative Research Associates, Inc., publisher of the Florida Administrative Law Reports, as its official reporter for the purpose of publishing and indexing by subject matter all Department orders rendered after a proceeding in which the substantial interests of a party are determined by the Department.

Specific Authority: 403.087, 403.088, 120.53, F.S. Law Implemented: 120.53, F.S.
History: New 4-28-81.

17-1.682 Designation of Agency Clerk; Duties.

(1) The Department designates as Agency Clerk the position of Secretary to the General Counsel in the Office of General Counsel, at the address described in Section 17-1.02(1), F.A.C., telephone number (904) 488-9730. The Agency Clerk shall be responsible for filing and recording the date of filing of

orders pursuant to Section 120.52 (9), Florida Statutes, entered by the agency head, and orders entered pursuant to administrative appeal. The Agency Clerk shall be responsible for the receipt and certification of all notices of appeal pursuant to the Florida Rules of Appellate Procedure.

(2) The Department designates as Deputy Agency Clerks each District Manager and Subdistrict Manager, at the address and telephone numbers described in Section 17-1.02(3), F.A.C. The responsibility of a Deputy Agency Clerk is limited to the filing and recording the date of filing of final orders entered by the District or Subdistrict Manager. This responsibility may be delegated to a person within the District or Subdistrict Office. Specific Authority: 120.53(1)(b)(c), F.S. Law Implemented: 120.52(9), 120.53(1)(b)(c), F.S. History: New 4-28-81, Amended 12-19-82.

PART IV APPEALS-ENVIRONMENTAL REGULATION COMMISSION

17-1.69 General.

Specific Authority: 20.05(5), 403.061(7), 381.031(g)3., 381.271, 373.043, 403.805, 403.803(12), F.S. Law Implemented: 403.804(1), F.S. History: New 6-24-76, Formerly 17-1.50, Repealed 4-28-81.

17-1.70 Final Agency Action.

Specific Authority: 20.05(5), 403.061(7), 381.031(g)3., 381.271, 373.043, 403.805, 403.803(12), F.S. Law Implemented: 403.804(1), F.S. History: New 6-24-76, Formerly 17-1.51, Repealed 4-28-81.

17-1.68(2) -- 17-1.70(History)

preservation.

(4) Upon request and tender of the actual costs of reproduction, the Department shall provide a copy of any tape or tapes to any person, and shall make available on the premises of the Department equipment for reviewing the same by any party.

(5) Oaths of deponents shall be administered by any person who is authorized by law to administer oaths.

(6) Videotape equipment utilized to record such depositions shall be operated by a person trained in the operation of such equipment and such person shall certify, under oath, that the videotape is a true and accurate recording of any such deposition.

(7) Upon a showing of good cause, a hearing officer or the Secretary may prescribe additional safeguards designed to assure the accurate recording and preservation of any testimony given by deposition.

Specific Authority: 120.53, F.S.
Law Implemented: 120.53, F.S.
History: New 2-6-78.

17-1.66 Hearings To Be Held Within 120 Days.

Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1), F.S.
History: New 2-6-78, Repealed 4-28-81.

17-1.67 Suspension and Revocation of Department Permits, Certifications or Certificates.

The Department may suspend or revoke any Department permit, certification, or certificate as provided by Section 403.087, Florida Statutes, and Chapters 17-4 and 17-16, Florida Administrative Code. Prior to

suspending or revoking such permit, certification, or certificate, the Department shall serve, by certified mail, an administrative complaint. The procedures contained in Sections 28-6.09, and 28-6.11, Florida Administrative Code, are expressly incorporated herein, and shall govern such suspension or revocation.

Specific Authority: 120.53, 403.061(7), F.S. Law Implemented: 403.087, 120.53, 120.60(5), F.S. History: New 2-6-78, Amended 4-28-81.

17-1.68 Agency Action on Recommended Orders. The following procedures shall apply to the entry of Final Department Orders adopting, rejecting or modifying Recommended Orders submitted by hearing officers of the Division of Administrative Hearings (DOAH).

(1) Within ten (10) days after submittal of a Recommended Order to the Department by a DOAH hearing officer, in accordance with Section 120.57(1), Florida Statutes, parties to the proceeding may file with the Department written Exceptions to the Recommended Order, with service of copies on all parties. Exceptions shall state, with particularity, the basis for asserting that the hearing officer erred in entering or omitting specific findings of fact, conclusions of law, or a recommendation. Any party may serve one Response to Exceptions within ten (10) days of service of the Exceptions. The Department may extend or shorten the times provided herein. Any party may submit a proposed final order.

(2) After expiration of the allotted time for filing Exceptions and within the time requirements imposed by Sections 120.60 and

17-1.65(3) -- 17-1.68(2)

17-1.109 Briefs and Oral**Argument.**

(1) No later than thirty-five (35) days prior to the hearing, persons submitting briefs shall file with the Department either a Brief in Support or a Brief in Opposition.

(2) No later than ten (10) days prior to the hearing persons who submitted briefs under paragraph (1) above may file a Brief in Response to any briefs filed by persons presenting the opposing view. If a Brief in Response is filed, persons filing such a brief shall serve a copy on all persons whose briefs are being addressed by the Brief in Response.

(3) Briefs shall:

(a) be typed on letter size paper;

(b) set forth separately each argument;

(c) make reference to the record by page number where appropriate;

(d) include a cover page with the title of the brief; address, and telephone number of the person submitting the brief; and

(e) include an index page of the arguments presented.

(4) Oral argument shall be limited to points raised in the briefs or Notice of Participation.

(5) Unless otherwise set by the Governor and Cabinet, the limits for oral arguments shall be as follows? Each person shall have a total of twenty (20) minutes to present argument which includes time for rebuttal.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 403.804(2), F.S. History: New 3-2-77, Formerly 17-1.94.

17-1.110 Filing.

(1) All notices, briefs or other material authorized or required to be filed under this rule shall be filed with the Secretary of the Department of Environmental Regulation, who shall provide copies to the Governor and Cabinet within forty-eight (48) hours of receipt.

(2) Filing shall be complete upon receipt by the Department.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 403.804(2), F.S. History: New 3-2-77, Formerly 17-1.95.

17-1.111 Motions. The Governor and Cabinet or, where appropriate, the Secretary, may entertain motions to effectuate the purposes and requirements of this part.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 403.804(2), F.S. History: New 3-2-77, Formerly 17-1.96.

17-1.112 Computation of Time.

In computing any period of time prescribed or allowed by this part, the day of the act, or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 403.804(2), F.S. History: New 3-2-77, Formerly 17-1.97.

17-1.113 Copies. All notices, briefs or other material filed pursuant to this rule shall be accompanied by fourteen (14) copies thereof.

