

**OPERATING AGREEMENT CONCERNING
REGULATION UNDER PART IV, CHAPTER 373, F.S.,
AND AQUACULTURE GENERAL PERMITS UNDER SECTION 403.814, F.S.,
BETWEEN
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

I. INTENT

The Southwest Florida Water Management District (DISTRICT) and the State of Florida Department of Environmental Protection (DEPARTMENT) enter into this operating agreement to further streamline environmental permitting, while protecting the environment. This agreement divides responsibility between the DISTRICT and the DEPARTMENT for the exercise of their authority regarding permits, compliance, and enforcement under Part IV, Chapter 373, F.S. This agreement also divides responsibility between the DISTRICT and DEPARTMENT regarding formal wetland determinations pursuant to Subsection 373.421(2) through (5), F.S. Finally, this agreement is intended to reflect the aquaculture provisions of Section 373.046(5) and the delegation of Chapter 403, F.S., aquaculture general permitting authority under Section 403.814, F.S. It is a goal of this operating agreement that the division of responsibilities provide no reduction in levels of compliance monitoring and enforcement and, where possible, allow increased levels of compliance monitoring and enforcement.

This agreement supersedes the following agreements: Operating Agreement Concerning Management and Storage of Surface Waters Regulation, and Wetland Resource Regulation Between Southwest Florida Water Management District and Department of Environmental Regulation, dated August 10, 1992; and the First Amendment to Operating Agreement Concerning Management and Storage of Surface Waters Regulation, and Wetland Resource Regulation Between Southwest Florida Water Management District and Department of Environmental Regulation, dated February 17, 1994; and Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., Between Southwest Florida Water Management District and Department of Environmental Protection, dated September 27, 1994.

As a future step to further increase the efficiency and effectiveness of environmental permitting, the DEPARTMENT and the DISTRICT shall jointly pursue further integration and streamlining of federal and state wetlands regulations.

II. RESPONSIBILITIES OF DISTRICT AND DEPARTMENT

A. DEPARTMENT Responsibilities

1. Permits and Variances

The DEPARTMENT shall review and take final action on all applications for permits and petitions for variances, under Part IV, Chapter 373, F.S., and variances or waivers under Section 120.542, F.S., for the project types listed in a. through r. below. The permit applications encompassed within the DEPARTMENT's responsibilities hereunder include those submitted for wetland resource (dredge and fill) permits and management and storage of surface water (MSSW) permits, pursuant to Subsections 373.414(11) through (16), F.S., as well as those submitted for environmental resource permits. However, the division of responsibilities for permitting aquaculture facilities is covered exclusively in Section II.E of this agreement.

a. All solid waste management facilities that require a permit under Chapter 403, F.S. However, the DISTRICT shall review and take final action on permit applications when the solid waste management facility qualifies for a solid waste general permit and is merely an incidental component of a project for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II.A.1. of this agreement.

b. Hazardous waste facilities that require a permit under Chapter 403, F.S. However, the DISTRICT shall review and take final action on permit applications when the storage of hazardous waste is merely an incidental component of a project for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II. A. 1. of this agreement.

c. Domestic wastewater treatment facilities that require a permit under Chapter 403, F.S., including effluent disposal sites. However, the DISTRICT shall review and take final action on permit applications for:

(1) That part of a facility which constitutes the application of reclaimed water to irrigate crops, golf courses, or other landscapes;

(2) That part of a facility which (2) constitutes the application of reclaimed water to rehydrate wetlands or to provide artificial recharge to reduce or mitigate drawdown impacts due to well withdrawals; and

(3) Those facilities which address any of the requirements of Chapters 40D-4, or 40D-40, F.A.C., through a system or activity which is not fully contained on the domestic wastewater facility site, but which is part of a larger project for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II. A. 1. of this ~~operating~~ agreement.

d. Industrial wastewater treatment facilities that require a permit under Chapter 403, F.S. However, the DISTRICT shall review and take final action on permit applications for:

(1) Those facilities that qualify for a general permit pursuant to Sections 62-660.801 (Laundromat Wastewater Disposal Systems), 62-660.802 (Pesticide Waste Degradation Systems), 62-660.803 (Car Wash Recycle Systems), 62-660.805 (Tomato Wash Water Disposal), or 62-621.300(2) (Generic Permit for the Discharge of Produced Ground Water from any Non-Contaminated Site Activity), F.A.C.;

(2) The excavation of a borrow pit which does not involve any on-site material grading or sorting;

(3) Those facilities in which the industrial wastewater component is merely an HVAC (heating, ventilation, and air conditioning) cooling tower discharge, or other industrial wastewater treatment facility which is merely an incidental component of a project for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II. A. 1. of this agreement; and

