

Notice of Proposed Rule

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO: RULE TITLE

[62-348.100](#): Purpose.[62-348.200](#): Definitions[62-348.300](#): Application Requirements[62-348.500](#): Conditions for Issuance[62-348.600](#): Wetland Mitigation Design and Technical Criteria[62-348.700](#): Transfer of Permit[62-348.800](#): Reports[62-348.900](#): Forms

PURPOSE AND EFFECT: As required by Section 373.414(6)(e) of the Florida Statutes, the Department proposes to adopt a new Chapter 62-348 of the Florida Administrative Code. The proposed rule will apply to mining of predominantly high-quality peat that is being used by Florida's horticultural industry in products that incorporate other renewable or recyclable materials to replace or reduce the use of natural peat. The proposed rules are intended to provide alternative permitting and mitigation requirements when such mining is proposed in herbaceous and historically herbaceous wetlands.

SUMMARY: The alternative wetland mitigation requirements will be available for qualifying mines extracting high quality peat, based on the Von Post Humification Scale and the pH scale, from freshwater herbaceous wetlands or historically freshwater herbaceous wetlands. In accordance with the statutory provisions, the rule will not apply where excavation would occur in the sand or rock underlying the peat, where mining is part of a larger plan of development, or if any portion of the proposed mining involves an Outstanding Florida Water. The alternative requirements will allow a percentage of the excavated wetlands to be replaced with open water under certain conditions. The proposed rules will not require design modifications to reduce or eliminate adverse impacts to herbaceous wetlands having a current condition score of less than 0.80, as verified by the Department in accordance with the Uniform Mitigation Assessment Method of Chapter 62-345, F.A.C. The proposed rules will require that the project be designed to avoid adverse impacts to water quality, offsite flooding, significant historic or archeological resources, and listed species or their habitats.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: [373.026\(7\)](#), [373.043](#), [373.414](#), [373.4145](#), [373.418](#), [373.421](#), [403.0877](#), [403.805\(1\) FS](#).

LAW IMPLEMENTED: [373.019](#), [373.026\(7\)](#), [373.042](#), [373.109](#), [373.117](#), [373.403](#), [373.409](#), [373.413](#), [373.4132](#), [373.414](#), [373.4141](#), [373.4142](#), [373.4145](#), [373.416](#), [373.418](#), [373.421](#), [373.4211](#), [373.426](#), [378.403](#), [403.031](#), [403.0877](#), [403.803 FS](#).

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: Wednesday, December 2, 2009, 1:00 p.m., Eastern Time

PLACE: Department of Environmental Protection, Bob Martinez Center, Room 609, 2600 Blair Stone Road, Tallahassee, FL

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Mary VanTassel at (850)245-8486 or Mary.VanTassel@dep.state.fl.us. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Howard J. Hayes, Program Administrator, Department of Environmental Protection, Bureau of Mining and Minerals Regulation, 2051 East Paul Dirac Drive, M.S. 715, Tallahassee, FL 32310-3760, or by e-mail at howard.hayes@dep.state.fl.us, or at (850)488-8217. (OGC No. 07-1077)

THE FULL TEXT OF THE PROPOSED RULE IS:

PERMITTING AND ALTERNATIVE Mitigation for the Mining of High-quality Peat

62-348.100 Purpose and Applicability.

(1) Applicants who intend to mine high-quality peat may elect to use the provisions of this chapter. In accordance with Section 373.414(6)(e), F.S., this chapter provides additional permitting and alternative wetland mitigation requirements for processing wetland resource permits and environmental resource permits, in accordance with Part IV of Chapter 373, F.S., for the extraction of high-quality peat from certain herbaceous freshwater wetlands for use in the state's horticultural industry. The requirements of this chapter are in addition to and not in lieu of the requirements of Chapters 62-312 and 62-345, F.A.C., for wetland resource permits and Chapters 62-330, 62-343, 62-345, and 62-346, F.A.C., for environmental resource permits, with the exception of the alternative wetland mitigation requirements for the extraction of high-quality peat.

