AMENDMENTS TO CHAPTER 40E-61, FLORIDA ADMINISTRATIVE CODE WORKS OF THE DISTRICT REGULATORY SOURCE CONTROL PROGRAM FREQUENTLY ASKED QUESTIONS

1. WHAT IS THE PURPOSE OF CHAPTER 40E-61, FLORIDA ADMINISTRATIVE CODE (F.A.C.)?

The South Florida Water Management District's (SFWMD) regulatory programs include a unique best management practices (BMP) program for agricultural and nonagricultural land uses pursuant to Chapter 40E-61, Florida Administrative Code. There is no other program like it in Florida or the nation. The purpose of the program is to describe and enforce criteria to ensure that use or connection to "Works of the District" canals, structures, rights of way, lakes and streams, and other water resources for which the SFWMD has responsibility or owns are compatible with the SFWMD's ability to carry out the objectives of the legislative declarations of policy for water resource protection (Sections 373.016, 373.085, 373.113, 373.4595, 373.4592, and 403.067). The current program includes enforceable phosphorus concentration discharge limitation criteria for stormwater runoff within the Lake Okeechobee watershed.

2. HOW DOES CHAPTER 40E-61, F.A.C., RELATE TO LAKE OKEECHOBEE WATERSHED PROTECTION?

Chapter 40E-61, F.A.C., is an existing mandated regulatory program referenced by the Northern Everglades and Estuaries Protection Program (373.4595, NEEPP) statute and by the Everglades Forever Act (373.4592, EFA). The NEEPP states that the District, FDEP, and FDACS, shall achieve and maintain compliance with water quality standards through, among other means, refinement of existing regulations, and specifically references the District Lake Okeechobee Works of the District Program (Chapter 40E-61, F.A.C.). Under the EFA, the District must require and enforce the BMP and other requirements of Chapters 40E-61, F.A.C., and 40E-63, F.A.C. (the Works of the District Program south of the Lake), as discharges from the Northern Everglades may be directed to the Southern Everglades restoration projects.

Chapter 40E-61, F.A.C., is also an element of existing Basin Management Action Plans adopted under 403.067, F.S. for the River watersheds. As indicated in 403.067, F.S., their provisions are intended to supplement existing law, and do not alter or restrict the authority granted to a water management district under the chapter 373.

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3. WHY IS AMENDMENT OF CHAPTER 40E-61, F.A.C., NEEDED?

Chapter 40E-61, F.A.C. needs to be updated to reflect current NEEPP requirements including the expanded boundaries of the source control programs to include Upper Kissimmee, Lake Istokpoga, and the St Lucie and Caloosahatchee watersheds; refinement of the source control plan criteria based on current knowledge on BMPs and discharge monitoring requirements; and inclusion of phosphorus and nitrogen as pollutants of concern in the St Lucie and Caloosahatchee River watersheds.

4. WHAT IS THE OBJECTIVE OF SOURCE CONTROL PROGRAMS?

Source control programs are generally the most cost effective approaches for improving water quality because they control pollutants at the source and reduce what enters the downstream ecosystem. Pollutants are generally controlled at the source through the implementation of BMPs, and their long term success is assured through discharge limitations. However, like any other technology BMPs have a maximum achievable water quality benefit. There is typically a gap between the levels that BMPs can achieve and the ultimate water quality goal of each ecosystem. In most cases, it is necessary to invest in constructing downstream sub-regional and regional projects to further reduce nutrients to close that gap; a treatment train approach. The more effective source control programs are, however, the smaller the gap and thus the lower the cost of the downstream projects. When utilizing a treatment train approach, the water quality benefit expected through implementation of source control programs must be estimated based on levels that are consistently achievable over the long term. These estimated levels translate into discharge limitations which provide a base condition (design envelope) for those entities responsible for the planning, budgeting, and construction of downstream projects to achieve water quality criteria.

5. WHAT ARE THE AMENDMENTS TO CHAPTER 40E-61 EXPECTED TO ADDRESS?

- Expansion of the Chapter 40E-61 boundaries to align with current statutory mandates, that is, the expanded Lake Okeechobee Watershed, and the St Lucie and Caloosahatchee River Watersheds;
- 2. Coordination and synchronization with source control implementation requirements under the FDEP and FDACS programs;
- 3. Establishment of refined BMP implementation criteria and monitoring requirements for entities required to obtain a Chapter 40E-61, F.A.C., permit;

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- 4. Revision of discharge limitations under the existing rule, focusing on consistency with NEEPP and a refined monitoring network for tracking water quality at various scales including site specific, upstream (local), sub-regional, and regional; and
- 5. Establishment of a schedule that aligns the collective programs' implementation milestones with water quality data to ensure the ability to measure progress and expeditious achievement of NEEPP requirements.

6. HOW WILL THE RULE ENSURE THAT REQUIREMENTS ARE NOT DUPLICATIVE?

The responsibilities of the coordinating agencies are generally described in the statutes with more detail in the protection plans and the Interagency Agreement executed among the Florida Department of Environmental Protection, the Florida Department of Agriculture and Consumer Services and the South Florida Water Management District. The rule, once amended, will provide additional clarification.

7. HOW DOES CHAPTER 40E-61, F.A.C., RELATE TO BMAP ALLOCATIONS?

The process of providing BMAP allocations is carried out by FDEP under 403.067, F.S., and is based on the established amount of a pollutant (TMDL) that a water body may receive from all sources, *point and nonpoint*, without exceeding water quality standards. The BMAP must integrate the appropriate management strategies available through existing water quality programs to achieve the TMDL. The Lake Okeechobee, St Lucie and Caloosahatchee Protection Plans describe adopted management strategies for achieving water quality goals for the Northern Everglades watersheds. The Chapter 40E-61 regulatory program is a key element of the nutrient control programs and protection plans and is focused on *nonpoint* source controls through mandated efforts. Chapter 40E-61 incorporates BMP requirements that are developed based on nutrient load reductions technically and economically feasible, implementation schedules, and monitoring to track progress. Chapter 40E-61 is included in the first phase of adopted BMAPs for the St Lucie and Caloosahatchee watersheds. It is anticipated, that the Chapter 40E-61 regulatory program. See question 4 above about how BMPs are only one of many activities in an overall plan aimed at achieving the TMDL for Lake Okeechobee.

8. WHAT IS THE BASIS FOR AN ACCEPTABLE BMP PLAN AS IT RELATES TO ACHIEVING WATER QUALITY GOALS?

The 1989 Chapter 40E-61 requires permittees to submit a "statement indicating how phosphorus discharge will be controlled" and establishes the phosphorus concentration discharge limitations that shall be achieved at the parcel level, as a result of those source controls. The source control implementation criteria has been refined along the years to include lessons learned for a more robust BMP plan that minimizes nutrient input and offsite transport in stormwater runoff. BMP plans developed since 2007 under Chapter 40-61 permits include nutrient management, water management and particulate matter and erosion controls, as is required by Chapter 40E-63 for the Everglades Agricultural Area and C-139 Basins. Earlier permits are in a transition phase to align with current water quality goals.