Specific Authority: 20.05(5), 120.53, F.S. Law Implemented: 403.804(2), F.S. History: New 3-2-77, Formerly 17-1.98.

17-1.114 Membership of Florida Cabinet; Presiding Officer Quorum; Agendas; Distribution of Agendas; Recording of Proceedings Agency Action; Voting; Amendment to Rules; Parliamentary Matters Minutes; Order of Procedure.

(1) The provisions of Section 16-4.02, 16-4.04, 16-4.05, 16-4.06, 16-4.07, 16-4.08, 16-4.12, 16-4.13, 16-4.14, 16-4.15, Florida Administrative Code, are incorporated herein with the following exceptions:

(a) Where the phrase "Department of Natural Resources" appears, the phrase "Governor and Cabinet" is substituted;

(b) Where the phrase "Executive Director" appears, the phrase "Secretary of the Department of Environmental Regulation" is substituted;

(c) The last two (2) sentences in Section 16-4.06, Florida Administrative Code, are not germane to the subject matter of this rule, and therefore, are excluded from incorporation herein.

(2) The Secretary of the Department of Environmental Regulation shall keep the official minutes of the Governor and Cabinet relevant to this part, transcribe them into writing, and have them approved at a subsequent meeting of the Governor and Cabinet. The minutes, when approved, of each meeting; shall be part of the official record of the meeting. The minutes, before being submitted for approval, shall be

checked against the electronic recordings of each meeting to ascertain their accuracy.

(3) The order of procedure for the regular meetings shall be as follows:

Invocation and Pledge of Allegiance

Introduction of Guests

Presentation of Resolutions and Awards

Meetings of the commissions, departments or boards in the following order:

(a) Board of Administration

Governor

Comptroller

Treasurer

(b) Administration Commission

Governor and Cabinet

(c) Land and Water Adjudicatory Commission

Governor and Cabinet

(d) Department of Criminal Law Enforcement

Governor and Cabinet

(e) Department of Highway Safety and Motor Vehicles

Governor and Cabinet

(f) Department of Revenue

Governor and Cabinet

(g) Department of Education

Governor and Cabinet

(h) Department of General Services

Governor and Cabinet

(i) Department of Natural Resources

Governor and Cabinet

(j) Board of Trustees of the Internal Improvement Trust Fund

Governor and Cabinet

(k) Governor and Cabinet acting under section 403.804(2), Florida Statutes

Specific Authority: 20.05(5),

120.53, F.S. Law Implemented:

120.53, 403.804(2), F.S. History:

New 3-2-77, Formerly 17-1.99.

17-1.113 -- 17-1.114(History)

**PART VII
AGENDA AND SCHEDULING
OF MEETINGS AND WORKSHOPS**

17-1.115 Notice of Meetings.

(1) Except in the case of emergencies, the Department shall give at least seven (7) days public notice of any public meeting or workshop affecting the general public interest (and not relating exclusively to organization, procedure or practice, or not concerned with internal administrative or ministerial matters not affecting the public generally) by publication in the Florida Administrative Weekly.

(2) Such notice of such meeting or workshop shall state:

(a) The date, time and place of the event.

(b) A brief description of the purpose of the event.

(c) The address where interested persons can write to obtain a copy of the agenda.

(3) The Department shall follow substantially the following form in providing notice of the meeting or workshop.

**NOTICE OF PUBLIC MEETING
OR WORKSHOP**

The Department of Environmental Regulation announces a public meeting or workshop to which all persons are invited.

DATE AND TIME: _____
PLACE: _____
PURPOSE: _____

A copy of the agenda may be obtained by writing to the Department of Environmental Regulation, _____, (office) _____, (room) Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301. Specific Authority: 120.53(1), F.S. Law Implemented: 120.53(1)(d), F.S. History: New 2-6-78.

17-1.116 Agenda of Meetings and Workshops.

(1) In order to ensure that interested persons requesting copies of agendas of Department meetings and workshops receive them at least seven (7) days prior to the event, the Department shall prepare, and make available for distribution, agendas at least ten (10) days prior to the meeting or workshop.

(2) The agenda shall list the items in the order they are to be considered. For good cause stated in the record, items on the agenda may be considered out of their stated order with the approval of the Department or the person designated to preside.

(3)(a) The agenda shall list the items to be considered and shall summarize those matters involving the exercise of Departmental discretion and policy-making. Additions to agenda items such as "old business", "new business", "other business", or similar terms may be used for consideration of solely ministerial or internal-administrative matters which do not affect the interests of the public generally.

(b) The Department may utilize substantially the following form in preparing its agenda:

**"DEPARTMENT OF
ENVIRONMENTAL REGULATION"
TIME, DATE AND PLACE
OF THE MEETING
THIS MEETING IS OPEN
TO THE PUBLIC**

- 1) Call to Order
- 2) Review of Minutes
- 3) Old Business:

Listing of all matters involving Departmental discretion or policy-making with brief summary of each.

- 4) New Business:

Listing of all matters involving Departmental discretion or policy-making with brief summary of each.

(5) Other Business:

Listing of all matters involving Departmental discretion or policy-making with brief summary of each.

(4) Additions or changes may be made to the agenda after it has been made available for distribution by the Department only for "good cause" as determined by the person designated to preside and stated in the record. This shall include, but not be limited to, consent of all parties substantially affected by the item to be added to the agenda; provided, however, that the Department may consider an item on an emergency basis. No specific addition may be made, however, unless the general subject matter of the addition was included in the meeting notice previously published by the Department or an emergency item exists.

(5) The Department shall provide that such meeting or workshop shall be open to the public unless this is not required because of the nature of the meeting or workshop or provisions of applicable law.
Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1)(d), F.S.
History: New 2-6-78.

17-1.117 Smoking Prohibited.

Smoking, igniting, or burning of tobacco or any other substance shall be prohibited at any public workshop, hearing, or meeting conducted by the Department or Commission for the purpose of considering a proposed rule. Smoking in Department buildings is governed by Part XI of this chapter. Smoking in other state buildings is governed by the

rules of the agency responsible for the building. At reasonable intervals, persons who desire to smoke shall be provided an opportunity to do so in a location which will not affect persons who choose not to smoke.

Specific Authority: 120.53(1), 255.27, F.S. Law Implemented: 120.53(1), F.S. History: New 2-6-78, Amended 4-28-81.

17-1.118 Emergency Meeting and Workshop.

(1) The Department may without prior notice or agenda hold an emergency meeting or workshop, for the purpose of acting upon internal-administrative and ministerial matters, and matters of immediate danger to the public health, safety, and welfare.