(4) That part of a facility which constitutes the application of treated industrial wastewater to irrigate crops or landscapes.

e. All mining projects, including phosphate, heavy minerals, fuller's earth, peat, limerock, sand, gravel, and shell. However, the DISTRICT shall review and take final action on permit applications for borrow pits which have no on-site material grading or sorting facilities.

f. Power plants and electrical distribution and transmission lines and other facilities related to the production, transmission and distribution of electricity.

g. Communication cables and lines.

h. Natural gas or petroleum exploration, production, and distribution activities and facilities, product pipelines, and other facilities related to the exploration, production, and distribution of natural gas and petroleum.

i. Docking facilities, boardwalks, shore protection structures, and piers, including the adjacent docking and boating related development and navigational dredging. Adjacent docking and boating related development includes parking areas for the docking facility, dry storage facilities, boat sale and supply facilities, maintenance and repair facilities, associated seafood loading and processing facilities, restaurants, harbor master and marina administration facilities. Residential development and other commercial development is not considered docking or boating related. The DEPARTMENT shall also review and take final action on permit applications for docking, boating related, boardwalk, shore protection or pier projects which include existing project related commercial or residential development that does not have a previously issued DISTRICT permit under Part IV of Chapter 373, F.S., and which do not propose new project related commercial or

residential development. However, the DISTRICT shall review and take final action on permit applications for all docking facilities, boardwalks, shore protection structures, and piers, including adjacent docking and boating related development and navigational dredging, whenever such facilities are part of a larger plan of other commercial or residential development that has received or requires a permit under Part IV of Chapter 373, F.S.

j. Systems proposed in whole or in part seaward of the coastal construction control line (CCCL). The CCCL has been established in the following counties: Pinellas through those portions of Charlotte within the area of the DISTRICT. In counties where a CCCL has not been established, systems proposed in whole or in part seaward of a point 50 feet above the mean high water line at any riparian coastal location fronting the Gulf of Mexico or Atlantic coast shoreline of the state, exclusive of bays, inlets, rivers, bayous, creeks, passes, and the like.

k. Projects constructed, operated or maintained by the DISTRICT; however, activities of the DISTRICT permitted under Sections 403.91-403.929, F.S., or the rules adopted pursuant to those statutes, and activities of the DISTRICT which did not require a permit under such statutes or rules, shall not require a permit under Part IV of Chapter 373, F.S., provided such activities are part of a project which was commenced prior to October 3, 1995.

l. Navigational dredging conducted by governmental entities except where associated with a larger project that is otherwise the responsibility of the DISTRICT for review and final action.

m. Seaports and adjacent seaport related development where the applicant or property owner is a port authority as defined in Subsection 315.02(2), F.S.

n. A system which serves only one single family dwelling unit, duplex, triplex, or quadruplex (hereinafter referred to as residential unit), except (i) where the residential unit is part of a larger common plan of development or sale proposed by the applicant, or (ii) where the residential unit is only an incidental part of a parcel that is otherwise used for agricultural activities for which a permit has been issued or is required under Part IV, Chapter 373, F.S.

o. The following systems in wetlands or other surface waters when they are not part of a larger plan of development: boat ramps, ski jumps, ski slalom courses, aids to navigation, mooring buoys and fields, piling supported structures which are not physically connected to uplands, aquatic plant management activities regulated under Chapter 369, F.S., fish attractors, artificial reefs, treasure salvage, and archeological research or exploration.

p. Temporary systems proposed for commercial film productions.

q. High speed rail facilities under Sections 341.321 through 341.386, F.S.

r. Magnetic levitation demonstration projects under Sections 341.401 through 341.422, F.S.

2. **Formal Determinations**

The DEPARTMENT shall review and take final action on petitions for formal determinations of the extent of wetlands and other surface waters pursuant to Section 373.421, F.S., filed by entities regarding properties on which they propose to undertake activities for which the DEPARTMENT would have permitting responsibility under this agreement.

The DEPARTMENT shall provide the DISTRICT with copies of formal determinations of the extent of wetlands or other surface waters issued by the DEPARTMENT.

3. **Mitigation Banks**

a. The DEPARTMENT shall review and take final action on all permit applications for mitigation banks, under Part IV, Chapter 373, F.S., filed by:

(1) Entities which propose mitigation banks primarily to offset the impacts of solid waste management facilities for which the DEPARTMENT is responsible under Section II.

(2) Entities engaged in the business of mining which propose mitigation banks primarily to offset the impacts of mining projects for which the DEPARTMENT is responsible under Section II.

