

IMPAIRED WATERS RULE DEVELOPMENT

November 2013



AGENDA

- 1. Welcome and Introductions
- 2. Proposed Schedule
- 3. Presentation on Proposed Rule Change
- 4. Discussion / Questions

PRESENTERS

- Susan Martin, Esq., Senior Specialist Attorney
 - Dan Waters, P.E., Regulation Service Center Administrator
 - Anita Bain, Environmental Resource Permitting Bureau Chief
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- For Procedural questions after the meeting, contact:
 - Jan Sluth, CP, FRP, Senior Paralegal



RULE DEVELOPMENT

- Governing Board authorized publication of Notice of Rule Development in October.
- Workshops scheduled November 6 in Ft. Myers, November 12 in Kissimmee, and November 18 in West Palm Beach.

Preliminary Timeline

- Feb 2014: Present proposed rule language to WRAC
- April 2014: Present proposed rule language to Governing Board
- June 2014: Public hearing to adopt proposed rule
- July 2014: Rule becomes effective (if no changes since publication)
- August – Rule with changes becomes effective

What is this rule for?

Introduction

- The Impaired Waters Memo summarizes the application of existing District rules to projects discharging to an Impaired Waterbody or an Outstanding Florida Water (OFW).
- The original Impaired Waters Memo was issued in June 2004 and was updated in May 2009.
- Memo was updated again in September 2013 to reflect new rule numbers, as a result of the adoption of the new SWERP rules.

Background

- The Impaired Waters Memo is used as guidance on the applicability of existing District rules for permitting of projects that discharge to Impaired Waters or Outstanding Florida Waters (OFW)

Impaired Waters

- Defined in Rule 62-303.200(7) F.A.C.
- Impaired Water “shall mean a waterbody or waterbody segment that does not meet its applicable water quality standards...”
- Existing District rules require additional reasonable assurances for projects proposing to discharge to a waterbody that does not meet applicable standards.

What is Changing?

- Intent of this rule making is to make the Impaired Waters Memo a part of District rules.
- Pursuant to Section 373.4131(3)(a), Fla. Stat., if a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by the department or a water management district under this part, the system design will be presumed not to cause or contribute to violations of applicable state water quality standards.

What are the applicable rules which support the Impaired Waters Memo?

Conditions for Issuance

- Rule 62-330.301 (1)(e), Florida Administrative Code (F.A.C.).
- An applicant must provide reasonable assurances that the activity will not adversely affect the quality of receiving waters such that state water quality standards will be violated.

Applicant's Handbook Volume I

- Section 10.2.4 – Applicant's Handbook (AH) Volume I

An applicant must provide reasonable assurances that the regulated activity will not cause or contribute to violations of water quality standards.

- Section 10.2.4.5 – AH Volume I

Existing criteria requires that “for the parameters that do not meet water quality standards, the applicant must demonstrate that the proposed activity will not contribute to the existing violation.”

Applicant's Handbook Volume II

- Section 4.1 – AH Volume II

“Projects shall be designed and operated so that off-site discharges will meet State water quality standards.”

Net Improvement

§373.414(1)(a)3, Fla. Stat.,
and 62-330.301(2), F.A.C.:

In instances where an applicant is unable to meet state water quality standards because existing ambient water quality does not meet standards and the system will contribute to this existing condition, the applicant must implement mitigation measures that are proposed by or acceptable to the applicant that will cause net improvement of the water quality in the receiving waters for those parameters that do not meet standards.