(2) Whenever an emergency meeting is scheduled to be held, the Department may notify at least one major newspaper of general circulation in the area where the meeting will take place and also all major wire services of the time, date, place and purpose of the meeting.
Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53, F.S.
History: New 2-6-78.

**PART VIII
DECLARATORY STATEMENTS**

17-1.119 Purpose and Use of Declaratory Statement. A declaratory statement is a means for determining the rights of substantially affected persons when a controversy, or when doubt concerning the applicability of any statutory provision, rule or order, has arisen before any wrong has actually been committed. The potential impact upon petitioner's interests must be

alleged in order for petitioner to show the existence of a controversy or doubt.

Specific Authority: 120.53(1), F.S.

Law Implemented: 120.53(1), F.S.

History: New 2-6-78.

17-1.120 Petition.

(1) The petition seeking a declaratory statement shall be filed in writing with the Department.

(2) A form for submission of such petition shall be substantially as follows:

PETITION FOR
DECLARATORY STATEMENT
TO THE FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

1) Name of Petitioner: _____
2) Address of Petitioner: _____
3) Agency rule, order or statutory provision on which declaratory statement is sought: _____
4) The precise factual circumstances giving rise to the petition: _____

5) Description of how this rule, order or statute may or does affect the petitioner; and

6) The point(s) on which the petitioner requests a declaration.

(Signature of Petitioner)

(Address)

(Date)

Specific Authority: 120.53(1), 120.54(9), 120.565, F.S. Law Implemented: 120.53(1), 120.54(9), 120.565, F.S. History: New 2-6-78.

17-1.121 Department Disposition.

(1) A Department order rendered pursuant to Section 120.565, Florida Statutes, shall only be applicable to the petitioner.

(2) The Department may at its discretion, either upon its own motion or upon request, hold a hearing to dispose of a petition submitted pursuant to Section 120.565,

Florida Statutes.

(3) A department order shall be rendered within sixty (60) days after receipt of the petition; provided however, if a hearing is held, the Department order shall be rendered within thirty (30) days of the hearing conclusion and receipt of the transcript, if any.

(4) The Department shall notice in the Florida Administrative Weekly that a petition has been filed. The notice shall contain sufficient information to advise substantially affected persons of the proceedings.

(5) The hearing, if granted by the Department, shall be conducted pursuant to Section 120.57, Florida Statutes, or as otherwise agreed upon by the Department and the parties.

Specific Authority: 120.53(1), 120.54(10), 120.565, F.S. Law Implemented: 120.53(1), 120.54(10), 120.565, F.S. History: New 2-6-78.

PART IX LIST OF FORMS AND INSTRUCTIONS

17-1.122 List of Approved Forms and Instructions.

Specific Authority: 120.53(1), F.S. Law Implemented: 120.53(1), F.S. History: New 2-6-78, Amended 2-18-79, 7-15-79, 4-28-81, 7-8-82, Repealed 11-30-82.

17-1.1221 Forms.

Copies of these forms may be obtained by writing to the Director, Division of Environmental Permitting, Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

Specific Authority: 120.53(1), F.S. Law Implemented: 120.52(14), F.S. History: New 2-18-79, Amended 7-15-79.

17-1.200 Approved Forms and Instructions. The forms and instructions used by the Department in dealings with the public are listed in this part. This listing supercedes and supplants all previous lists promulgated by the Department including Florida Administrative Code Rule 17-1.122 which is being repealed with the adoption of this list.

(1) Copies of these forms and instructions may be obtained by writing to the Director, Division of Environmental Permitting, Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301. In addition many of the more commonly used forms are available at the Department's District and Branch offices as described in Florida Administrative Code Rule 17-1.05.

(2) The following table lists the forms by the current and the former rule numbers that were listed in Florida Administrative Code Rule 17-1.122. Whenever a form is referenced by the former rule number this table lists the current form in use:

Form No. Prior To Nov. 30, 1982	Form No. After December 1, 1982.
17-1.122(1)	17-1.204(1)
(2)	205(1)
(3)	205(2)
(4)	Deleted
(5)	204(2)
(6)	205(3)
(7)	205(4)
(8)	210(1)
17-1.122(9)	17-1.208(1)
(10)	208(11)
(11)	213(1)
(12)	210(2)
(13)	206(1)
(14)	206(2)
(15)	203(1)

(16)	202(1)
(17)	202(4)
(18)	Deleted
(19)	Deleted
(20)	202(3)
(21)	201(1)
(22)	205(5)
(23)	205(6)
(24)	Deleted
(25)	Deleted
(26)	Deleted
(27)	Deleted
(28)	208(2)
(29)	213(3)
(30)	208(3)
(31)	208(4)
(32)	203(2)
(33)	202(2)
(34)	Deleted
(35)	Deleted
(36)	Deleted
(37)	205(7)
(38)	213(2)
17-1.122(39)	17-1.208(5)
(40)	208(6)
(41)	208(7)
(42)	208(8)
(43)	205(9)
(44)	202(6)
(45)	202(5)
(46)	Deleted
(47)	Deleted
(48)	201(3)
(49)	Deleted
(50)	Deleted
(51)	Deleted
(52)	Deleted
(53)	Deleted
(54)	Deleted
(55)	Deleted
(56)	205(10)
(57)	201(4)
(58)	Deleted
(59)	Deleted
(60)	208(9)
(61)	208(10)
(62)	203(4)
(63)	201(5)
(64)	214(1)
(65)	201(6)

(66)	201(7)
(67)	Deleted
(68)	210(3)
17-1.122(69)	17-1.210(3)
(70)	203(3)
(71)	201(8)
(72)	211(1)
(73)	Deleted
(74)	Deleted
(75)	Deleted
(76)	Deleted
(77)	Deleted
(78)	Deleted
(79)	Deleted
(80)	Deleted
(81)	Deleted
(82)	206(3)
(83)	202(7)
(84)	205(8)
(85)	204(3)
(86)	Deleted
(87)	Deleted
(88)	Deleted
(89)	215(1)
(90)	215(2)
(91)	207(1)
(92)	207(2)
(93)	202(8)
(94)	207(3)
(95)	209(1)
(96)	209(2)
(97)	Deleted
(98)	209(3)
17-1.122(99)	17-1.209(5)
(100)	Deleted
(101)	209(7)
(102)	209(8)
(118)	212(1)

(3) The forms are listed in this part by Rule number which is also the form number and with the subject title and effective date.

Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S. History: New 11-30-82.

17-1.201 General and Multi-Purpose Forms.

(1) Application For Transfer Permit, November 30, 1982.

(2) Reserved.

(3) Notification of Incomplete Application Follow-Up, November 30, 1982.

(4) Notification of Receipt of Application for Permit, November 30, 1982.

