

Exposing DERM:

The Blueprint for Bypassing Environmental Law and How Farmers Can Fight Back

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I. Executive Summary

Miami-Dade County's Division of Environmental Resources Management (DERM) is targeting agricultural landowners in the Las Palmas Community by labeling working farmland as "wetlands" in direct conflict with state and federal environmental laws. This enforcement strategy is not only legally unsupported but strategically engineered to bypass public accountability, destroy agricultural operations, and eventually transfer land into government hands under the guise of environmental restoration.

Despite lacking legal delegation from the Florida Department of Environmental Protection (FDEP) under **§373.441, F.S.** and **Rule 62-344, F.A.C.**, DERM has unlawfully enforced Environmental Resource Permit (ERP) requirements. The agency routinely issues Class IV violations, Cease and Desist letters, and demands corrective action without conducting legally valid wetland delineations or securing interagency coordination.

The tactics include misclassifying soil types, suppressing hydrology records, rejecting third-party studies, and deliberately flipping the legal burden onto farmers. These violations not only destroy livelihoods, but also expose Miami-Dade County to potential litigation under the **Bert J. Harris, Jr. Private Property Rights Protection Act** and federal takings law.

This report documents:

- DERM's lack of ERP enforcement authority
- Florida statutes that protect agricultural operations
- DERM's refusal to recognize USDA, NRCS, and university-based science
- Public records strategies to expose misconduct
- Templates for legal defenses and complaints

It concludes with a detailed appendix, including the 1995 Cabinet Certificate and MOA, showing DERM's limited authority. These documents prove that DERM has never been authorized to carry out ERP enforcement or regulate farmland hydrology, irrigation, or drainage systems.

Farmers and their advocates are encouraged to distribute this report, submit public records requests, and pursue legal remedies against this pattern of regulatory abuse.

II. Background: What Is DERM and Why Does It Matter?

The Division of Environmental Resources Management (DERM) operates under the Miami-Dade County Department of Regulatory and Economic Resources. DERM is tasked with protecting natural resources, including wetlands, water quality, and air pollution. However, when it comes to wetland regulation, DERM's authority is strictly local — not state or federal.

Under Florida law, only the Florida Department of Environmental Protection (FDEP) or the South Florida Water Management District (SFWMD) can regulate wetlands through the Environmental Resource Permitting (ERP) process. This authority must be formally delegated to a local government through **§373.441, F.S.** and **Rule 62-344, F.A.C.** No such delegation exists for Miami-Dade County.

DERM often references **Chapter 24 of the Miami-Dade County Code**, which grants it local regulatory powers. But Chapter 24 does not — and cannot — supersede state or federal law. This means that any enforcement DERM undertakes related to wetlands or ERPs must still fall within legal boundaries established by state and federal law.

Why this matters: If DERM is acting outside its legal jurisdiction, every enforcement action — every violation, cease and desist order, or forced remediation — is potentially unlawful. Landowners may have legal grounds for damages, injunctions, and statutory relief.

This report shows that DERM's local code cannot lawfully override:

- Florida's Environmental Resource Permit (ERP) program
- The Agricultural Lands and Practices Act (**§163.3162, F.S.**)
- The Right to Farm Act (**§823.14, F.S.**)
- The Bert J. Harris Act (**§70.001, F.S.**)

Understanding what DERM is — and is not — allowed to do is the foundation for building a defense. This report provides the legal roadmap and evidence needed to expose and defeat DERM's unlawful overreach.

III. Agencies DERM Ignores or Bypasses

DERM frequently acts without involving — or even consulting — the agencies that hold actual regulatory authority under Florida and federal law. This not only undermines lawful process, but also exposes Miami-Dade County to legal risk and violates due process rights of landowners.

1. Florida Department of Environmental Protection (FDEP)

Only FDEP or the South Florida Water Management District can issue or enforce ERP permits unless delegated under **Rule 62-344, F.A.C.** DERM has never received this delegation.

2. South Florida Water Management District (SFWMD)

SFWMD manages regional water policy and hydrology. They maintain real-time water table data and must approve large-scale water-related impacts. DERM bypasses SFWMD in enforcement.

3. U.S. Army Corps of Engineers (USACE)

DERM cites “wetlands” but never coordinates with USACE to determine jurisdiction under the Clean Water Act. DERM oversteps without proving federal wetlands status.

