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No. 84-19
date

OPERATING AGREEMENT
BETWEEN
THE DEPARTMENT OF ENVIRONMENTAL REGULATION
AND
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
CONCERNING
CERTIFICATION OF WATER QUALITY STANDARDS
UNDER THE FEDERAL CLEAN WATER ACT

THIS OPERATING AGREEMENT, made and entered into this 7th day of November, 1984, by and between the Southwest Florida Water Management District (SWFWMD) and the Department of Environmental Regulation (DER) is to clarify interagency operating procedures associated with coordination and review of applications for water quality certifications pursuant to Section 401 of the Federal Clean Water Act. The power to apply and enforce surface water quality standards was delegated to SWFWMD by Order of Delegation signed by the Secretary of the Department. The power to process water quality certifications pursuant to Section 401 of the Federal Clean Water Act for agricultural activities and agricultural water management systems was delegated to SWFWMD by letter dated September 28, 1984, signed by the Governor, to be effective December 1, 1984.

NOW, THEREFORE, the DER and the SWFWMD agree as follows:

1. The SWFWMD shall notify the DER Southwest Florida District Office of all requests for certification under Section 401 within three days of receipt of such requests. The DER may offer comments on the certification request within 30 days of receipt. In the event comments are not received within that time period, SWFWMD shall presume that DER has no objection to issuance of the water quality certification. The DER will provide technical and legal assistance to SWFWMD for certification determinations upon request.
2. In the event of material changes in a permit application subsequent to initial notification to DER pursuant to Paragraph 1, SWFWMD shall notify the DER Southwest Florida District Office within three days of receipt, and DER may provide

comments thereon within 20 days. If the DER receives new information concerning the proposed certification prior to the time of certification, but after the 30 day comment period and such information would materially alter the DER's comments, then it shall submit additional comments in writing to the District for its consideration. The DER's right of appeal pursuant to paragraph 6 shall be applicable in this instance.

3. In the event SWFWMD is required to defend a water quality certification decision made pursuant to Section 401 of the Federal Clean Water Act in a legal proceeding, the DER will, upon request, provide technical or legal support needed to assist in the defense of any such action.

4. All certification applications which are pending or for which final or intended agency action has not been taken, shall remain the responsibility of DER.

5. SWFWMD shall provide DER with notice of intended agency action on all Section 401 certifications. In the event DER objects to intended SWFWMD action, it shall petition for formal administrative hearing in all cases involving a disputed issue of material fact, or an informal hearing in cases not involving a disputed issue of material fact. In the event the DER subsequently disagrees with final agency action taken pursuant to Section 120.57(1)(b)9., Florida Statutes, it may then appeal said action pursuant to Section 373.114, Florida Statutes. The record in that proceeding shall be limited to that which was developed in the prior proceeding.

6. The DER shall only appeal SWFWMD certification decisions pursuant to paragraph 5 in the event it has recommended against granting the certification in accordance with the time limitations of paragraphs 1 and 2 hereof, and said recommendation was not accepted by SWFWMD.

7. In order that the Department may be periodically informed regarding certifications processed by the SWFWMD, information regarding certifications or permits and the certification or permitting program shall be provided to the DER upon request.

8. This operating agreement will be reviewed annually and may be amended or further clarified from time to time with the consent of both the SWFWMD and DER.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names the day and year first written above.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

By Victoria J. Lindell
Secretary

By Jan W. Kuhl
Executive Director

Attest _____

Attest Lee Cotton