(5) Permit, General Conditions, November 30, 1982.

(6) Transmittal Letter for Permit (subsequent to letter of intent), November 30, 1982.

(7) Transmittal Letter for Permit, November 30, 1982.

(8) Waiver of 90-Day Time Limit Under Section 120.60(2)F.S. November 30, 1982.

(9) Waiver Re-Establishing Time Limit Under Section 120.60, Florida Statutes, November 30, 1982.

Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S. History: New 11-30-82.

17-1.202 Air Pollution.

(1) Application to Operate/Construct Air Pollution Sources, November 30, 1982.

(2) Completeness Summary Air Pollution Sources, November 30, 1982.

(3) Air Pollution Sources-Certification of Completion of Construction, November 30, 1982.

(4) Application for Renewal of Permit to Operate Air Pollution Sources, November 30, 1982.

(5) Notification of Stack Sampling Test To be Performed by Permittee, November 30, 1982.

(6) Annual Operations Report for Air Emissions Sources, November 30, 1982.

(7) Gasoline Bulk Plant

17-1.200(2) -- 17-1.202(7)

Operating Permit Application Form, November 30, 1982.

(8) Application to Construct/Operate a Perchloroethylene Dry Cleaning Facility, November 30, 1982.

Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S. History: New 11-30-82.

17-1.203 Dredge and Fill.

(1) Joint Dredge and Fill Application Form, November 30, 1982.

(2) Completeness Summary Dredge and Fill Permit Application, November 30, 1982.

(3) Authorization for Restoration, November 30, 1982.

(4) Joint U. S. Army Corps of Engineers/Florida Department of Environmental Regulation Emergency Permit, November 30, 1982.

(5) Recognition of Jurisdiction Under Chapter 253 and 403, Florida Statutes, November 30, 1982.

Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S. History: New 11-30-82.

17-1.204 Industrial Waste.

(1) Application for Permit to Discharge Wastewaters From Animal and Poultry Confinement and Feeding Facilities, November 30, 1982.

(2) Application to Operate/Construct Industrial Wastewater Treatment and Disposal Systems, November 30, 1982.

(3) Industrial Wastewater Facilities Certificate of Completion of Construction, November 30, 1982.

Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S. History: New 11-30-82.

17-1.205 Domestic Waste.

(1) Application to Operate/Construct Domestic Wastewater

Treatment and Disposal Systems, November 30, 1982.

(2) Application to Construct Domestic Wastewater Collection/Transmission Systems, November 30, 1982.

(3) Domestic Wastewater Treatment and Disposal Systems - Certificate of Completion of Construction, November 30, 1982.

(4) Application for Renewal of Permit To Operate Domestic/Industrial Wastewater Treatment and Disposal Systems, November 30, 1982.

(5) Completeness Summary-Wastewater Treatment Facility, November 30, 1982.

(6) Completeness Summary Wastewater Collection/Transmission System, November 30, 1982.

(7) Domestic Wastewater Treatment Plant Monthly Operating Report, November 30, 1982.

(8) Domestic Wastewater Collection/Transmission Systems Certificate of Completion of Construction, November 30, 1982.

(9) Notice of Intent to Use General Permit for Wastewater Collection System/Drinking Water Distribution System, November 30, 1982.

(10) Notification of Incomplete Test Reports Wastewater, November 30, 1982.

Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S. History: New 11-30-82.

17-1.206 Solid Waste.

(1) Application for Permit to Construct/Operate a Solid Waste Resource Recovery and Management Facility, November 30, 1982.

(2) Application to Operate Only Resource Recovery and Management Facility-Certification of Construction Completion, November 30, 1982.

(3) Preliminary Examination/Final Examination and Certification of Resource Recovery Equipment,

November 30, 1982.

Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S. History: New 11-30-82.

17-1.207 Hazardous Waste.

(1) Application for Determination of Hazardous Waste Generator Status Under Chapter 208, Florida Statutes, November 30, 1982.

(2) Generator's Certificate of Exemption, November 30, 1982.

(3) Application for a Hazardous Waste Facility Permit, November 30, 1982.

Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S. History: New 11-30-82.

17-1.208 Drinking Water.

(1) Application for Construction Permit Public Drinking Water System, November 30, 1982.

(2) Completeness Summary Public Drinking Water Systems, November 30, 1982.

(3) Application Completeness Summary Public Drinking Water Systems-Test Reports, November 30, 1982.

(4) Completeness Summary Monthly Operating Report on Public Drinking Water System, November 30, 1982.

(5) Drinking Water Treatment Plant Daily Operation Summary, November 30, 1982.

(6) Water Treatment Plant Operation Report, November 30, 1982.

(7) Drinking Water Treatment Plant Operations Report - Reverse Osmosis (R.O.), November 30, 1982.

(8) Water Treatment Plant Monthly Operation Report Summary, November 30, 1982.

(9) Notification of Use Authorization For Water Distribution System, November 30, 1982.

(10) Notification of Use Authorization Public Drinking System,

November 30, 1982.

(11) Application for Variance or Exemption Florida Safe Drinking Water Act, November 30, 1982.

Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S. History: New 11-30-82.

17-1.209 Underground Injection Control.

(1) Construction/Clearance Permit Application for Class V Wells, November 30, 1982.

(2) Certification of Class V Well Construction Completion, November 30, 1982.

(3) Authorization for Class V Well Use, November 30, 1982.

(4) Reserved.

(5) Application for Class V Well Plugging and Abandonment Permit, November 30, 1982.

(6) Reserved.

(7) Certification of Plugging Completion Class I, III or IV Well, November 30, 1982.

(8) Notification to FDER of Class V Well Ownership, November 30, 1982.

(9) Application to Construct/Operate/Abandon Class I, III, or V Injection Well Systems, November 30, 1982.

Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S. History: New 11-30-82.

17-1.210 Operators and Contractors.

(1) Application for Certification For Operators of Domestic Wastewater or Drinking Water Plants, November 30, 1982.

(2) Application for a Water Well Contractor's License, November 30, 1982.

(3) Application to Duplicate Water or Waste Water Certificates, November 30, 1982.

17-1.206(3) -- 17-1.210(3)

(4) Application for a Water Well Contractor's License Renewal, November 30, 1982.
 Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S.
 History: New 11-30-82.

17-1.211 Power Plant Certification.

(1) Application for Certification of Proposed Electrical Power Generating Plant Site, November 30, 1982.
 Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S.
 History: New 11-30-82.

17-1.212 Transmission Line Application.

(1) Application Form for Certification of a Proposed Electrical Transmission Line Corridor, November 30, 1982.
 Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S.
 History: New 11-30-82.

17-1.213 Water Well.