4. U.S. Department of Agriculture – NRCS

The Natural Resources Conservation Service provides wetland determinations for agricultural land. DERM refuses to accept NRCS determinations, even though these are required for federal programs.

5. Florida Department of Agriculture and Consumer Services (FDACS)

FDACS protects agricultural operations. DERM fails to notify or coordinate with FDACS even when enforcing against clearly documented agricultural use.

6. University-Based Science

DERM often disregards soil, vegetation, and hydrology studies performed by university experts, including University of Florida Institute of Food and Agricultural Sciences (UF/IFAS). Their rejection of third-party data is politically motivated.

By ignoring these agencies, DERM creates a closed-loop enforcement regime where it acts as enforcer, judge, and jury — without checks, oversight, or scientific accountability.

IV. Real-World Impacts on Farmers and Families

DERM’s misapplication of wetland enforcement is not a theoretical problem. It’s destroying the livelihoods of real people in the Las Palmas Community — farmers who have cultivated the land for decades.

These impacts include:

- **Economic Losses:** Farmers are forced to stop agricultural activity, rip out crops, or leave land idle due to false wetland designations. This results in massive income loss and business failure.
- **Loss of Financing:** Once DERM labels a property as “wetland,” banks refuse to offer loans or lines of credit. Appraisals plummet. Land that once supported a family becomes a liability.
- **Family Displacement:** Some farmers have been coerced into selling land below value through “willing seller” programs. These sales were not voluntary — they were driven by fear, legal pressure, and economic exhaustion.
- **Mental and Physical Health Strain:** Constant threats, inspections, legal notices, and the fear of fines or arrest create unbearable stress for elderly and low-income landowners.
- **Destruction of Community:** Entire agricultural zones have been transformed into government-controlled wetlands, often through questionable science and political deals. Families are uprooted. Traditions are lost.

These real-world harms aren't incidental — they are central to DERM's enforcement model, which prioritizes land conversion over lawful regulation. By targeting farmers, DERM undermines food production, property rights, and rural stability — all without proper jurisdiction or oversight.

V. Class IV Wetland Permit: Legal Trap

DERM's preferred weapon of enforcement is the "Class IV Wetland Permit," an administrative process that sounds routine but functions as a legal trap. It is presented to landowners as a simple paperwork requirement, but in reality, it serves to waive legal defenses and admit guilt — even when no wetland legally exists.

How It Works:

1. DERM labels a property as containing wetlands — often without a proper delineation.
2. A cease and desist letter is issued, followed by fines or threats of enforcement.
3. The landowner is told they can "resolve" the issue by applying for a Class IV permit.
4. The permit application includes a map drawn by DERM, which becomes the official record.
5. Once submitted, DERM uses the application as evidence that the landowner accepted the wetland designation.

Why It's a Trap:

- Submitting the permit is treated as **admission** that the wetland exists.
- You are **not allowed to dispute** the boundaries after the fact.
- The mapped area is locked into the public record and used to justify future enforcement.
- Legal arguments — such as lack of jurisdiction or proper delineation — are considered waived.

The Result:

Many farmers believe they are cooperating when they submit this application. In truth, they are signing away their rights and solidifying a regulatory footprint that will haunt them in future years. It also prevents legal remedies under laws like the Bert J. Harris Act, since DERM can argue the landowner "consented."

What to Do Instead:

- Never sign or submit anything without legal review.
- Demand that DERM conduct a wetland delineation per **Rule 62-340, F.A.C.**
- Require written confirmation of jurisdiction under **§373.441, F.S.** and **Rule 62-344, F.A.C.**
- Invoke rights under **§163.3162, F.S.** and **§823.14, F.S.** before any paperwork is filed.

The Class IV permit process is not a formality — it's a legal trap. Avoid it unless every jurisdictional and factual issue has been resolved in your favor.

VI. Bureaucratic Wall: Why Agencies Won't Help Unless Forced

Many farmers assume that appealing to higher-level agencies like FDEP, FDACS, or even the Governor's Office will resolve the overreach — but this rarely works.

Here's why:

- **Each agency defers to the other:** FDEP tells you to call DERM. DERM says it has "local authority." The SFWMD says it doesn't oversee county governments. This endless loop is intentional.
- **No one wants liability:** If FDEP or SFWMD admit DERM is wrong, they may become responsible for correcting or compensating the damage. So, they avoid involvement.
- **Federal agencies won't act without a clear federal nexus:** Unless wetlands qualify under federal Clean Water Act jurisdiction, the Army Corps and EPA won't intervene.
- **Legal complexity deters action:** Most oversight bodies are reluctant to get involved unless there's a clear court order or public pressure campaign.

