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Rule Chapter: 62-4

Chapter Title: PERMITS








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	62-4.150	Review (Repealed)	2/16/2012

			
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	62-4.220	Operation Permit for New Sources (Repealed)	2/16/2012
	62-4.240	Operation Permits for Water Pollution Sources (Repealed)	2/16/2012
	62-4.241	Whole Effluent Toxicity Limits	4/2/2008
	62-4.242	Antidegradation Permitting Requirements; Outstanding Florida Waters; Outstanding National Resource Waters; Equitable Abatement	5/15/2002
	62-4.243	Exemptions from Water Quality Criteria	8/31/1988
	62-4.244	Mixing Zones: Surface Waters	12/13/2005
	62-4.246	Sampling, Testing Methods, and Method Detection Limits for Water Pollution Sources	6/13/1993
	62-4.249	Preservation of Rights (Repealed)	2/16/2012
	62-4.250	Water Pollution Temporary Operation Permits; Conditions (Repealed)	2/16/2012
	62-4.510	Scope of Part III	10/1/2007
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	62-4.530	Procedures	3/19/1990
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Rule: 62-4.242

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Rule Title: Antidegradation Permitting Requirements; Outstanding Florida Waters; Outstanding National Resource Waters; Equitable Abatement

Department: [DEPARTMENT OF ENVIRONMENTAL PROTECTION](#)

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Latest version of the final adopted rule presented in Florida Administrative Code (FAC):










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Effective Date: 5/15/2002

History Notes: Specific Authority [373.016](#), [373.171](#), [403.061](#), [403.062](#), [403.087](#), [403.088](#), [403.504](#), [403.704](#), [403.804](#), [403.805 FS](#). Law Implemented [373.016](#), [373.171](#), [403.021](#), [403.061](#), [403.087](#), [403.088](#), [403.101](#), [403.111](#), [403.121](#), [403.141](#), [403.161](#), [403.182](#), [403.502](#), [403.702 FS](#). History–New 3-1-79, Amended 5-14-81, 9-30-82, 3-31-83, 4-9-84, 11-29-84, 12-11-84, 5-8-85, 7-22-85, 8-31-88, 9-13-89, 10-4-89, Formerly 17-4.242, Amended 1-23-95, 5-15-02.

References in this version: No reference(s).

History of this Rule since Jan. 6, 2006

Notice / Adopted	Section	Description	ID	Publish Date
	Development 62-4.050	The Department of Environmental Protection (Department) proposes to initiate the state’s Triennial Review of surface water quality standards. The Department is considering revisions to a limited number of rule sections at	11395286	4/27/2012 Vol. 38/17
	Misc 62-4.242	NOTICE OF INTENT TO GRANT VARIANCE	10990893	2/3/2012 Vol. 38/05
	Misc 62-4.242	NOTICE OF INTENT TO GRANT VARIANCE	10868673	1/6/2012 Vol. 38/01
	Misc 62-4.242	NOTICE OF INTENT TO GRANT VARIANCE	10868867	1/6/2012 Vol. 38/01
	Misc 62-4.242	Notice of Intent to Grant Variance	10671666	11/23/2011 Vol. 37/47
	Misc 62-4.242	NOTICE OF INTENT TO GRANT VARIANCE	10564772	10/28/2011 Vol. 37/43
	Misc 62-4.242	NOTICE OF INTENT TO GRANT VARIANCE	10470779	10/7/2011 Vol. 37/40
	Misc 62-4.242	NOTICE OF INTENT TO GRANT VARIANCE	10423831	9/23/2011 Vol. 37/38
	Misc 62-4.242	Notice of Intent to Grant Variance	9630080	2/4/2011 Vol. 37/05
	Misc 62-4.242	NOTICE OF INTENT TO GRANT VARIANCE	9512904	12/23/2010 Vol. 36/51
	Misc 62-4.242	Notice of Intent to Grant Variance	9413091	11/24/2010 Vol. 36/47
	Misc 62-4.242	NOTICE OF INTENT TO GRANT VARIANCE	9338013	11/5/2010 Vol. 36/44
	Misc 62-4.242	NOTICE OF INTENT TO GRANT VARIANCE	8648343	5/21/2010 Vol. 36/20
	Misc 62-4.242	NOTICE OF INTENT TO GRANT VARIANCE	8478690	4/9/2010 Vol. 36/14
	Misc			2/19/2010