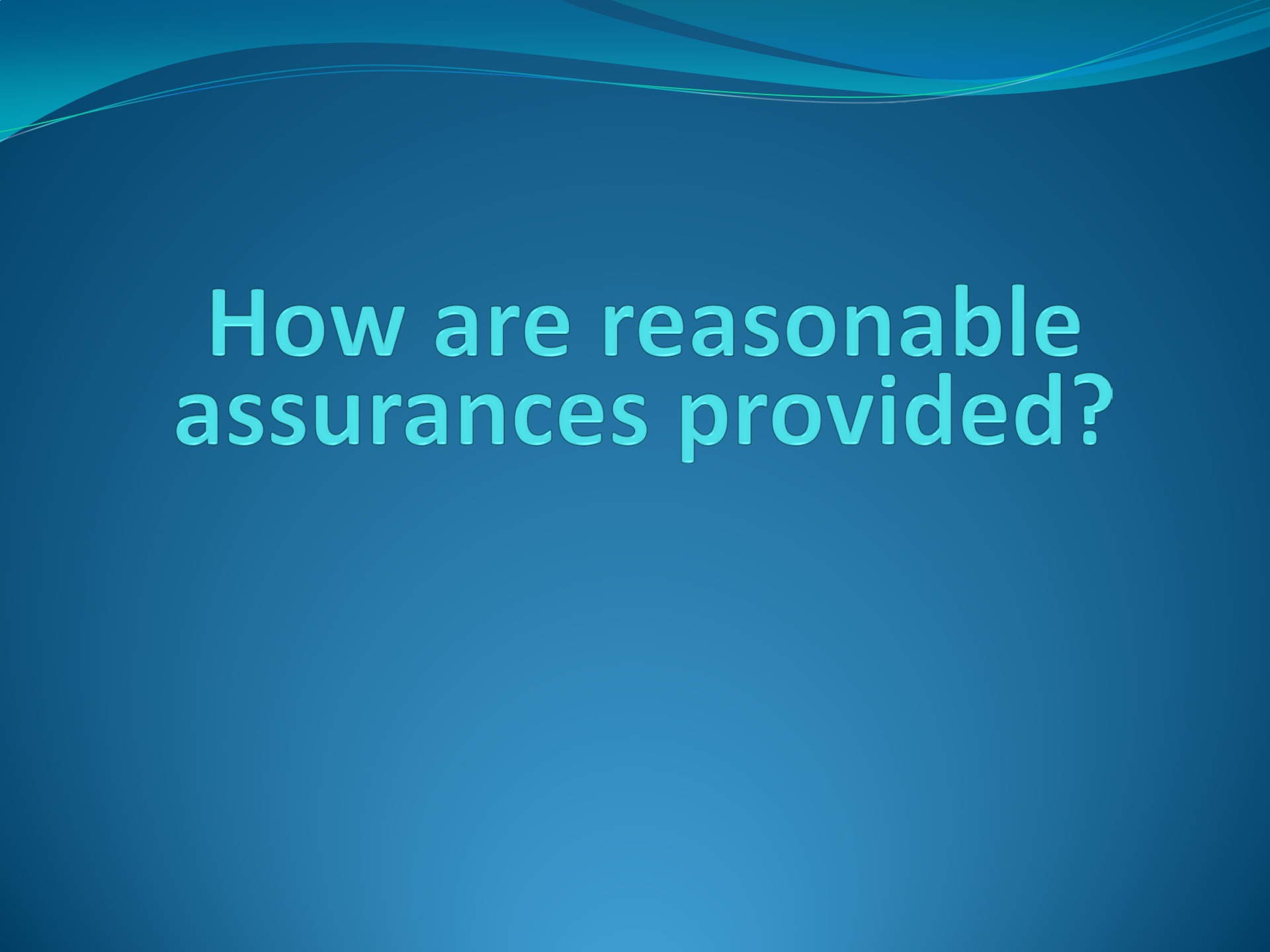
**How do I determine if my
project discharges to an
impaired waterbody?**

Applicant's Handbook Volume II

- Pre-Application Meeting with SFWMD Staff
- Discuss with FDEP Staff
- Look at the FDEP Verified List
- <http://www.dep.state.fl.us/water/watersheds/assessment/docs/303d/Master-Verified-List-2013.xls>

Comprehensive Verified List (Group 1, Cycle 1 through Group 1, Cycle 3)