(3) Entities engaged in the business of power production which propose mitigation banks primarily to offset the impacts of power plants or electrical distribution or transmission lines or other facilities related to the production, transmission or distribution of electricity for which the DEPARTMENT is responsible under Section II.

(4) Entities engaged in the business of communication transmission which propose mitigation banks primarily to offset the impacts of communication cables or lines for which the DEPARTMENT is responsible under Section II.

(5) Entities engaged in the business of natural gas or petroleum exploration, production, or distribution which propose mitigation banks primarily to offset the impacts of natural gas or petroleum exploration, production or distribution activities or facilities, or product pipelines for which the DEPARTMENT is responsible under Section II.

(6) Governmental entities which propose mitigation banks primarily to offset the impacts of navigational dredging which they conduct for which the DEPARTMENT is responsible under Section II.

(7) Port authorities as defined in Subsection 315.02(2), F.S., which propose mitigation banks primarily to offset the impacts of seaports or adjacent seaport related development for which the DEPARTMENT is responsible under Section II.

(8) The DISTRICT.

b. For the purposes of Section II.A.3., “primarily to offset” shall mean that greater than 50 percent of the assigned mitigation credits from the proposed mitigation bank are proposed to offset impacts which result from the project type as specified in one of paragraphs (1) through (7) of Section II.A.3.a. However, nothing in Section II.A.3. shall prohibit a banker from using, selling, or transferring credits to offset impacts other than those identified in Section II.A.3. as specified in the mitigation bank permit.,

B. DISTRICT Responsibilities

1. The DISTRICT shall review and take final action on all applications for permits, petitions for variances, and petitions for formal determination under part IV, Chapter 373, F.S., and variances and waivers under Section 120.542 F.S., except for those identified as the DEPARTMENT’s responsibility under this operating agreement and except as provided in Section II.E. of this agreement. The permit applications encompassed within the DISTRICT’s responsibility hereunder include those submitted for wetland resource permits and MSSW permits, under Subsections 373.414(11) through (16), F.S., as well as those submitted for environmental resource permits.

2. The DISTRICT shall review and take action on projects constructed, operated or maintained by the DEPARTMENT. However, activities of the DEPARTMENT permitted under Sections 403.91-403.929, F.S., or the rules adopted pursuant to those statutes, and activities of the DEPARTMENT which did not require a permit under such statutes or rules, shall not require a permit under Part IV of Chapter 373, F.S., provided such activities are part of a project which was commenced prior to October 3, 1995.

3. The DISTRICT shall provide the DEPARTMENT with copies of formal determinations of the extent of wetlands or other surface waters issued by the DISTRICT.

C. Incorrectly Submitted Applications and Petitions; Modifications

1. Permit applications, petitions for variances or waivers, and petitions for formal determinations submitted to the incorrect agency pursuant to the terms of this operating agreement shall be returned to the applicant or with the applicant’s concurrence, be forwarded to the correct agency. The application shall not be considered received for purposes of Subsection 120.60(1), F.S., until it is received by the correct agency. A refund of any submitted fee shall be made to the applicant. Prior to transferring the application, the incorrect receiving agency shall coordinate with the proper reviewing

agency and the applicant in order to inform all parties that the application has been submitted incorrectly and is being either returned or forwarded.

2. Notwithstanding sections II.A. and II.B. of this agreement, permit modification requests shall be processed by the agency issuing the original permit. If the permit has been modified, the agency that issued the last modification to the permit shall process the modification. However, all modifications to permits shall be processed by the DEPARTMENT for:

- a. Solid waste management facilities as described in Section II.A.1.a.; and
- b. Mining projects as described in Section II.A.1.e., when the modification involves the addition of new lands to the permit or the expansion of mining activities into areas not previously approved for mining.
- c. Seaports and seaport related development as described in Section II.A.1.m.

D. Special Cases

By written agreement between the DISTRICT and the DEPARTMENT, responsibilities may deviate from the responsibilities outlined in II.A., B., or C. above. Instances where this may occur include:

1. An extensive regulatory history by either the DISTRICT or the DEPARTMENT with a particular project that would make a deviation result in more efficient and effective regulation;
2. Simplification of the regulation of a project that crosses water management district boundaries;
3. The incorrect agency has begun processing an application or petition and transfer of the application or petition would be inefficient; or
4. Circumstances in which a deviation would result in the application or petition being more efficiently or effectively processed.

E. Aquaculture

Notwithstanding any other provision of this agreement, the division of responsibility for permitting, compliance, and enforcement of aquaculture facilities which are not exempt from Part IV, Chapter 373, F.S., or which require aquaculture general permits under Chapter 403, F.S., shall be pursuant to Sections 373.046 and 403.814, F.S. For aquaculture activities for which the DISTRICT has Chapter 403, F.S., general permitting authority, the DISTRICT shall also have the authority to issue letters determining that no permit is required and to perform compliance monitoring and enforcement activities.