(2) Florida's horticultural industry contributes to the economic strength of the state. High-quality peat is an important component of horticultural production in Florida. Obtaining high-quality peat typically and uniquely requires the mining of wetlands and other surface waters. Since high-quality peat is a limited resource, the use of recycled and renewable material to replace or reduce the use of natural peat is necessary for the future of the state's horticultural industry. This chapter shall be applied to the mining of peat from certain herbaceous freshwater wetlands, where no less than 80 percent of the extracted peat will be high-quality peat, and no less than 80 percent of the high-quality peat will be used in Florida by the horticultural industry in products that incorporate other renewable or recycled materials to replace or reduce the use of natural peat. Persons applying for use of this rule shall provide certification of the intended use of the resource by submitting Form 62-348.900(1), "Horticultural Use Certification for High-Quality Peat" incorporated by reference herein.

Rulemaking Authority 373.026(7), 373.043, 373.414, 373.4145 FS. Law Implemented 373.413, 373.414, 373.4145, 373.416, 373.421, 373.426 FS. History--New _____.

62-348.200 Definitions.

The definitions in Sections 373.019, 373.403, 378.403, 403.031 and 403.803, F.S., and the following definitions apply to this chapter:

(1) "Herbaceous freshwater wetlands" means wetlands where less than 10 percent of the vegetation is woody vegetation and the chloride concentration meets the definition of predominately freshwaters as defined in Rule 62-302.200, F.A.C. Such areas are typically known as marshes, but may include other forms of wetlands dominated by herbaceous freshwater vegetation.

(2) "High-quality peat" means peat from a herbaceous freshwater wetland that is classified as H1 to H4 on the von Post Humification Scale and has a pH less than 7. The following method, incorporated herein by reference, shall be used to determine the classification on the von Post Humification Scale, for use in this chapter: American Society for Testing and Materials, D5715-00 (Reapproved 2006) Standard Test Method for Estimating the Degree of Humification of Peat and Other Organic Soils (Visual/Manual Method), Volume 04.08, Issued March 2000. The following method, incorporated herein by reference, shall be used to determine the pH for use in this chapter: U.S. Environmental Protection Agency, EPA 150.1, Methods for the Chemical Analysis of Water and Waste, EPA-600/4-79-020, Revised 1983.

(3) "High-quality peat extraction area" or "extraction area" means an area of herbaceous freshwater wetland, or an area of historically herbaceous freshwater wetland, where cumulatively no less than 80 percent of the extracted peat is high-quality peat.

(4) "Historically herbaceous freshwater wetlands" means wetlands that, as determined using aerial photography, would meet the definition of herbaceous freshwater wetlands if not for human alteration of environmental conditions.

(5) "Horticultural industry" means the industry that cultivates plants in Florida, such as, trees, shrubs, flowers, annuals, perennials, tropical foliage, liners, ferns, vines, bulbs, grafts, scions, or buds, but not turf grasses. The plants are grown or kept for propagation or distribution for retail, wholesale, or re-wholesale purposes.

(6) "Invasive Exotic" for purposes of this rule means those plant species listed in the Florida Exotic Pest Plant Council's 2009 List of Invasive Species Category I and II, which is incorporated herein by reference.

(7) "Larger plan of development" means a common plan of development or sale that includes:

(a) Any activity initiated by the surveying, planning, or platting of contiguous real property, where such activity facilitates the advancement of a common type of land use (such as multiple residences, a residential subdivision, or phased site development) on the subject property; or

(b) Any activity on contiguous real property that comprises a total land area divided into three or more lots, parcels, tracts, tiers, blocks, sites, or units, and is served by a common road or road network or common surface water management system within that land area. Areas of land that are divided by public or private roads are considered contiguous if such areas are under one ownership or control.

(8) "Nuisance Species" shall mean plant species as defined in Rule 62-302.200, F.A.C.

(9) "Open water" means an area of surface waters as identified by Rule 62-340.600, F.A.C., which under normal circumstances does not support emergent vegetation. For the purpose of this definition, emergent vegetation does not include aquatic vegetation as defined in Rule 62-340.200, F.A.C.

(10) "Recycled materials" means those materials that are capable of being recycled and that would otherwise be processed or disposed of as solid waste.

(11) "Registered Professional" means a professional registered or licensed in Florida with the necessary expertise in the fields of hydrology, hydrogeology, hydraulics, drainage, flood control, erosion and sediment control, and stormwater pollution control, and who is qualified by education and experience in the technical analyses, design, and application of required structures, processes, and systems, to design and certify the stormwater management systems under review. Examples of registered professionals, authorized pursuant to Chapter 455, F.S., and the respective practice acts by which they are regulated, are professional engineers licensed under Chapter 471, F.S., professional landscape architects licensed under Chapter 481, F.S., professional surveyors and mappers licensed under Chapter 472, F.S., and professional geologists licensed under Chapter 492, F.S. Registered professionals may sign and seal only those drawings, documents, and calculations commensurate with their skills, background, knowledge, education, and experience, and in accordance with their respective practice acts.