	62-4.242	NOTICE OF INTENT TO GRANT VARIANCE	8269849	Vol. 36/07
	Misc 62-4.242	Notice of Intent to Grant Variance	8163537	1/22/2010 Vol. 36/03
	Misc 62-4.242	Notice of Intent to Grant Variance	8166447	1/22/2010 Vol. 36/03
	Misc 62-4.242	Notice of Intent to Grant Variance	7564853	8/28/2009 Vol. 35/34
	Misc 62-4.242	NOTICE OF INTENT TO GRANT VARIANCE	7396752	7/24/2009 Vol. 35/29
	Variances 62-4.242	On this date of March 23, 2007 the bureau recived a request for variance from rules 62 4.244(5)(c), F.A.C., to allow the turbidity mixing zone to exceed 150 meters; and from Rules 62-4.242(2)(a)2.b., 62-302.700(1) and 62-312.080(3),	6411232	11/14/2008 Vol. 34/46
	Variances 62-4.242	On this date March 23, 2007 the bureau recieved a request for variance from rules 62-4.242(2)(a)2.b, 62-302.700(1) and 62-312.080(3), F.A.C. The Department of Environmental Protection gives notice of its intent to grant	6411717	11/14/2008 Vol. 34/46
	Variances 62-4.242	The Department of Environmental Protection gives notice of its intent to grant a variance under section 403.201 of the Florida Statutes (F.S.) from the provisions of Rules 62 4.242(2)(a)(2)(b), 62-302.700(1), 40C-4.301(1)(e)	5942528	8/1/2008 Vol. 34/31
	Variances 62-4.242	The Department of Environmental Protection gives notice of its intent to grant a variance under section 403.201 of the Florida Statutes (F.S.) from the provisions of Rules 62 4.242(2)(a)(2)(b), 62-302.700(1), 40C-4.301(1)(e)	5942819	8/1/2008 Vol. 34/31
	Misc 62-4.242	DEPARTMENT OF ENVIRONMENTAL PROTECTION NOTICE OF INTENT TO GRANT A VARIANCE	4566777	9/7/2007 Vol. 33/36
	Final 62-4.242	Antidegradation Permitting Requirements; Outstanding Florida Waters; Outstanding National Resource Waters; Equitable Abatement	2196000	Effective: 05/15/2002

62-4.242 Antidegradation Permitting Requirements; Outstanding Florida Waters; Outstanding National Resource Waters; Equitable Abatement.

(1) Antidegradation Permitting Requirements.

(a) Permits shall be issued when consistent with the antidegradation policy set forth in Rule 62-302.300, F.A.C., and, if applicable, Rule 62-302.700, F.A.C.

(b) In determining whether a proposed discharge which results in water quality degradation is necessary or desirable under federal standards and under circumstances which are clearly in the public interest, the department shall consider and balance the following factors:

1. Whether the proposed project is important to and is beneficial to the public health, safety, or welfare (taking into account the policies set forth in Rule 62-302.300, F.A.C., and, if applicable, Rule 62-302.700, F.A.C.); and

2. Whether the proposed discharge will adversely affect conservation of fish and wildlife, including endangered or threatened species, or their habitats; and

3. Whether the proposed discharge will adversely affect the fishing or water-based recreational values or marine productivity in the vicinity of the proposed discharge; and

4. Whether the proposed discharge is consistent with any applicable Surface Water Improvement and Management Plan that has been adopted by a Water Management District and approved by the Department.

(c) For domestic wastewater facilities, in addition to paragraph (b) above, in order for a proposed discharge to be necessary or desirable under federal standards and under circumstances which are clearly in the public interest, the permit applicant must demonstrate that none of the following is economically and technologically reasonable:

1. Implementation of water conservation measures to reduce the flow of domestic wastewater. The engineering report shall include an assessment of the feasibility of implementation of water conservation programs within the area served by the collection system. This paragraph shall apply only to utilities, municipalities, or other entities that have responsibility for both wastewater and water supply;

2. Implementation of infiltration/inflow reduction measures for expansions of domestic wastewater facilities. The engineering report shall include an assessment of an infiltration/inflow reduction program within the area served by the collection system;

3. Reuse of reclaimed water; and

4. Use of other discharge locations, which would reduce adverse impacts on water quality.

(d) For industrial wastewater facilities proposing new or expanded surface water discharges, in addition to paragraph (b) above, in order for the new or expanded industrial wastewater discharge to be necessary or desirable under federal standards and under circumstances which are clearly in the public interest, the permit applicant:

1. Must demonstrate that use of other discharge locations, land application, or recycling at offsite locations that would avoid the degradation of water quality is not economically and technologically reasonable; and

2. Shall submit a signed statement under penalty of law that a waste minimization and source reduction analysis was completed consistent with best management practices appropriate for the type of facility or discharge proposed, as identified in paragraph 62-620.100(3)(m), F.A.C., 40 CFR 122.44(k), and Guidance Manual for Developing Best Management Practices (BMP), U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA 833-B-93-004, October, 1993.