**III. DELEGATION OF AUTHORITY: MIXING ZONES,
ZONES OF DISCHARGE, VARIANCES**

A. The DEPARTMENT delegates authority to the DISTRICT to review and take final action on requests for zones of mixing in surface waters and zones of discharge in groundwater, in accordance with Sections 62-4.242, 62-4.244, 62-28.700, 62-522.400 and 62-522.410, F.A.C., when the requests are associated with a permit application for which the DISTRICT is responsible under the terms of this operating agreement.

B. The DEPARTMENT delegates the authority to the DISTRICT to take action on petitions for variances or waivers from state water quality standards in accordance with Sections 120.542, 373.414(17), and 403.201, F.S., when the petition is associated with a permit application for which the DISTRICT is responsible under the terms of this operating agreement.

IV. COMPLIANCE MONITORING AND ENFORCEMENT

A. Division of Responsibilities

Each agency shall perform compliance monitoring on all projects for which that agency has issued a permit, consent order, final order, or for which a consent final judgment or final judgment has been entered in order to determine compliance with the conditions thereof and will enforce said conditions by taking appropriate enforcement action where necessary. However if the DEPARTMENT or the DISTRICT modifies a permit previously issued by the other agency, pursuant to this operating agreement, the agency modifying the permit shall thereafter determine compliance with the permit and enforce all provisions or conditions of that permit.

Each agency shall investigate activities regulated under Part IV of Chapter 373, F.S., which are undertaken without the required permits, and take appropriate enforcement action, when it has permitting responsibilities for those activities under this operating agreement.

B. Special Cases

1. By written agreement between the DISTRICT and the DEPARTMENT, enforcement responsibilities for specific cases may deviate from the responsibilities outlined in Section IV.A. Instances where this may occur include:

a. The case also includes activities which may be violations of rules of the DEPARTMENT or DISTRICT that are not the subject of this agreement;

b. The case involves activities that cross water management district boundaries; or

c. Deviation would result in the case being more effectively or efficiently handled.

The Governing Board may delegate authority to staff to execute special case agreements.

V. EMERGENCIES

In a declared emergency, pooling of staff resources and deviations from the terms of this agreement may be in the best interest of public service and protecting or restoring property and environmental resources. Therefore, notwithstanding the divisions of responsibilities specified in this agreement, where the Governor has issued an Executive Order which declares an emergency and the DEPARTMENT and the DISTRICT has issued emergency orders to implement the Executive Order, either party to this agreement can review and take agency action on any activities regulated under Part IV of Chapter 373, F.S., that are authorized by an emergency order during the duration of the emergency orders of the DEPARTMENT and the DISTRICT.

VI. INTERAGENCY COMMITTEE

In order to seek consistency in the Environmental Resource Permit (ERP) program and to facilitate the implementation of the DEPARTMENT's responsibilities under Subsection 373.026(7), F.S., and Section 62-340.100, F.A.C., the DEPARTMENT and DISTRICT agree to form and participate in an ERP Committee (Committee). The Committee shall meet at least twice a year, but may meet more frequently as issues arise that require interagency coordination. The Committee shall provide a forum for the DEPARTMENT and water management districts to coordinate and communicate regarding the following:

- a. Joint training efforts to maximize the use of training resources and ensure that adequate training is provided.
- b. Promotion of consistent interpretation and implementation of ERP rules.
- c. Proposed amendments to ERP rules.
- d. Development of consistent ERP compliance and enforcement.
- e. Future revisions to the DEPARTMENT and DISTRICT operating agreements regarding the ERP program.
- f. Development of a statewide ERP data set and a computer data exchange methodology.
- g. Such other activities which the Committee deems necessary or desirable to achieve and maintain the goals of this operating agreement.

VII. EFFECTIVE DATE

A. This operating agreement shall take effect upon execution by both parties and adoption of rule amendments which incorporate this operating agreement by reference.

B. Applications, petitions, and enforcement cases, under Part IV of Chapter 373, F.S., which are pending on the effective date of this agreement shall continue to be processed by the agency to which application or petition was made or which initiated the enforcement case, except when the DISTRICT and the DEPARTMENT agree, and in the case of aquaculture activity the applicant also agrees, that an application, petition or enforcement case should be transferred in order to provide for more efficient processing and enforcement. Applications and petitions received after the effective date of this operating agreement will be processed as described in Section II of this operating agreement.

AGREED TO this 27th day of October, 1998.

SOUTHWEST FLORIDA
WATER MANAGEMENT DISTRICT

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

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