

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

(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 C.F.R. 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 ~~or~~.

**c. The discharge or activity is part of an environmental restoration and enhancement project and meets all other applicable anti-degradation requirements in subsection (1) above.**

(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 rule, or  
2. For dredging beach-quality sand from inlets and related channels, or restoration/nourishment of beaches and the use of offshore borrow areas, the applicant demonstrates that:

a. Turbidity has been minimized for both magnitude and duration to the maximum extent practicable,  
b. Turbidity at the edge of the approved mixing zone does not exceed natural background levels by more than the range in natural background turbidity levels measured throughout a normal tidal cycle for the applicable sand dredging or beach restoration/nourishment site; and in no case shall it exceed 29 NTUs above natural background; and,

c. Turbidity levels, both inside and outside of the mixing zone, are not expected to have an adverse impact on marine resources, recreational value or public safety, or

3. 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 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.

*Rulemaking 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, 8-1-13, 2-17-16, --.*