



*Florida Department of
Environmental Protection*

*Florida Surface Water Quality
Antidegradation Policies, with Emphasis
on Application to Wetlands*

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Basis

- Article II, Section 7, Fl. Constitution requires
 - Abatement of water pollution
 - Conservation & protection of Florida's natural resources and scenic beauty
- Section 101(a)(2) Federal Water Pollution Control Act
 - Achievement by July 1, 1983 of water quality:
 - Sufficient for protection & propagation of fish, shellfish, wildlife, & recreation
 - Prohibit discharges of toxic pollutants in toxic amounts





General

- Present & future most beneficial uses of all waters of the state designated by DEP by classification system in Chapter 62-302, F.A.C.
- WQ standards established by DEP to protect those designated uses
 - Apply equally to public & private sector
 - Private activities for private purposes may be in public interest





Surface Water Quality Standards

- Use Designations (Classifications)
- Water Quality Criteria
- Antidegradation Policies
- Relief Mechanisms



Class III-Limited (new)

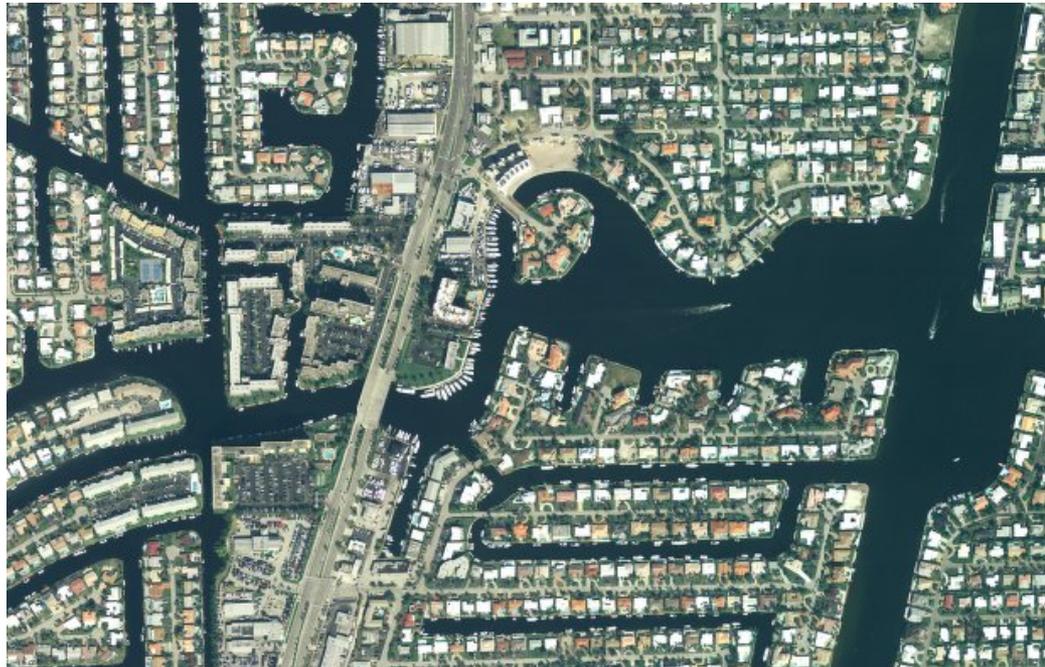
- Have site-specific alternative criteria different than Class III waters (see Rule 62-302.800, F.A.C.)
- Restricted to waters with human-induced physical or habitat conditions that prevent attainment of Class III uses (other than those created for mitigation)
- “Limited population of fish & wildlife”—aquatic biological community does not fully resemble that of a natural system:
 - Types
 - Tolerance
 - Diversity of species