What this means:

- **Agencies will not act unless forced** through lawsuits, media exposure, or legislative intervention.
- **Silence favors DERM**, which benefits from each agency's unwillingness to challenge its authority.

The burden is on the farmer to:

- Document violations.
- Demand jurisdictional proof.
- Escalate through coordinated legal, political, and public channels.

This report is your road map to breaking the wall of silence.

VII. DERM's Legal End-Run Through Circuit Court

When DERM's enforcement is challenged, they often shift strategy — bypassing formal permitting channels and dragging landowners directly into Miami-Dade County Circuit Court.

This tactic allows DERM to:

- **Avoid Scientific Scrutiny:** In court, DERM no longer needs to conduct a formal wetland delineation. They rely on prior determinations, photos, or staff affidavits.
- **Shift from Administrative Law to Civil Penalties:** This move sidelines environmental law defenses and pivots to code enforcement violations.

- **Stack the Deck:** DERM uses county-paid attorneys in a court system familiar with — and often deferential to — county agencies. The landowner is forced to defend against vague violations without full discovery or environmental review.
- **Suppress Public Records:** In court filings, DERM has omitted or misrepresented scientific data submitted by farmers, or failed to upload documents that disprove their claims.
- **Delay Resolution:** Cases can be dragged out for months or years, during which time landowners are pressured to settle, lose financing, or walk away from the property.

This is not legitimate environmental enforcement — it's a legal siege designed to outlast and bankrupt the farmer. Every court case brought by DERM should be treated not as a neutral proceeding, but as a weaponized abuse of legal process.

The way to counter this is to:

- Challenge jurisdiction at every stage
- File motions to dismiss based on improper delegation
- Demand scientific evidence and full administrative records
- Submit public records requests to expose missing documentation

Never assume the court will protect your rights without aggressive legal defense. DERM's strategy depends on your silence — don't give it to them.

VIII. How to Protect Yourself

A. Know Your Rights

- **Do not admit guilt** — remain silent.
- **Request jurisdictional proof** — ask for delegation authority.
- **Refuse unauthorized inspections** — no entry without warrant or written consent.

B. Don't Go Alone

- Demand written communication.
- Bring a witness or record all interactions.
- Log everything.

C. Use the Law

- **§163.3162, F.S.** — Agricultural Lands and Practices Act
- **§823.14, F.S.** — Right to Farm Act
- **HB 909 (2022–2023)** — Limits county authority
- **Rule 62-340, F.A.C.** — Defines real wetland criteria

D. Engage Oversight

File complaints with:

- FDEP (Florida Department of Environmental Protection)
- FDACS (Department of Agriculture)
- SFWMD (Water Management District)
- USDA NRCS (Natural Resources Conservation Service)
- Governor's Office
- State Attorney's Office
- Office of Inspector General
- County Commissioners

E. Prepare for Court

- Get expert reports, aerial maps, and affidavits.
- Download water table records (e.g., SFWMD DBHydro).
- File public records requests — expose their process.
- Submit a Bert Harris claim if value was lost.

IX. DERM: A Threat Disguised as Protection

DERM markets itself as a defender of the environment — but its record in agricultural areas tells a different story. The agency uses environmental rhetoric to justify enforcement actions that:

- Violate Florida law
- Ignore scientific standards
- Undermine food security
- Drive rural families off the land

This isn't about wetlands. It's about **control**.

- Control of water rights.
- Control of land use.
- Control of future development under the banner of "conservation."

DERM's model is not protection — it's punishment. Farmers must stop treating DERM as a regulator and start treating it as an adversary acting beyond its lawful powers.

X. The Bert J. Harris Act

The **Bert J. Harris, Jr. Private Property Rights Protection Act (§70.001, F.S.)** allows landowners to seek compensation when government actions inordinately burden their property rights. This includes regulatory actions that reduce the economic value or use of property — even if the action doesn't rise to the level of a constitutional taking.

Why It Applies to DERM:

DERM's misclassification of farmland as "wetlands," along with its refusal to coordinate with state and federal agencies, creates a direct financial loss to landowners. In many cases, this loss is in the hundreds of thousands or even millions of dollars.