(12) "Renewable materials" means those materials that are able to be sustained indefinitely because of inexhaustible supplies or new growth.

Rulemaking Authority 373.026(7), 373.043, 373.414, 373.4145, 373.418, 373.421, 403.805(1) FS. Law Implemented 373.019, 373.403, 373.413, 373.414, 373.4145, 373.416, 373.421, 373.4211, 373.426, 378.403, 403.031, 403.803 FS. History—New _____.

62-348.300 Application Requirements.

Applicants using this rule shall submit Form 62-343.900(1) for an environmental resource permit, or within the geographical jurisdiction of the Northwest Florida Water Management District Form 62-312.900(1) for a wetland resource permit and Form 62-346.900(1) for an environmental resource permit. In addition, applicants shall submit the following plans and reports for the high-quality peat extraction area that will be subject to the wetland mitigation provisions of this chapter:

(1) Plans showing the depth to the clay, sand, or rock stratum under the area where peat is proposed for extraction, identified on a grid with a maximum horizontal interval no larger than 50 feet.

(2) Plans showing the proposed depth of excavation and extraction (below existing grade), identified on a grid with a maximum horizontal interval no larger than 50 feet.

(3) Plans and aerial photography showing the existing land use and land cover (acreage and percentages) mapped to at least Level III of the *Florida Land Use, Cover and Classification System* (Florida Department of Transportation, 1999), incorporated by reference herein. Each mapped unit shall be sufficiently homogenous in character to be assessed as a single unit. No mapped unit shall be smaller than 0.1 of an acre.

(4) For historically herbaceous freshwater wetlands that will be subject to the wetland mitigation provisions of this chapter, the application shall include documentation of the historic land cover conditions. Such documentation shall include at least a chronological sequence of dated aerial photographs demonstrating the historical character of the wetland. The applicant may provide any additional information to supplement the aerial photography to demonstrate their claim that the wetland is a historically herbaceous freshwater wetland.

(5) A prospecting report describing the horizontal and vertical extent of the high-quality peat extraction area that will be subject to the wetland mitigation provisions of this chapter. The report shall be based on core samples from the proposed peat extraction area taken on a grid with a maximum horizontal sample spacing no larger than 100 feet. All core samples shall be included in the prospecting report. The report shall identify the location and relative depths where peat samples were collected and the results of the analysis, including for each core the classification and vertical extent of all layers that can be classified using the von Post Humification Scale. The analysis for any layer classified on the von Post Humification Scale as H1 to H4 shall also include the measurement of pH.

(6) Information required by Chapter 62-345, F.A.C., Uniform Mitigation Assessment Method, for all areas of wetlands proposed for extraction and for all wetland mitigation areas.

(7) Plans for all reclamation and wetland mitigation areas showing the proposed final grade elevations and

water levels. Water levels shall include seasonal high and seasonal low water elevations. Wetland mitigation shall meet the design standards of Rule 62-348.600, F.A.C.

(8) Plans for the proposed land use and land cover (acreage and percentages) for all reclamation and wetland mitigation areas mapped to at least Level III of the *Florida Land Use, Cover and Classification System* (Florida Department of Transportation, 1999). Each mapped unit shall be sufficiently homogenous in character to be assessed as a single unit. No mapped unit shall be smaller than 0.1 of an acre.

(9) Form 62-348.900(1), "Horticultural Use Certification for High-Quality Peat."
Rulemaking Authority 373.026(7), 373.043, 373.118, 373.414, 373.4145, 373.421, 403.0877 FS. Law Implemented 373.026(7), 373.109, 373.413, 373.414, 373.4141, 373.416, 373.426 FS. History- New _____.

62-348.500 Conditions for Issuance.