(2) Standards Applying to Outstanding Florida Waters.

(a) No Department permit or water quality certification shall be issued for any proposed activity or discharge within an Outstanding Florida Waters, or which significantly degrades, either alone or in combination with other stationary installations, any Outstanding Florida Waters, unless the applicant affirmatively demonstrates that:

1. With respect to blowdown from a recirculated cooling water system of a steam electrical generating plant, that the discharge:

a. Meets the applicable limitations of subsection 62-302.520(4), F.A.C., at the point of discharge; or

b. Has a mixing zone established pursuant to paragraph 62-302.520(6)(b), F.A.C., which assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the Outstanding Florida Water, and which is established taking into account the recreational or ecological significance of such water; and

c. Meets the temperature limits of subsection 62-302.520(4), F.A.C., at the boundary of the mixing zone established pursuant to paragraph 62-302.520(6)(b), F.A.C.; or

2. The proposed activity of discharge is clearly in the public interest, and either

a. A Department permit for the activity has been issued or an application for such permit was complete on the effective date of

the Outstanding Florida Water designation; or

b. The existing ambient water quality within Outstanding Florida Waters will not be lowered as a result of the proposed activity or discharge, except on a temporary basis during construction for a period not to exceed thirty days; lowered water quality would occur only within a restricted mixing zone approved by the Department; and, water quality criteria would not be violated outside the restricted mixing zone. The Department may allow an extension of the thirty-day time limit on a construction-caused degradation for a period demonstrated by the applicant to be unavoidable and where suitable management practices and technology approved by the Department are employed to minimize any degradation of water quality.

(b) The Department recognizes that it may be necessary to permit limited activities or discharges in Outstanding Florida Waters to allow for or enhance public use or to maintain facilities that existed prior to the effective date of the Outstanding Florida Water designation, or facilities permitted after adoption of the Outstanding Florida Water designation. However, such activities or discharges will only be permitted if:

1. The discharge or activity is in compliance with the provisions specified in subparagraph (2)(a)2. of this section; or
2. Management practices and suitable technology approved by the Department are implemented for all stationary installations including those created for drainage, flood control, or by dredging or filling; and
3. There is no alternative to the proposed activity, including the alternative of not undertaking any change, except at an unreasonably higher cost.

(c) For the purpose of this section the term “existing ambient water quality” shall mean (based on the best scientific information available) the better water quality of either (1) that which could reasonably be expected to have existed for the baseline year of an Outstanding Florida Water designation or (2) that which existed during the year prior to the date of a permit application. It shall include daily, seasonal, and other cyclic fluctuations, taking into consideration the effects of allowable discharges for which Department permits were issued or applications for such permits were filed and complete on the effective date of designation.

(d) Subsection 62-4.242(2), F.A.C., shall not apply to any dredge or fill activity or any discharge to an Outstanding Florida Water permitted by the Department on, or for which a complete permit application was filed on, the effective date of an Outstanding Florida Water designation; nor shall it apply to any renewal of a Department permit where there is no modification in the dredge or fill activity or discharge which would necessitate a permit review.

(e) Any activity that is exempted from permit programs administered by the Department is not subject to the requirements of Rule 62-4.242, F.A.C.

(f) For the Apalachicola River north of Gulf County, this section shall not apply in the federally-authorized nine-foot navigation project, as follows:

1. Maintenance dredging and disposal and snag removal by the Army Corps of Engineers as presently performed pursuant to existing permits and its continuation under renewals thereof; or
2. Class A and B emergencies as defined in subsection 62-312.150(5), F.A.C.; or
3. Exemptions to permitting specified in Section 403.813, F.S., and Department rules; or
4. Any other permissible project of the Army Corps of Engineers deemed necessary by the Department pursuant to the considerations referenced in paragraph 62-302.100(10)(c), F.A.C.

