

NOTICE OF PROPOSED RULE DEVELOPMENT

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION: WATER RESOURCE MANAGEMENT

RULE CHAPTER TITLE:

RULE CHAPTER NO.:

Noticed General Environmental Resource Permits

62-341

RULE TITLE:

RULE NO.:

General Permit to U.S. Army Corps of Engineers

62-341.486

for Environmental Restoration or Enhancement Activities

DOCKET NO.: 99-42R

PURPOSE AND EFFECT: A noticed general permit is proposed under the environmental resource permit program that will authorize specified environmental restoration and enhancement projects funded or conducted by the U.S. Army Corps of Engineers. This will expedite the review and processing of the specified activities. The noticed general permit requires notice to the Department, and an affirmative Department confirmation of qualification with the terms and conditions of the general permit before work may commence. The noticed general permit includes limitations and conditions that ensure that the authorized activities will not cause significant individual or cumulative adverse environmental impacts.

SUBJECT AREA TO BE ADDRESSED: This is a proposed environmental resource noticed general permit under Part IV of Chapter 373, F.S., for specified environmental enhancement and restoration projects funded or conducted by the U.S. Army Corps of Engineers outside of the geographic limits of the Northwest Florida Water Management District. The activities must be authorized under one or more of the following: Section 204 of the Water Resources Development Act of 1992, as amended (Beneficial Uses of Dredged Material); Section 206 of the Water Resources Development Act of 1996, as amended (Aquatic Ecosystem Restoration);

or Section 1135 of the Water Resources Development Act of 1986, as amended (Project Modifications for Improvement of Environment). The noticed general permit includes conditions that ensure that the authorized activities will not cause significant adverse environmental impacts either individually or cumulatively, as required by section 373.414(9), F.S.

SPECIFIC AUTHORITY: 373.026, 373.043, 373.044, 373.118, 373.406, 403.814, FS

LAW IMPLEMENTED: 373.026, 373.043, 373.046, 373.118, 373.403, 373.413, 373.416, 373.418, 373.419, 373.422, 373.423, 373.426, 403.814, FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF PUBLICATION OF THIS NOTICE AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: July 20, 2005, 9:30 A.M.

PLACE: Rm. 609, Twin Towers
FL Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop is asked to advise the agency at least 48 hours before the workshop by contacting the Bureau of Personnel Services at (850) 245-2511. If you are hearing or speech impaired, please contact the Florida Relay Service by calling (800) 955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Katherine Gilbert, Florida Department of Environmental Protection, Submerged Lands and Environmental Resources Office, 2600 Blair Stone Road—MS 2500, Tallahassee, FL 32399-2400, telephone (850) 245-8482, e-mail: Katherine.Gilbert@dep.state.fl.us, or facsimile (850) 245-8499.

THE PRELIMINARY TEXT OF THE PROPOSED RULE UNDER DEVELOPMENT IS:

62-341.486 General Permit to U.S. Army Corps of Engineers for Environmental
Restoration or Enhancement Activities.

(1) A general permit is hereby granted to the U.S. Army Corps of Engineers for the
construction, alteration, operation, and maintenance of systems to implement environmental
restoration or enhancement activities. In order to qualify for this general permit, the
environmental restoration or enhancement activity must be funded or conducted by the U.S.
Army Corps of Engineers, and be authorized under:

(a) Section 204 of the Water Resources Development Act of 1992, as amended
(Beneficial Uses of Dredged Material);

(b) Section 206 of the Water Resources Development Act of 1996, as amended
(Aquatic Ecosystem Restoration); or

(c) Section 1135 of the Water Resources Development Act of 1986, as amended
(Project Modifications for Improvement of Environment).