To obtain a permit under this chapter, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal or abandonment of a surface water management system will meet all of the following requirements:

(1) Will meet the requirements of Chapters 62-312 and 62-345, F.A.C., for wetland resource permits, or Chapters 62-330, 62-343, 62-345, and 62-346, F.A.C., for environmental resource permits, except for wetland mitigation requirements for high-quality peat extraction areas. Chapter 62-348, F.A.C., specifies alternative wetland mitigation requirements for high-quality peat extraction areas;

(2) Will not include extraction in the underlying clay, sand or rock strata; however, nothing herein shall preclude the applicant from proposing plans for the excavation of sand necessary for the construction of onsite access or drainage features provided the underlying sand stratum is restored using the excavated materials or other clean clay, sand or rock during reclamation;

(3) No portion of the extraction or mitigation area is part of an existing or proposed larger plan of development;

(4) No portion of the mine is located in a body of water designated as Outstanding Florida Waters;

(5) Will not include within the high-quality peat extraction area wetlands having a current condition score of greater than or equal to 0.80, as verified by the Department in accordance with the Uniform Mitigation Assessment Method of Chapter 62-345, F.A.C.;

(6) No less than 80 percent of the peat to be extracted is high-quality peat and at least 80 percent of the high-quality peat will be used by the horticultural industry in products that incorporate other renewable or recycled materials to replace or reduce the use of natural peat; and

(7) Wetland mitigation will meet the design and technical criteria of Section 348.600, F.S.
Rulemaking Authority 373.026(7), 373.043, 373.4145, 373.421, 403.805(1) FS. Law Implemented 373.042, 373.409, 373.413, 373.4142, 373.4145, 373.416, 373.4142, 373.426 FS. History- New _____.

62-348.600 Wetland Mitigation Design and Technical Criteria.

The alternative wetland mitigation criteria for areas qualified for the provisions of this chapter shall meet all of the following requirements:

(1) The applicant shall not be required to modify the design to reduce or eliminate adverse impacts to high-quality peat extraction areas with a current condition score of less than 0.80, as verified by the Department in accordance with the Uniform Mitigation Assessment Method of Chapter 62-345, F.A.C., except to require that the project meet water quality standards, not cause adverse offsite flooding, not adversely impact significant historical and archeological resources pursuant to Section 267.061, F.S., and not cause adverse impacts to listed species or their habitats.

(2) Within extraction areas qualified for the provisions of this chapter, the applicant may reclaim up to 30 percent of the premining wetlands as open water, which shall be considered appropriate and sufficient mitigation for the adverse impacts to the wetlands. If the applicant chooses to reclaim more than 30 percent of the premining wetlands as open water, the applicant must propose wetland mitigation to address adverse impacts of the additional open water beyond the 30 percent. Regardless of the amount of mitigation proposed, the amount of open water within the extraction area shall not exceed 60 percent of the premining wetlands. The wetland mitigation for open waters beyond 30 percent, shall meet the requirements of Chapters 62-312 and 62-345, F.A.C., for wetland resource permits and Chapters 62-330, 62-343, 62-345, and 62-346, F.A.C., for environmental resource permits, except for Rule 62-345.600, F.A.C.

(3) Wetland mitigation areas constructed within and contiguous to the extraction area, exclusive of the allowable open water, shall meet all of the following standards:

(a) The requirements of Chapters 62-312 and 62-345, F.A.C., for wetland resource permits and Chapters 62-330, 62-343, 62-345, and 62-346, F.A.C., for environmental resource permits.

- (b) Supports 80 percent cover by obligate and facultative wet emergent herbaceous vegetation.
 - (c) Slopes no steeper than 6 horizontal to 1 vertical, from the seasonal high water elevation to a depth of five feet below the seasonal high water elevation.
 - (d) Invasive exotic and nuisance species shall be less than 5 percent of the cover.
 - (e) The required slopes and vegetation cover shall be complete within three years of the initial contouring of the mitigation area.
 - (4) The permittee shall ensure that sufficient quantities of peat or sand are available to provide sufficient planting area to complete wetland mitigation within extraction areas.
 - (5) The annual reports required by subsection 62-348.800(1), F.A.C., shall demonstrate that no less than 80 percent of the extracted peat was high-quality peat and at least 80 percent of the high-quality peat was used by the Florida horticultural industry in products that incorporate other renewable or recycled materials to replace or reduce the use of natural peat.
- Rulemaking Authority 373.026(7), 373.043, 373.414, 373.4145, 373.418, 373.421, 403.0877 FS. Law Implemented 373.026(7), 373.109, 373.413, 373.414, 373.4141, 373.416, 373.426 FS. History– New _____.