Yet DERM refuses to accept:

- NRCS wetland determinations
- Hydrology reports
- Soil studies
- Expert declarations

This refusal is not due to scientific disagreement — it's strategic. If DERM accepts third-party science, it risks:

- Admitting its actions were improper
- Opening the door to massive liability under the Harris Act
- Undermining its "wetland" designations across the county

Instead, DERM pretends only its opinion matters. This tactic is designed to protect itself — not the public or the environment.

Landowners must:

- Formally submit evidence to DERM and other agencies
- Get expert appraisals showing loss of use/value
- File a Harris Act claim within the statute of limitations
- Mark all filings as "**submitted under protest and without waiving jurisdictional objections**"

The more scientific evidence you submit, and the more clearly DERM ignores it, the stronger your legal claim becomes.

XI. Flip the Burden: Make DERM Prove It

One of the most powerful strategies a landowner can use is to shift the burden of proof.

Instead of trying to prove that your land is **not** a wetland — make DERM prove that it **is**.

Here's how to do it:

- Demand a valid wetland delineation conducted under **Rule 62-340, F.A.C.**
- Require DERM to produce proof of ERP delegation under **§373.441, F.S.** or **Rule 62-344, F.A.C.**
- Force all scientific evidence to be placed on the public record
- Submit third-party evidence from USDA NRCS, UF/IFAS, or SFWMD — and record DERM's refusal to accept it

If DERM cannot prove jurisdiction — they have none. If they refuse to participate in scientific debate — they expose their misconduct.

You don't have to prove innocence. They have to prove guilt.

This is how you flip the burden, protect your rights, and build the legal foundation for damages, injunctions, or reversal of enforcement.

XII. Cease and Desist Orders: Respond Strategically

When DERM issues a **Cease and Desist Order**, it's tempting to argue immediately. Don't. That's part of the trap.

A. Do Not Engage

- Do not argue.
- Do not provide information.
- Take the paperwork and walk away.

B. Document the Encounter

- Take clear photographs of:
 - The paperwork
 - The agents involved
 - Their vehicles and license plates

C. Follow Up

- **Submit public records requests:**
 - Ask for wetland delineation reports
 - Request interagency communication
 - Demand jurisdictional authority
- **Keep a logbook** of all enforcement actions

- **Begin preparing your legal file**

Every Cease and Desist notice is also an opportunity — to demand proof, expose flaws, and build your defense. By staying calm, documenting everything, and forcing DERM to justify their actions, you shift the power dynamic back where it belongs — with the landowner.

XIII. Defensive Strategies for Farmers

- **Don't Accept Chapter 24 as Final Authority**

Demand specific delegation from state/federal law.

- **Checklist:**

- Post no-trespassing signs.
- Record all unannounced visits.
- Remain silent during DERM interactions.
- Maintain a logbook and request enforcement records.
- Join coalitions, contact lawmakers, and share your case publicly.

XIV. Recommendations

- **Distribute this report** to neighbors, farmers, and civic groups.
- **File public records requests** to demand all DERM reports, photos, hydrology, jurisdictional documents, and correspondence.
- **Submit complaints** to FDEP, FDACS, SFWMD, USDA NRCS, State Attorney, and the Governor.
- **Include Exhibits:** Attach scientific data, MODFLOW studies, and legal correspondence when making your case.
- **Encourage independent delineations** and site visits by qualified professionals.
- **Monitor public meetings** and challenge budget allocations used for enforcement against agricultural land.
- **Organize regionally** — the more unified the resistance, the more likely state lawmakers and oversight bodies will act.

DERM's strategy only works in the shadows. This guide is a flashlight. Use it.

XV. Final Call to Action

This report is not just a warning — it is a call to organize. The farmers and landowners of the Las Palmas Community are not alone. What is happening in Miami-Dade County is part of a broader trend of environmental overreach that disregards legal authority, science, and property rights.

Every Landowner Should:

- **Demand legal proof of jurisdiction** from DERM, not just citations of local codes.
- **Require agencies to follow Rule 62-340, F.A.C.** when alleging wetland violations.
- **Submit public records requests** and document all agency contact.
- **Educate neighbors** about their rights.
- **Publish findings online** and share verified documents.
- **Organize with other landowners** to form a united legal and political response.

This document is designed to be a public tool — share it freely.

For the full set of exhibits, updated legal templates, and ongoing strategy updates, visit:
www.MiamiDade.watch

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