(2) The following shall not be eligible for this general permit:

(a) Activities on the sandy beaches of Florida fronting the Atlantic Ocean, the Gulf of
Mexico or the Straits of Florida that extend seaward of the mean high water line, including
beach restoration, nourishment, disposal of dredged material, beach or inlet structures, or
excavation;

(b) Activities proposed to implement mitigation for another activity that requires a
permit under Part IV of Chapter 373, F.S., a water quality certification, or coastal zone
consistency concurrence;

(c) Activities that involve replacing a natural biological community type with a
different type of biological community, such as filling bay bottom to create a marsh, except to

restore or enhance a community that was previously damaged or destroyed by human activities, such as to fill a dredged channel to the elevations and community types that existed before dredging;

(d) Activities that adversely affect animal species that are listed as endangered, threatened or of special concern in Section 39-27.003, 39-27.004, or 39-27.005, F.A.C., and plant species listed in 50 Code of Federal Regulation 17.12, when such plants are located in a wetland or other surface water;

(e) Activities that would adversely affect historic properties listed in or eligible for listing in the National Register of Historic Places under the provisions of Section 267.061, F.S.;
or

(f) Activities requiring a permit under section 373.1502, F.S., or authorized under section 528 of the Water Resources Development Act of 1996, Public Law 103-404 (Critical Restoration Projects).

(3) Prior to submittal of the notice to use this general permit, the environmental restoration or enhancement activity must be included in a draft or approved Feasibility Report, Reevaluation Report, Letter Report or other equivalent Federal planning document that the State of Florida has found to be consistent with the Coastal Zone Management program. Documentation of consistency must be submitted with the notice to use this general permit.

(4) This general permit shall be subject to the following additional provisions and limitations:

(a) Activities authorized under this general permit shall not be available for use as future mitigation credit for a separate activity that requires a permit under Part IV of Chapter 373, F.S., a water quality certification, or a coastal zone consistency concurrence;

(b) The activity must be conducted in a manner that will not adversely affect the value of functions provided to fish and wildlife by wetlands or other surface waters;

(c) The activity must not cause adverse flooding to on-site or off-site property, must not cause adverse impacts to existing surface water storage or conveyance capabilities, must not cause adverse secondary impacts to the water resources, must not adversely impact the maintenance of surface or ground water levels or surface water flows established pursuant to Section 373.042, F.S., must not cause adverse impacts to a work of the District established pursuant to Section 373.086, F.S., and must not adversely affect properties outside the area to be enhanced or restored;

(d) The activity must be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed, and must comply with any applicable special basin and geographic area criteria established in Chapters 40C-41 or 40E-41, F.A.C.

(e) The activities shall not be for the primary purpose of providing or enhancing recreation or other public uses of the lands that are enhanced or restored under this general permit. However, if the areas that are enhanced or restored are to be made available for public recreation or other use, the construction, alteration, operation, removal, maintenance, or abandonment of any facilities or systems that enable that use, such as parking lots, roads, trails, boardwalks, docks, piers, observation decks, kiosks, and visitor's centers, must be fully authorized through applicable permits and sovereignty submerged lands authorizations under part IV of Chapter 373, and Chapters 253 and 258, F.A.C., prior to their construction and use.

(f) The activity must not violate the water quality standards set forth in Chapters 62-4, 62-302, 62-550, 62-522, and 62-550, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), subsections 62-4.242(2) and (3), and Rule 62-302.300,

F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C. Appropriate measures shall be used to control runoff and discharges from the site, such as stabilization of disturbed sediments and soils, and effective deployment and maintenance of turbidity and silt control devices during all phases of construction, and as necessary during operation and maintenance of the system.

(g) The U.S. Army Corps of Engineers must file a notice, using form 62-343.900(1), F.A.C., describing the proposed activities and providing plans and other information necessary to evaluate whether the activities qualify under the terms and conditions of this general permit. The Department will provide written notification to the U.S. Army Corps of Engineers whether the proposed activity qualifies for this general permit within 30 days of submittal of the written notice. The proposed activity shall not commence until the Department has provided the applicant with an affirmative, written confirmation that the proposed activity qualifies for this general permit.

(5) Applicable authorization in accordance with Chapter 253, F.S., and Chapter 18-21, F.A.C., to use sovereignty submerged lands must be obtained from the Board of Trustees of the Internal Improvement Trust Fund prior to any construction authorized under this general permit.

Specific Authority 373.026, 373.043, 373.044, 373.118, 373.406, 403.814 FS. Law

Implemented 373.026, 373.043, 373.046, 373.118, 373.403, 373.413, 373.416, 373.418, 373.419, 373.422, 373.423, 373.426, 403.814 FS. History -- New [effective date].