(1) Application for Permit to Drill Water Well, November 30, 1982.
 (2) Well Completion Report, November 30, 1982.
 (3) Notification of Receipt of Incomplete Application for Permit to Construct a Public Water Well Supply, November 30, 1982.
 Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S.
 History: New 11-30-82.

17-1.214 Water Restoration.

(1) Application for Water Resource Restoration Funding, November 30, 1982.
 Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S.
 History: New 11-30-82.

17-1.215 Stormwater.

(1) Application for New Stormwater Discharge, November 30, 1982.
 (2) Notice of New Stormwater Discharge Florida Administrative Code Rule 17-25, November 30, 1982.
 Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S.
 History: New 11-30-82.

17-1.216 Ground Water.

(1) Application for Monitoring Plan Approval, January 1, 1983.
 (2) Quarterly Monitoring Report, January 1, 1983.
 (3) Supplement to DER Forms 17-1.204(2), 17-1.205(1), and any other Applications for Permit when there are Impacts on Ground Water, January 1, 1983.
 Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S.
 History: New 11-30-82, Amended 1-1-83.

17-1.217 Wastewater Management Grants.

(1) Reserved.
 (2) Request for Inclusion on Construction Grants Priority Allowance List, November 30, 1982.
 (3) Application for Construction Grants Advance Allowance, November 30, 1982.
 Specific Authority: 120.53(1), 403.061, F.S. Law Implemented: 120.53(1), 120.55, 403.0875, F.S.
 History: New 11-30-82.

**PART X
 WATER RESOURCES
 RESTORATION AND PRESERVATION**

17-1.123 Purpose. The purpose of these rules is to set forth the criteria for the allocation of funds pursuant to the Water Resources Restoration and Preservation Act.

These rules are adopted pursuant to Chapter 77-369, Laws of Florida and Section 403.061, Florida Statutes. Specific Authority: 403.061(28), F.S. Law Implemented: 403.0615, F.S. History: New 5-29-78.

17-1.124 Application of Rules.

These rules shall apply to the Florida Department of Environmental Regulation and to all persons or organizations applying for or receiving funds under the Water Resources Restoration and Preservation Act. Specific Authority: 403.061(28), F.S. Law Implemented: 403.0615, F.S. History: New 5-29-78.

17-1.125 Definitions. As used in this chapter:

(1) "Department" is the Florida Department of Environmental Regulation.

(2) "Water resource" shall include, but not be limited to rivers, lakes, streams, springs, impoundments; and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface or underground.

Specific Authority: 403.061(28), F.S. Law Implemented: 403.0615, F.S. History: New 5-29-78.

17-1.126 General.

(1) Funds from the Water Resources Restoration and Preservation Program shall be used only for restoration or preservation proposals which in the determination of the department, show promise of long-term effectiveness.

(2) Funds from this program shall be available only to state, regional, and local government entities for use in the restoration and preservation of water resources.

(3) Funds from this program shall not be awarded or used for the following purposes:

(a) for construction of treat-

ment facilities for domestic or industrial waste disposal;

(b) for restoration or preservation of any water resource if, by time of completion of restoration, point sources affecting the water resource will not be in compliance with applicable standards, and a program approved by the department will not have been implemented for control of pollution from non-point sources;

(c) for restoration or preservation of any water resource if the water resource is inaccessible to the public; or,

(d) for the harvesting of aquatic vegetation, the purchase, use or maintenance of lake aeration devices, or for any other palliative, temporary, or cosmetic restorative treatment, except when such are an integral part of a water resource restoration program which is determined by the department to be long-lasting and designed to treat the actual causes of the resource problems.

(4) The department shall require, as a condition of project approval, that the governmental organization sponsoring the project coordinate the implementation of the project with other affected governmental agencies. This coordination shall include obtaining the appropriate permits for the approved work before implementation from all local, state and federal agencies authorized to require permits for such activities.

Specific Authority: 403.061(28), F.S. Law Implemented: 403.0615, F.S. History: New 5-29-78.

17-1.127 Limitation of Funding.

(1) Funding shall be based upon a contract between the department and the recipient of the funds, setting forth conditions which shall apply to the use of the funds. The

contract may require actions and responsibilities of a continuing nature from the recipient.

(2) Contracts for standard restoration and preservation projects may be awarded for:

(a) a study of feasibility, for up to sixty percent (60%) of the total cost of the study; and

(b) the actual restoration or preservation of a water resource, for up to eighty percent (80%) of that part of the total project cost not funded by federal moneys.

(3) Contracts for projects of unusually high scientific value and exceptional difficulty of successful restoration, as determined by the department, may be awarded for:

(a) a study of feasibility without a "percent of total cost" limitation as described in 917-1.127 (2)(b); and,

(b) the actual restoration or preservation of a water resource without a "percent of total cost" limitation as described in 17-1.127 (2)(b).

(4) In no case will more than two awards be made in a single year for projects of high scientific value and exceptional difficulty which are to receive funding in excess of sixty percent (60%) of the total cost of a feasibility study, unless otherwise provided by law.

(5) In no case will more than two awards be made in a single year for projects of high scientific value and exceptional difficulty which are to receive funding in excess of eighty percent (80%) of that part of the total cost of restoration or preservation not funded by federal moneys, unless otherwise provided by law.

Specific Authority: 403.061(28),
F.S. Law Implemented: 403.0615,
F.S. History: New 5-29-78.

17-1.128 Application of Funds.

(1) Application of Water Resources Restoration and Preservation Funds shall be made on DER Form PERM 20-1 supplied by the department.

(2) Information to be supplied in or pursuant to the application shall include, but not be limited to:

(a) a description of the morphology of the water resource, including surface area, mean depth, bathymetry, and nutrient; and water budget, if available;

(b) a description of current and project land use practices affecting the water resource, and local ordinances, land use plans or zoning which may affect the land use;

(c) a description of the nature of possible pollutants of the water resource, the history of the problems, and any treatment already attempted;

(d) identification of the nature and quantity of point and nonpoint pollution affecting the water resource;

(e) an explanation of existing and proposed programs which have been, and are directed at reducing or eliminating pollutant discharges into the water;

(f) a listing of studies in progress or already completed on the water resource;

(g) a description of the proposed method of restoration and/or preservation, including its tangible and intangible economic costs;

(h) a description of the provisions made for public access and public control;

(i) an estimate of the time required for the restoration;

(j) a listing of any lawsuits concerning pollution of the water resource, particularly including

17-1.127(1) -- 17-1.128(2)(j)

those for which any damages or penalties are being sought or have been collected; and,

(k) documentation of the degree of public concern about the project, as evidenced by news media coverage, public expenditures, citizens' associations, or other means.

(3) Specific items of information may be omitted at the discretion of the department, based upon a case by case determination of their necessity.