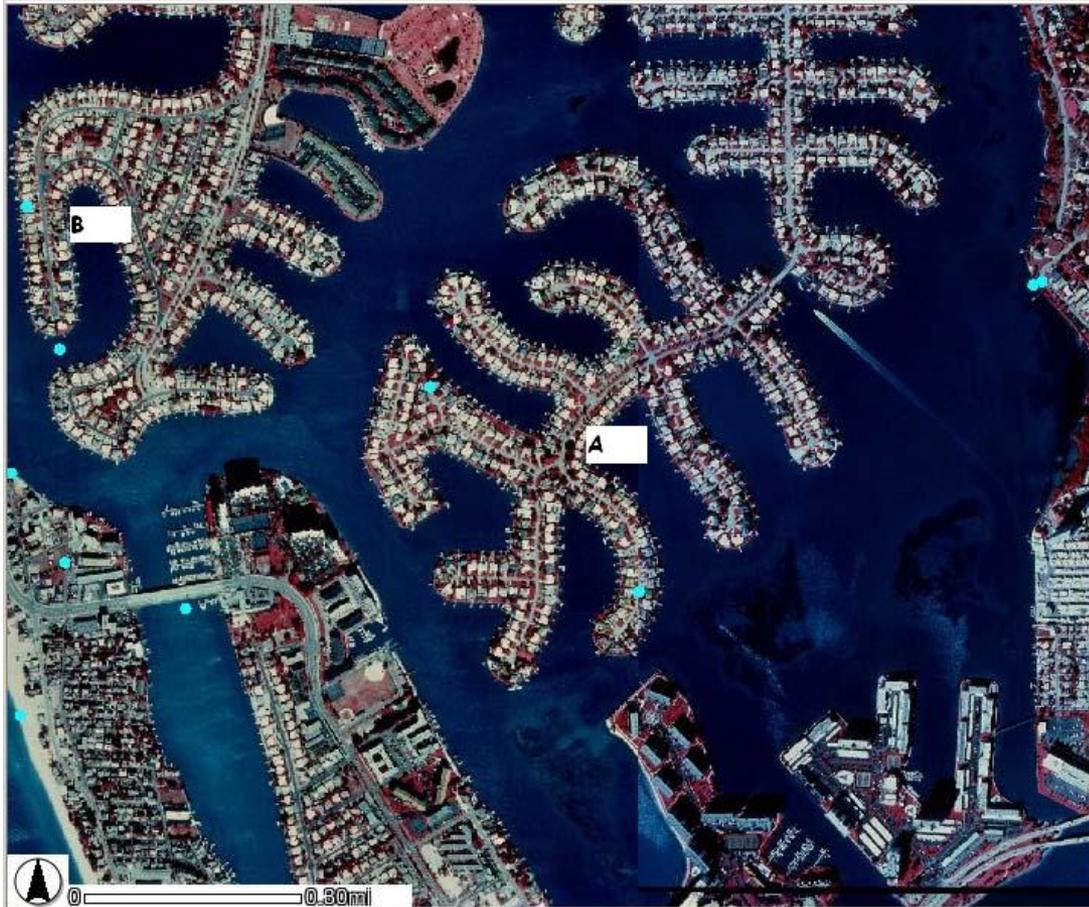




Class III-Limited (cont.)

- Restricted to:
 - Wholly artificial waterbodies
 - Altered waterbodies (dredged or filled before 11-28-1975)





● ERPpa
99 Aerials



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Surface Water Classifications

- **Class III is the statewide default classification (intended to meet “fishable/swimmable” Clean Water Act goal)**