(3) Standards Applying to Outstanding National Resource Waters:

(a) All discharges or activities that may cause degradation of water quality in Outstanding National Resource Waters are prohibited, other than:

1. Discharges or activities that are exempted by statute from Department permitting or regulation;
2. Those discharges or activities described in sub-subparagraphs 62-4.242(2)(a)1.b., 62-4.242(2)(a)1.c., and 62-4.242(2)(a)2.b., F.A.C.

(b) Discharges or activities that would have the result of clearly enhancing the water quality of Outstanding National Resource Waters are not prohibited.

(c) In addition, the following restrictions apply on Outstanding National Resource Waters. Each is listed below, followed by a reference to DEP rules or Florida Statutes:

1. Water quality reclassification to a class with less stringent criteria is not allowed (Rule 62-302.400, F.A.C.).
2. New or expanded mixing zones cannot be issued other than those for thermal discharges as allowed in subparagraph 62-4.242(1)(a)1., F.A.C.
3. Temporary Operation Permits cannot be renewed (Rule 62-4.250, F.A.C.).

4. General Permits cannot be used.

5. Exemptions from water quality criteria cannot be issued (Rule 62-4.243; subsections 62-6.020(5), (6), and (7); 62-25.030(3); and Rule 62-528.300, F.A.C.).

6. Variances shall not be issued (Sections 403.201 and 403.938, F.S.).

7. Any special restrictions for water quality protection in Outstanding Florida Waters, whether in Department rules or Florida Statutes, also apply in Outstanding National Resource Waters.

(d) This subsection shall not apply to any existing activity permitted, exempted, or for which a completed application for permit was filed, on or before the effective date of the Outstanding National Resource Water designation; nor shall it apply to any renewal of a Department permit where there is no modification of the activity which would necessitate a permit review.

(e) Paragraph 62-4.242(3)(d), F.A.C., shall not apply to any activity which contributes to the degradation of water quality in an Outstanding National Resource Water beyond those levels established for the baseline year.

(4) Equitable Abatement.

(a) It shall be Department policy to further protect and enhance the quality of those surface waters whose quality has been artificially lowered below the quality necessary to support their designated uses. For such waters, no new activity or discharge shall be issued a Department license to construct unless the applicant affirmatively demonstrates that:

1. Water quality standards once achieved would not be violated as a result of the proposed activity or discharge;
2. The proposed activity or discharge is necessary or desirable under federal standards; and
3. The proposed activity or discharge is clearly in the public interest.

(b) To allocate equitably the relative levels of responsibility for abatement among persons directly discharging significant amounts of pollutants into waters which fail to meet one or more of the water quality criteria applicable to those waters, it is necessary to determine the amounts of those pollutants contributed by each of those persons and to consider all factors relevant to the equitable allocation of that responsibility. The following provisions of this section prescribe the means by which the Department, upon the petition of a license applicant, will equitably allocate among such persons the relative levels of abatement responsibility of each for abatement of those pollutants and by which it will establish for each of those persons, if necessary, an abatement program and schedule to accomplish any abatement determined necessary under the provisions of this section.

(c)1. For a surface water body, or portion thereof, which is determined by the Department to fail to meet one or more of the water quality criteria applicable to that water body, an applicant for a license to construct or operate a stationary installation to discharge wastes which contributes, or will contribute, to that failure may petition the Department in writing for an equitable allocation of the relative levels of responsibility for abatement among the stationary installations which discharge significant amounts of one or more of the pollutants which contribute to the failure of those waters to meet the water quality criterion (a) specified in the petition.

2. The applicant shall identify in the petition the location of each of the existing stationary installations which it wishes the Department to consider and the legal name and mailing address of the owners of each of those stationary installations.

3. The county government within which each stationary installation identified under subparagraphs 1. and 2. of this paragraph is located shall be given notice of the proceeding, as shall the municipality, if the stationary installation is located within a municipality.

4. The Department may identify any other owners of existing stationary installations which it deems necessary to allocate equitably the relative levels of responsibility for abatement of pollutants which contribute to the failure of those waters to meet any criterion specified in the petition.

5. Those owners identified by the petitioner and the Department shall be joined as parties in the licensing proceeding. Nothing shall preclude any party from requiring the joinder, as a party to the proceeding, of the owner of any other existing stationary installation upon written motion and an affirmative demonstration that such stationary installation is discharging significant amounts of one or more pollutants which contribute to the failure of the subject water body to meet any criterion specified in the petition. A motion for joinder shall be filed within 20 days of receipt by the movant of notice that it has been joined in the proceeding.