Cycle Group	OGC Case Number	Basin	Planning Unit	County (-ies)	WBD	Water Segment Name	Water-body Type	Water-body Class ¹	1998 303(d) Parameters of Concern	Parameters Assessed Using the Impaired Waters Rule (IWR)	Dissolved Oxygen/Biology Pollutant of Concern	DO / Nutrient / Biology TN, TP, BOD Median Values (mg/L) ²	Concentration of Criterion or Threshold Not Met	Priority for TMDL Development ³	Projected Year For TMDL Development ⁴	Verified Period Assessment Data ⁵	Comments ^{2,3}
3	1	13-0259	Everglades West Coast	Southwest Coast	Collier	3259L	Camp Kiale	Stream	3F	Nutrients (Historic Chlorophyll a)		TN = 0.866 (n = 106) TP = 0.037 (n = 179) BOD = 1 (n = 52)	≤ 9 µg/L	Medium		2005 (3 µg/L) 2006 (5 µg/L) 2007 (20 µg/L) 2008 (15 µg/L) 2009 (30 µg/L) 2010 (7 µg/L)	The parameter is impaired for this waterbody because annual average chlorophyll a values exceeded the historic minimum of 6 µg/L by more than 50% in at least two consecutive years. The historic minimum was calculated using data from the period 2000 - 2004. Based on the median TN/TP ratio of 19.88, total nitrogen and total phosphorus are co-limiting nutrients. Historic chlorophyll a is one part of the IWR nutrient assessment and dissolved oxygen is in category 4d and chlorophyll a is also impaired based on annual average values greater than 20 µg/L. This parameter is being added to the 303(d) list.
3	1	13-0261	Everglades West Coast	Southwest Coast	Collier	3278E	Cow Slough	Stream	3F	Fecal Coliform			≤ 400 Counts / 100 mL	Low		7/19	This parameter is impaired for this waterbody based on the number of exceedances for a sample size less than 20. Fewer than twenty samples may be used to identify a waterbody as impaired if there are at least five exceedances, per Rule 62-303.420(7)(a) F.A.C. This parameter is being added to the 303(d) list.
2	1	09-2708	Everglades West Coast	Southwest Coast	Collier	3278L	Immokalee Basin	Stream	3F	Dissolved Oxygen	Nutrients (added from comments)		< 5.0 mg/L	Medium			pp = 23 / 30; vp = 38 / 52. TP is the causative pollutant with TP median = 0.25 mg/L (43 obs.).
3	1	13-0262	Everglades West Coast	Southwest Coast	Collier	3278L	Immokalee Basin	Stream	3F	Fecal Coliform			≤ 400 Counts / 100 mL	Low		4/02	This parameter is impaired for the waterbody based on the number of exceedances for the sample size and is being added to the 303(d) list.



How are reasonable
assurances provided?

Examples of Reasonable Assurances

- Site specific pollutant loading analysis to demonstrate post development reduction in pollutant load
- Site specific analysis may include the incorporation of Best Management Practices (BMPs).
- Additional 50% Water Quality Treatment Volume (above amount required in Section 4.2.1 of AH Volume II).
- Creation of project specific Construction SWPPP and Post Construction PPP.

Criteria Flexibility

- While the incorporation of this Memorandum into Volume II will mean that it will be a rule, criteria flexibility is required to be maintained under existing rules.
- Rule 1.1 of Volume II provides that: “an applicant may propose alternative designs to those provided in this Volume for consideration by the Agency.”
- If this is done, additional reasonable assurances will be required to demonstrate that the alternative design meets the conditions for issuance of an environmental resource permit.

Summary

- Impaired Waters Memo will become part of District Rules.
- District will continue to enforce existing rules requiring reasonable assurances for projects discharging to impaired waterbodies / OFWs
- Site Specific Analysis, additional 50% water quality treatment volume, and the potential use of BMPs required to provide reasonable assurances.

Questions / Public Comment