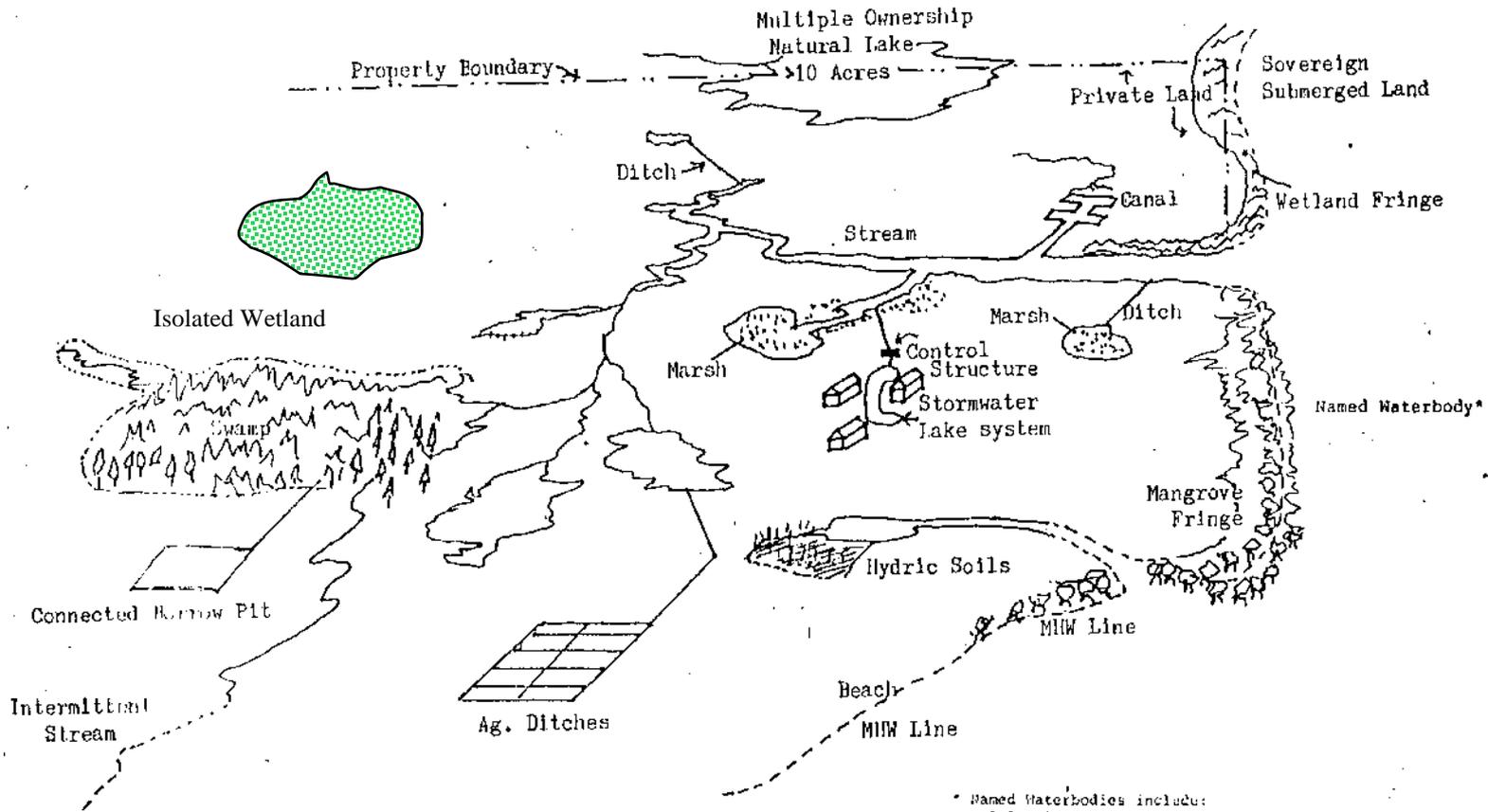


- **Most wetlands are classified as Class III waters**



Wetlands are a type of surface water, having the same standards as the waters to which they are contiguous(I, II, III, etc.)





Surface waters of the state are those waters and excavated water bodies which connect directly or via an excavated water body or series of excavated water bodies to a named waterbody*

- * Named Waterbodies include:
- Atlantic Ocean
 - Gulf of Mexico
 - bays, bayous, sounds, estuaries, lagoons and natural channels and natural tributaries thereto
 - rivers, streams and natural tributaries thereto
 - natural lakes, except those owned entirely by one person other than the state; those that become dry each year and are without standing water; or those of no more than 10 acres in landward extent with a maximum average depth of 2 feet or less existing throughout the year
- waters within the Everglades (Section 403.031(12)(a) and Section 403.031(12)(b), F.S.)

Same standards apply to marshes
(for that waterbody class)





As they do
to swamps
(for that
waterbody
class)



Surface Water Criteria

- **Criteria may be aquatic life-based or human health-based**
- **Criteria may be numeric or narrative**
- **Criteria support protection of the designated use (classification)**
- **Site Specific Alternative Criteria**



Relief Mechanisms

- **Mixing zones**
- **Variances**
- **Exemptions and Exceptions**



Antidegradation Policies

- **Intended to maintain existing uses and the level of water quality necessary to protect those uses**
- **Antidegradation policies in Rules 62-4.242, 62-302.300, and 62-302.700, F.A.C**



Antidegradation Policies

- **Applies to:**
 - **All new and expanded discharges**
 - “Expanded” can be either an increase in loading or flow (or both)
 - **Facilities where degradation due to discharge was greater than expected, or**
 - **Facilities initially permitted after October 4, 1989, but for which an antidegradation analysis was not conducted**





Antidegradation Policies

- **“Degradation” can be a confusing term**
- **Actually two types of degradation**
 - **Degradation that lowers water quality below water quality minimum criteria is not allowable (without administrative relief)**
 - **Degradation that lowers water quality below existing conditions but is still above minimum applicable criteria**
 - **DO decreases from 7.5 mg/L to 6.0 mg/L, for example (minimum DO criterion of 5.0 mg/L)**



Except within Outstanding Florida Waters (OFWs)¹ [see 62-4.242, F.A.C.]

- **No degradation of existing ambient water quality**
 - **Better WQ as reasonably expected for either:**
 - **Baseline year of OFW designation; or**
 - **That existing 1 yr. prior to permit application**
 - **Ambient background**
- **Temporary lowering (30 days) allowed only within a restricted mixing zone during construction**
 - **< 150 m in radius**
 - **< 150 m downstream**
- **Clearly in Public Interest**



¹OFWs are listed in
62-302.700, F.A.C.