62-348.700 Transfer of Permit.

In addition to the requirements for transfer of Chapter 62-312, F.A.C., for wetland resource permits, or Chapters 62-330, 62-343, and 62-346, F.A.C., for environmental resource permits, the application for transfer of a permit under this chapter shall include the following:

- (1) The permittee shall provide a production report using Form No. 62-348.900(2) "Annual Production Report For High-Quality Peat," incorporated by reference herein, for that portion of the calendar year when production was under the control of the permittee.
 - (2) The transferee shall provide certification of the intended use of the resource by submitting Form 62-348.900(1), "Horticultural Use Certification for High-Quality Peat."
- Rulemaking Authority 373.026(7), 373.043, 373.414, 373.4145, 373.418, 403.0877 FS. Law Implemented 373.026(7), 373.109, 373.413, 373.414, 373.4141, 373.416, 373.426 FS. History– New _____.

62-348.800 Reports.

- (1) The permittee shall maintain records for the life of the permit of the sales and usage of high-quality peat extracted from areas authorized by the permit. The sales and usage records shall include for each month: the quantity of high-quality peat extracted; a list of customers that received high-quality peat, and the quantity of high-quality peat received; the quantity of high-quality peat sold or used that included recycled or renewable materials to replace or reduce the use of natural peat, and the percentage of product that was recycled or renewable material; and the quantity of high-quality peat sold that did not contain recycled or renewable material. Records shall be available to Department staff upon request.
- (2) On or before March 1 of each year, the permittee shall provide a report to the Department for the previous calendar year using Form No. 62-348.900(2) "Annual Production Report For High-Quality Peat," incorporated by reference herein. The report shall identify only quantities of high-quality peat extracted from areas that will be subject to the provisions of this chapter. The report shall provide all of the following:
 - (a) Permittee name, project name, permit number, and calendar year of the report.
 - (b) The quantity of high-quality peat, based on weight or volume, extracted during the calendar year.
 - (c) The quantity of high-quality peat, based on weight or volume, sold or used during the calendar year that included renewable or recyclable materials used to replace or reduce the use of peat.
 - (d) The quantity of high-quality peat, based on weight or volume, sold or used during the calendar year that did not include renewable or recyclable materials.
 - (e) The cumulative total of high-quality peat extracted, sold, and used, from the start of extraction through the most recent calendar year based on previous annual reports.
- (3) The Department shall be entitled to audit the monthly sales and usage records required to be maintained by subsection 62-348.800(1), F.A.C.
- (4) Upon completion of extraction at a mine, or a portion of a mine, the permittee shall begin reclamation of wetlands within the extraction area. No later than 60 days after achieving final grade, the permittee shall provide to the Department a topographic and bathymetric map of the reclamation area that meets the following criteria:
 - (a) One-foot contour intervals based on a 10-foot, or finer, resolution grid;
 - (b) The topography/bathymetry of the site shall be depicted in such a way as to unambiguously show how the site will retain, detain, shed, or otherwise influence the flow and detention of water at the site; and
 - (c) Certification by a registered professional.

Rulemaking Authority 373.026(7), 373.043, 373.414, 373.4145, 373.418, 403.0877 FS. Law Implemented 373.019, 373.403, 373.413, 373.414, 373.4145, 373.416, 373.421, 373.4211, 373.426, 378.403, 403.031, 403.803 FS. History–New

62-348.900 Forms.

The forms used in this chapter are listed by rule number, which is also the form number, with the subject title and effective date. Copies of forms may be obtained from the Internet site of the Department or from any local district or branch office of the Department, or by writing to the Florida Department of Environmental Protection, Bureau of Mining and Minerals Regulation, M.S. 715, 2041 East Paul Dirac Drive, Tallahassee, Florida 32310-3760.

(1) Horticultural Use Certification for High-Quality Peat, [Effective Date].

(2) Annual Production Report for High-Quality Peat, [Effective Date].

Rulemaking Authority 373.026(7), 373.043, 373.414, 373.4145, 373.418, 403.0877 FS. Law Implemented 373.019, 373.403, 373.413, 373.414, 373.4145, 373.416, 373.421, 373.4211, 373.426, 378.403, 403.031, 403.803 FS. History–New

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet G. Llewellyn, Director, Division of Water Resource Management

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Michael W. Sole, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 19, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 26, 2008