Specific Authority: 403.061(8), F.S.

Law Implemented: 403.0615, F.S.

History: New 5-25-78.

17-1.129 Criteria for Selection of Proposals and for Allocation of Funds. Selection of proposals for restoration or preservation shall be based upon a consideration of:

(1) the severity of the problem which shall be determined by the department with regard to the following factors:

(a) conditions that adversely affect the water resource;

(b) conditions that change the biological integrity of the water resource;

(c) conditions that inhibit life forms or threaten elimination of life forms in the water resource;

(d) conditions such as eutrophication or ecological disturbances;

(e) costs to the public of meeting or maintaining water quality standards; and,

(f) conditions which intermittently or frequently prevent a beneficial use.

(2) The feasibility of restoration or preservation (the extent to which restoration or preservation is likely to be accomplished by the proposed treatment) which shall be

determined by the department with regard to the following factors:

(a) whether the restoration treatment proposed will have beneficial effects for an extended period of time;

(b) whether the restoration treatment proposed is compatible with sound environmental practices;

(c) the extent to which pollutant discharge into the water resource has been reduced;

(d) whether the treatment or investigation proposed is likely to produce new knowledge of a transferable technique in water resources restoration or preservation; and,

(e) the extent to which the local and regional governments with jurisdiction over the water resource and adjacent areas have implemented, or will have begun to implement, a water quality program to protect and enhance the water quality of the subject water resource by the time restoration or preservation is initiated.

The interest and involvement of governmental entities and the public which shall be determined by the department with regard to the following factors:

(a) an endorsement by the governing board of the governmental entity sponsoring the project proposal;

(b) comments from the appropriate Water Management District, the Game and Fresh Water Fish Commission, and the Department of Natural Resources;

(c) the amount of public access and the extent of use by the public;

(d) whether the local government has expended funds to restore or preserve the water resource;

(e) whether the local govern-

ment has adopted and implemented a comprehensive water quality program;

(f) whether the water resource is designated as a national resource water, a geographical area of particular concern under the approved state Coastal Zone Management Program, or other rare or unique ecosystem; and,

(g) Comments from, and interest expressed by, the public.

Specific Authority: 403.061(28),
F.S. Law Implemented: 403.0615,
F.S. History: New 5-29-78.

17-1.130 Award of Funds.

(1) Applications for a study of feasibility of restoration or preservation may be submitted at any time, however, awarding of funds will depend on available moneys.

(2) The department shall consider only those applications for actual restoration or preservation received by September 1 for funding in the following fiscal year, unless otherwise provided by law. To assure consideration for funding, applications and supporting information and data should be as complete as possible. Applications should be submitted as early as possible before September 1 to allow comprehensive review and expeditious processing.

(3) After applying the selection criteria described in 17-1.129, all restoration and preservation applications shall be ranked in order of their priority and submitted to the Secretary for approval. The Secretary shall then approve or disapprove, in writing, the awarding of funds to the highest ranked projects to the extent of the funds available for restoration and preservation.

(4) Projects funded in the pre-

ceding year and not completed are eligible for further funding without reapplication.

(5) Selection of a project may be made contingent upon the project proposal receiving supplemental funding from sources other than the Water Resources Restoration and Preservation Program. If a proposal which was selected for funding contingent upon the receipt of other funding does not, in fact, obtain the supplemental funding by May 30, the funds proposed to be awarded by the department may be reallocated.

(6) Projects shall be implemented statewide with, to the extent feasible, an equitable geographic distribution, unless otherwise provided by law.

Specific Authority: 403.061(28),
F.S. Law Implemented: 403.0615,
F.S. History: New 5-29-78.

17-1.131 Application Form.

Specific Authority: 403.061(28),
F.S. Law Implemented: 403.0615,
F.S. History: New 5-29-78,
Repealed 2-18-79.

PART XI SMOKING POLICY

17-1.132 Definitions.

(1) "Smoking" means the intentional inhaling and exhaling of the smoke from, or the carrying of, any burning material, such as tobacco.

(2) "Supervisor of an area" shall be the Secretary, the Division Director, the Bureau Chief, the District Manager, the General Counsel, whoever is the most immediately in charge of staff operations in the area, or their designee.

Specific Authority: 255.27, F.S.
Law Implemented: 255.27, F.S.
History: New 4-28-81.

17-1.129 -- 17-1.132(History)

17-1.133 Purpose. This rule implements Section 255.27, Florida Statutes, and recognizes the right of non-smokers to be free of annoying and possibly harmful tobacco smoke, which has been determined by the Surgeon General of the United States to be a substantial health hazard when present in stagnant room air. This rule is intended to reduce losses in productivity of those persons who are adversely affected by tobacco smoke.

Specific Authority: 255.27, F.S.

Law Implemented: 255.27, F.S.

History: New 4-28-81.

17-1.134 Restricted Areas.

Areas in which smoking is prohibited shall be known as "restricted areas". The designation of any restricted area shall be determined by the individual characteristics of the building or room, such as size, ventilation, the purposes for which it is utilized, and other criteria relating to public health, safety, and comfort. This determination shall be made in accordance with this rule by the supervisor of an area involved. All such areas shall be posted as no smoking areas.

Specific Authority: 255.27, F.S.

Law Implemented: 255.27, F.S.

History: New 4-28-81.

17-1.135 Action by Department Officials and Employees. The policy promulgated herein requires specific actions by certain Departmental units:

(1) A copy of this rule shall be furnished to any person requesting it and made available for inspection by any employee.

(2) All new employees shall be advised by their supervisor about this rule.

(3) Information as to restricted areas shall be posted throughout the Department informing persons that smoking is prohibited.

(4) The Division of Administrative Services shall be responsible for ensuring the implementation of this rule.

(5) The supervisor of an area shall be responsible for ensuring the posting of signs.

(6) The full cooperation of all supervisors and employees is expected to ensure that fairness and due consideration to others is used in implementing or enforcing this smoking policy.

Specific Authority: 255.27, F.S.

Law Implemented: 255.27, F.S.

History: New 4-28-81.

17-1.136 Specific Areas.

(1) Public Access Areas (lobbies, corridors, hallways), and restrooms. There will be no limitation on smoking in public access areas or in restrooms. Secretarial and clerical work areas are not to be considered public access areas.

(2) Conference Rooms and Auditoriums. Separate smoking and non-smoking areas shall be set aside.

(3) Other Areas, Including Work Areas. Each supervisor of a work area, but not including private offices, shall designate any smoking or non-smoking areas, taking into consideration building or room size, ventilation, purpose for which it is used, and other criteria relating to public health, safety and comfort.

(4) Private Offices. Smoking shall be permitted in private offices only with the consent of all persons assigned to the office.