Outstanding Florida Waters

- **Intended to preserve existing ambient water quality at the time of designation**
- **Overlay over existing classification system**
- **Equivalent to a Tier 2.5 level of protection (EPA tiered system)**
- **Over 300 OFWs**





Outstanding Florida Waters

- OFW designations affect new activities requiring a FDEP or WMD permit
- Existing permitted activities are “grandfathered”
- New direct discharges cannot lower water quality
- New indirect discharges cannot significantly degrade downstream water quality
- New direct discharges of stormwater must have 50% additional treatment beyond what is normally required





Outstanding Florida Waters

- **OFW does not affect activities outside the Department's jurisdiction**
 - **Most agricultural activities**
 - **Most forestry activities**
 - **Activities that do not affect water quality**
- **OFW also does not affect:**
 - **Maintenance of existing channels**
 - **Restoration of seawalls**
 - **Boating, fishing, waterskiing, etc.**
 - **Private docks under 500 ft²**
 - **Septic tanks**





Antidegradation Review Process

- **General policy — 62-302.300, F.A.C.**
- **Detailed procedure — 62-4.242, F.A.C.**
 - **For Environmental Resource Permits, generally ignore detailed procedures [62-302.300(17), F.A.C.]**





Antidegradation Review Process – non ERP

- **Determine whether appropriate existing uses will be maintained**
 - If not, then discharge or activity not permissible
 - If yes, then move to next step
- **Determine if expected degradation is “necessary and desirable” and “clearly in the public interest”**
 - **Two-step process: Balancing Test and Options Review**





Antidegradation Review Process – non ERP

- **Balancing Test**
 - **Is degradation beneficial to public?**
 - If no, fail test
 - If yes, proceed to next step
 - **Is this benefit outweighed by adverse effects on environment, or inconsistent with SWIM plan?**
 - If yes, fail test
 - If no, proceed to next step





Antidegradation Review Process – non ERP

- **Options Review**
 - **Is reuse feasible or are there other options?**
 - If yes, fail test
 - If no, pass antidegradation review



Antidegradation Review Process – ERP

- **Projects permitted under ERP generally considered in compliance with antidegradation requirements, because Conditions for Issuance already require:**
 - **No violation of water quality standards**
 - **If work is in wetlands or other surface waters, activity must meet 7 part public balancing test to determine:**
 - **If activity is contrary to the public interest**
 - **Clearly in the public interest**



ERP Conditions for Issuance

- (1) ...an applicant must provide reasonable assurance that construction, alteration, operation, maintenance, removal, or abandonment of a surface water management system:
- a) Will not cause adverse impacts to **receiving waters and adjacent lands**;
 - b) Will not cause **flooding** to on-site or off-site property;
 - c) Will not cause adverse impacts to **surface water storage & conveyance** capabilities;
 - d) Will not adversely impact the **value of functions** provided to fish & wildlife & listed species by wetlands and other surface waters;
 - e) Will not cause a **violation of state surface & ground water quality standards**;
 - f) Will not cause **adverse secondary impacts** to the water resources and not adversely impact maintenance of surface or ground water levels or surface water flows established pursuant to S. 373.042, F.S.;
 - g) Will be capable, based on generally accepted engineering and scientific principles, of **being performed and of functioning as proposed**;
 - h) Will be conducted by an entity with the **financial, legal & administrative capability** of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued; and
 - i) Compliance with **special basin or geographic area criteria** [including no untreated discharges into the Floridan Aquifer through sinkholes, solution pipes, or other karst features]



Additional Conditions for Issuance

- Weigh & Balance 7 Public Interest Criteria (only for activities located in wetlands or other surface waters)
 1. Adverse impacts to health, safety & welfare, or property of others
 2. Adverse impacts to fish and wildlife, including threatened and endangered species or their habitats
 3. Adverse impacts to navigation, flow of water, or ability to cause harmful erosion or shoaling
 4. Adverse impacts to fishing or recreational values, or marine productivity
 5. Whether the project will be temporary or permanent
 6. Adverse impacts to historical or archaeological resources
 7. Current condition and relative value of functions
- Cumulative Impacts to wetlands and other surface waters
- Class II and Class III waters designated for shellfishing
- Compliance with standard for seawalls in estuaries & lagoons
- Applicant's ability to provide reasonable assurances that permitting standards will be met, based on prior violations of applicant





Waters Not Meeting Standards – ERP Only

- Activities that cause or contribute to discharges of a pollutant into waters that are not meeting standards for that pollutant must result in a net improvement for the pollutant that is not meeting water quality standards



TMDLs

- Activities that cause or contribute to discharges of a pollutant into waters that are on the adopted Verified List of Impaired Waters, or for which a Total Maximum Daily Load (TMDL) or a Basin Management Action Plan (BMAP) has been adopted, must result in either:
 - A net improvement for the pollutant that is not meeting water quality standards [ERP only]; or
 - Meeting the percent reduction specified in an adopted TMDL or BMAP for the pollutant that is not meeting water quality standards

*ANY QUESTIONS?
COMMENTS?*



<http://www.dep.state.fl.us/water/wqssp/index.htm>

<https://www.flrules.org/>





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