(d) License applications filed by the petitioner, or any other party, for waste discharges which are identified pursuant to paragraph (2)(c) above in the equitable allocation process under this section shall be deemed incomplete or the subject of a dispute of material fact for purposes of Chapter 120, F.S. However, if an application for renewal of an existing license has been timely filed with the Department, the existing license shall remain in full force and effect until such time as a new or modified license has been issued pursuant to paragraph (2)(k).

(e) Prior to determining the most equitable allocation of responsibility for abatement under paragraph (f), the Department shall determine the percentage and quantification of the total contribution and the contribution by each of the stationary installations identified under paragraph (c) of the pollutants identified under paragraph (c) which contributes to the failure of the subject waters to meet the water quality criterion specified in the petition. Provided, however, that the Department, upon petition by an affected party pursuant to Rule 62-3.031, F.A.C., may establish more appropriate less stringent criteria upon which to base quantification calculations. For the purpose of performing quantification calculations, the Department shall assume waste discharges entering the water body from an adjacent state as a separate point source of pollution.

(f) The following factors shall be considered by the Department in determining the most equitable allocation among the parties identified pursuant to paragraph (c) of the relative levels of responsibility of each for abatement of the pollutants with which the petition is concerned:

1. The percentage and quantification of the abatement achieved by abatement techniques previously undertaken, if any, by each of those stationary installations and the costs previously incurred, if any, with respect to each, along with any economic or production benefits gained from said abatement techniques.

2. The identification and estimated cost of alternative abatement techniques available for each stationary installation. Identified techniques shall include:

- a. Those techniques which would abate the level of pollutants to the degree required by the quantities of contributed pollutants determined under paragraph (e), or the maximum degree possible, if the degree required is not presently attainable.

- b. Those techniques which would abate additional quantities of pollutants beyond the quantities determined under paragraph (e) and the approximate percentage of additional abatement which could be provided.

3. The economic and production impacts of additional abatement on each party, if any.

4. Other environmental impacts of available abatement techniques.

(g) In determining the percentages and quantities under paragraph (e), the Department shall use the best scientific and technical information, methods, and data in the possession of the Department.

(h) Each party to the licensing proceeding shall provide the Department, and each other party except as provided by Section 403.111, F.S., with any information which is requested by the Department and necessary for the determination under paragraphs (e) and (f). With regard to the determination under sub-subparagraph (f)2.ii., however, parties shall only be required to provide that information within their possession at the time of the Department's request. The Department shall make available to a party any information in its possession, and shall provide reasonable assistance to any party in identifying that information which would assist the party in complying with the Department's request.

(i) Each party shall undertake a program approved by the Department to abate the quantity of contributed pollutants for which it is determined responsible under paragraph (e). Such abatement program shall include but not be limited to, a quantified effluent limitation, best management practices or specific techniques for abatement, and a schedule for commencement and completion of the required abatement. In establishing an abatement schedule, the Department shall consider the previous abatement efforts and their costs, the reasonable remaining usable life of the discharge facility, and any commitments for phasing out the discharge from the facility.

(j) An abatement program required under paragraph (i) may include the agreement of one owner to undertake additional abatement on behalf of another owner. When such an agreement has been executed fully and filed in writing with the Department within a reasonable period of time set by the Department, the agreement shall be recognized in the licenses of the signatory parties to the extent that it satisfies the levels of abatement, determined for those parties under paragraph (e).

(k) Each party shall be issued an appropriate license or modified license, which shall include any abatement program required of the party and approved under paragraph (i), as well as any other conditions authorized by Chapter 403, F.S.

Specific Authority 373.016, 373.171, 403.061, 403.062, 403.087, 403.088, 403.504, 403.704, 403.804, 403.805 FS. Law Implemented 373.016, 373.171, 403.021, 403.061, 403.087, 403.088, 403.101, 403.111, 403.121, 403.141, 403.161, 403.182, 403.502, 403.702 FS. History—New 3-1-79, Amended 5-14-81, 9-30-82, 3-31-83, 4-9-84, 11-29-84, 12-11-84, 5-8-85, 7-22-85, 8-31-88, 9-13-89, 10-4-89, Formerly 17-4.242, Amended 1-23-95, 5-15-02.