Specific Authority: 255.27, F.S.

Law Implemented: 255.27, F.S.

History: New 4-28-81.

**PART XII
LEASES FOR REAL PROPERTY**

17-1.137 Definitions.

For the purpose of this chapter, each of the following words shall have the indicated meaning unless the context clearly indicates otherwise:

(1) Department - the Department of Environmental Regulation.

(2) Lease - A legal agreement to lease a privately owned building or mobile home or any part thereof.

(3) State-owned - Any state-owned facility regardless of use or control.

(4) Secretary - The Secretary of the Department.

Specific Authority: 255.25, F.S.

Law Implemented: 255.25(2), F.S.

History: New 7-26-82.

17-1.138 Review and Approval.

(1) The Department shall not enter into any lease until the lease conditions and the need therefor have been approved by the Division of Building Construction and Property Management unless otherwise provided by these rules, the rules of the Department of General Services, or Florida Statutes.

(2) Exceptions.

(a) Approval of the Division of Building Construction and Property Management need not be obtained for a lease of less than 2,000 square feet of space within a privately owned building, provided that the Secretary has filed with the Bureau a certificate of compliance in accordance with Florida Administrative Code Rule 13D-7.03(3). However, such a lease which is for a term extending beyond the end of a fiscal year shall be subject to the provisions of Section 216.311, Florida Statutes.

(b) This rule and Florida Administrative Code Rule 13D-7.11 shall not apply to any lease having a term of less than 21 consecutive days for the purpose of securing the one-time special use of the leased property.

(c) This rule and Florida Administrative Code Rule 13D-7.11 shall not apply to any lease for nominal or no consideration. Nominal consideration means consideration of one dollar or less.

(3) The responsibility for administering the provisions of this rule shall be vested in the Department's Division of Administrative Services. All Department leases of less than 2,000 square feet of space shall be drawn in the name of the Department.

Specific Authority: 255.25, 255.249, F.S. Law Implemented: 255.249(2)(j)(k), (3), 255.25(2)(b), (7), F.S.

History: New 7-26-82.

17-1.139 Escalation Clause Prohibited.

No lease shall contain an open rate including Consumer Price Index or rental escalation clause.

Specific Authority: 255.25, F.S.

Law Implemented: 255.25(2), F.S.

History: New 7-26-82.

17-1.140 Right-To-Terminate Clause Required.

Article XXI of the Standard Lease Agreement, the right-to-terminate clause, shall be a part of any lease for a term exceeding one year and may not be omitted from an agency's lease for any reason. Article XXI shall be deemed a part of any lease and given full legal force and effect.

Specific Authority: 255.25, F.S.

Law Implemented: 255.25(2), F.S.

History: New 7-26-82.

17-1.137 -- 17-1.140(History)

17-1.141 Standard Lease Agreement Form.

All leases shall be on the Standard Lease Agreement form except as provided by Florida Administrative Code Rule 13D-7.03.

Specific Authority: 255.25, F.S.
Law Implemented: 255.25(2), F.S.
History: New 7-26-82.

17-1.142 Filing of Leases.

A copy of each lease shall be filed with the Bureau of Property Management of the Division of Building Construction and Property Management.

Specific Authority: 255.25, F.S.
Law Implemented: 255.25(2), F.S.
History: New 7-26-82.

17-1.143 Standard Notice of Renewal.

If the Department elects to renew a lease pursuant to Article XX of the Standard Lease Agreement, it shall comply with Florida Administrative Code Rule 13D-7.09.

Specific Authority: 255.25, F.S.
Law Implemented: 255.25(2), F.S.
History: New 7-26-82.

17-1.144 Turnkey (Lease) Construction Program.

The purpose of this program is to provide the means of meeting State space requirements, in a competitive area, where it has been determined that existing space, either State or privately owned, is not available. The Department shall comply with the provisions of Florida Administrative Code Rule 13-D-7.10 when entering into turnkey leases.

Specific Authority: 255.25, F.S.
Law Implemented: 255.25(1), F.S.
History: New 7-26-82.

17-1.145 Leases of 2,000 Square Feet or More.

(1) No lease shall be entered into for 2,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive bids and award to the lowest and best bidder. The Department shall not enter into, within any 12 month period, more than one lease for space of a total of 2,000 square feet or more in a privately owned facility or complex except upon the solicitation of competitive bids.

(a) Exceptions

1. This rule shall not apply to renewal of leases pursuant to Article XX of the Standard Lease Agreement.

2. This rule shall not apply to any lease having a term of less than 21 consecutive days for the purpose of securing the one-time special use of the leased property.

3. This rule shall not apply to any lease for nominal or no consideration. Nominal consideration means consideration of one dollar or less per year.

4. This rule shall not apply to buildings or facilities of any size leased for the purpose of providing care and living space for persons, provided the agency has filed with the Bureau a certificate of exemption on a form provided by the Bureau of Property Management (BPM Form No. 4115).

5. An extension of an existing lease may be applied for by complying with the provisions of Florida Administrative Code Rule 13D-7.092.

(2) Certificate of Need.

The Department shall not proceed to solicit competitive bids for space of 2,000 square feet or more

in a privately owned building when suitable space is available in a state-owned building or other publicly owned building located in the same geographic region, until a certificate of need form (BPM No. 4105) has been filed with and approved by the Department of General Services.

(3) Solicitation.

(a) A public solicitation for proposals will be widely publicized using newspapers (a minimum of two publications, with a week between notices) and personal contact with owners, developers, or realtors in the city or area in which space is desired.

(b) Solicitation should set forth, but shall not be limited to the following:

1. Approximate net square footage required.
2. General area in which space must be located.
3. Date space must be available.
4. Name and address of user agency where specifications may be obtained.

(4) Specifications.

(a) Specifications shall be drawn in general terms. They shall afford each prospective lessor interested in submitting a proposal knowledge of the Department's space requirements. They shall not be structured to favor any specific location or lessor.

(b) Specifications provided to each prospective lessor should set forth, but shall not be limited to, the following:

1. Approximate net square footage required, to be measured in compliance with the Department of General Services' Standard Method of Space Measurement.

2. An approximate floor plan of space needed showing partitioning and other physical requirements.

3. General location of required space.

4. Date space must be available.

5. Term of lease with option to renew, if desired.

6. Services required to include parking, dining, and transportation requirements.

(c) Specifications shall also set forth that the prospective lessor will agree to:

1. Enter into a contract on a Department of General Services' Standard Lease Agreement form.

2. Provide a scaled floor plan showing present configurations and measurements that equate to net rentable square footage offered.

3. Comply with the requirement of Florida Administrative Code Rule 13D-1, Design Standards for Special Facilities for the Physically Disabled, if awarded bid.

4. Be an Equal Opportunity Employer and provide a notarized statement certifying same.

5. Provide Full Disclosure Statements of Ownership if awarded bid. (Florida Administrative Code Rules 13D-7.15 and 13D-7.16)

6. Validate the proposal for a minimum of thirty days following the public bid opening date.

7. Provide a Life Cycle analysis with proposal if lease is for 20,000 or more square feet in any one structure with the understanding that the analysis shall be acceptable before an award can be made. (Section 255.254, Florida Statutes)

8. Determine that the facility shall comply with the fire safety standards of the State Building Code

if awarded bid.

9. Determine that any renovations required will comply with fire safety standards of the State Building Code before renovations are commenced. (Section 255.25(5), Florida Statutes)

10. Propose a rental rate per square foot per year that will include all renovations and other special requirements necessary to accommodate the program at the time of initial occupancy.

(d) Specifications shall provide that sealed proposals are to be submitted, in a titled envelope enclosed in an outer envelope, to a designated individual by a specified closing time and date, at which time all proposals will be publicly opened. An announcement of award date shall also be made at this bid opening.

(e) Suggested formats and guidelines for specifications may be obtained from Bureau of Property Management, Department of General Services.

(5) Proposals:

(a) Proposals shall specifically respond but need not be limited to each item included in the specifications.

(b) Each proposal shall be signed by the owner(s), corporate officers, or legal representative(s). The corporate, trade, or partnership name must be either stamped, written, or typewritten beside the actual signature(s). If the proposal is signed by an agent, written evidence of his authority must accompany the proposal. If a corporation foreign to the State of Florida is the owner, written evidence of authority to conduct business in Florida must accompany the proposal.

(6) Evaluation:

(a) The Department alone shall reserve the right to accept or reject any or all bids submitted and if necessary reinstate procedures for soliciting competitive proposals.

(b) The Department, in conjunction with preparing specifications, shall develop weighted evaluation criteria. The criteria most significant to the Department's needs should have the highest weight. The cost of relocation, if any, consolidation of activities, if desirable, and any other factors deemed necessary should be weighed.

(c) The evaluation shall be made by the Department.

(d) Selection (deemed to be the lowest and best bid) shall be made by the Department.

(e) Documentation to support the selection shall be maintained by the Department and shall include but not be limited to the following:

1. A copy of all advertisements.

2. A copy of the proposal specifications.

3. A copy of all proposals received.

4. A synopsis of the Department's findings for each proposal.

(f) Selection shall be publicly announced by the user agency at the time and place designated at the bid opening.

(7) Lease Preparation and Approval.

(a) After the selection has been announced, a lease shall be properly executed by the successful proposer and the Department on a Department of General Services' Standard Lease Agreement and submitted for approval in accordance with the Bureau of Property Management's

"Manual of Instructions".

(b) Documentation in addition to that normally submitted in accordance with established procedures for lease approval shall include:

1. A copy of proposal specifications.

2. A synopsis of the Department's findings for each proposal received.

Specific Authority: 255.249(2), F.S. Law Implemented: 255.249(2), 255.21, 255.25(3)(5), 255.54, F.S. History: New 7-26-82.

17-1.146 Disclosure Statements.

The Department shall comply with the requirements of Florida Administrative Code Rules 13D-7.15 and 13D-7.16, concerning obtaining and submitting disclosure statements.

Specific Authority: 255.249(2), F.S. Law Implemented: 255.249(2)(h)(i), F.S. History: New 7-26-82.

17-1.147 Leases for Less Than 2,000 Square Feet of Space.

The Department is not required to seek competitive bids for leases of less than 2,000 square feet of space, but may do so at its discretion.

General Authority: 255.249, 255.25, F.S. Law Implemented: 255.249(2)(k), 255.249(3), 255.25(2)(b), F.S. History: New 7-26-82.

17-1.148 Waiver Committee.

(1) There is established a committee for consideration of waiver or modification of Standards for Special Facilities for the Physically Disabled (hereinafter "Waiver Committee") for leases of less than 2,000 square feet of space.

(2) The Waiver Committee shall be composed of a physically disabled consumer member not employed by the

Department, the Department safety officer, and a representative from the unit within the Department which will be the primary user of the space to be leased. The Deputy Director of Administrative Services will sit as non-voting Chairperson, will call meetings as appropriate, and will be responsible for appointing the consumer member and the unit representative to the Waiver Committee to consider modification or waiver requests.

(3) Requests for waiver or modification shall be approved by the affirmative vote of a simple majority of those members present.

(4) Any person leasing less than 2,000 square feet of space to the Department may request that the Standards for the Physically Disabled be waived or modified as to the leased space by submitting the request in writing to the Department. The request shall include the name of the lessor, the Division using the leased space and a statement of why the waiver or modification is justified. Supporting documents may also be submitted with the request.

(5) The Waiver Committee shall consider the request, and shall approve it if it finds any one of the following conditions to exist:

(a) The general public and the physically disabled will not, except under extraordinary circumstances, be users of the facility or the services of the agency or agencies housed therein, or

(b) The services or activities which would be housed in the facility covered by the application for modification or waiver are housed to the extent necessary to serve the physically disabled in other facilities which do conform to the standards and specifications established

17-1.145(7)(a) -- 17-1.148(5)(b)

by the Department of General Services, or for any other good reason at the discretion of the Committee.

(6) If the Waiver Committee does not grant the modification or waiver, the lessor may request an administrative hearing as provided for by Section 120.57, Florida Statutes.

Specific Authority: 255.21, F.S.
Law Implemented: 255.21(2), (3), (5), F.S. History: New 7-26-82.

17-1.149 Fire Code Compliance in Lease Space.

The Department shall comply with the provisions of Florida Administrative Code Rule 13D-7.091 concerning fire safety.

Specific Authority: 255.25, F.S.
Law Implemented: 255.25(5), F.S.
History: New 7-26-82.

17-1.150 Legal Review.

(1) A lease of less than 2,000 square feet of space in a privately owned building shall be reviewed as to form and legality by the agency's attorney or member of the agency's legal staff and approval thereof shall be indicated in the space provided on the Department of General Services' Standard Lease Agreement form.

(2) A lease of 2,000 square feet or greater of space in a privately owned building shall be approved by the Department of General Services' Office of General Counsel and approval thereof shall be indicated in the space provided on the Department of General Services' Standard Lease Agreement form.

(3) This rule shall not apply to leases for less than twenty-one consecutive days.

Specific Authority: 255.249, F.S.
Law Implemented: 255.249, 255.25, 255.21, 255.254, F.S. History:
New 7-26-82.

