

**Rules of the
South Florida Water Management District**

**ENVIRONMENTAL RESOURCE
STANDARD PERMITS
CHAPTER 40E-40, F.A.C.**



Effective December 15, 2011

Overview

40E-40 Environmental Resource Standard General Permits

Note: The text on this page provides a brief overview of the provisions of Chapter 40E-40, Florida Administrative Code (F.A.C.). The overview text is intended only to provide a basic understanding of the Chapter, and should not be used in place of the duly-adopted rule language or in a manner which is inconsistent with Chapter 40E-40, F.A.C.

This Chapter sets forth the requirements for qualification by a project for certain incidental site activities prior to permit issuance and for an Environmental Resource Standard General permit. The specific detail design criteria set forth in another part of this manual (the Basis of Review) must still be met but the lawful time period (60 days) for processing the complete permit application is shorter than for projects regulated by Chapter 40E-4 (90 days). The rules in this Chapter may now be applied to projects in the lands named in Chapter 40E-41.

The following types of projects, systems, or activities may qualify for a Standard General Permit under the Rule Chapter:

1. Many works within the District which serve projects with less than 100 acres total land area and with less than ten boat slips and with construction or alternation of the surface water management system in, on, or over less than one acre of wetlands or other surface water, and which do not qualify for either a no-notice or a noticed general environmental resource permit (see Chapter 40E-400), are permitted by this rule, subject to conditions. (Subsection 40E-40.0112(2) also contains descriptions of activities which will require an individual permit application).
2. Limited site activities proposed in conjunction with work which has not only been described in a complete environmental resource permit application, but also received a preliminary staff recommendation of approval. Such activities might include, among others: upland clearing; limited earthwork and lake, road subgrade, and foundation construction; utility, fence, and construction trailer installation; and unconnected drainage facilities construction.

To apply for a standard general permit for any works qualifying under this Rule Chapter, except incidental site activities, the applicant must submit a properly-completed Joint Application for Environmental Resource Permit/Authorization to Use State Owned Submerged Lands/Federal Dredge and Fill Permit (**Form 0971**); the items and documents described that that form and the appropriate fee.

To apply for a standard general permit for incidental site activities under this Rule Chapter, the applicant must submit a plan or description of the proposed activities, any other appropriate documents, and the appropriate fee; and must provide certain assurances as to how the proposed activities would be conducted. (By submitting a

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properly-completed Application for a Standard General Permit for Incidental Site Activities (**Form 0444**); the items described in that form; and the appropriate fee; an applicant will meet the submittal requirements for an incidental site activities general permit).

CHAPTER 40E-40
GENERAL ENVIRONMENTAL RESOURCE STANDARD PERMITS

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40E-40.010 Review of Environmental Resource Standard Permit Applications.

Environmental resource standard permit applications are processed pursuant to Section 120.60, F.S., Part VI of Chapter 40E-1, F.A.C., and Chapter 28-106, F.A.C.

Rulemaking Authority 120.54(5), 120.60 FS. Law Implemented 120.54(5), 120.60 FS. History—New 7-2-98, Amended 12-1-11.

40E-40.011 Policy and Purpose.

(1) The rules in this chapter authorize environmental resource standard permits for certain surface water management systems which have been determined to be not harmful to the water resources of the District and to be not inconsistent with the objectives of the District. This chapter sets forth the requirements for qualifying for a standard permit and the conditions under which it may be exercised. Unless expressly exempted by Rule 40E-4.051, F.A.C., surface water management systems which do not qualify for a no notice or noticed general permit pursuant to Chapter 40E-400, F.A.C., and which do not qualify for a standard permit pursuant to this chapter are required to obtain individual environmental resource permits pursuant to Chapter 40E-4, F.A.C.

(2) The District reserves the right to require an individual permit application for any system that does not comply with the provisions of this chapter; is harmful to the water resources of the District; is not consistent with the overall objectives of the District; is contrary to the provisions of Chapter 373, F.S.; or for which a substantial objection(s) has been received.

(3) The rules in this chapter also authorize standard permits for incidental site activities in uplands which may be done in conjunction with the work set forth in an individual environmental resource permit application. Projects qualifying for a standard permit for incidental site activities shall obtain an individual environmental resource permit for the proposed system and activities in, on, or over wetlands or other surface waters in accordance with this chapter, Chapter 40E-4 or 40E-400, F.A.C.

Rulemaking Authority 373.044, 373.113, 373.118, 373.413(1) FS. Law Implemented 373.118, 373.413(1), 373.416 FS. History—New 9-3-81, Formerly 16K-4.021(1)(d), 16K-4.022(1)(e), Amended 7-26-87, 4-20-94, 10-3-95, 12-1-11.

40E-40.021 Definitions.

As used in this chapter, all terms shall mean the same as defined in Chapter 373, F.S., and Rule 40E-4.021, F.A.C.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.019, 373.403, 373.413, 373.416, 373.419, 403.031(16), 704.06 FS. History–New 9-3-81, Amended 12-1-82, 7-26-87, 4-20-94, 10-3-95.

40E-40.031 Implementation.

(1) Rule 40E-4.031, F.A.C., specifies the effective dates for the environmental resource standard permits granted in this chapter.

(2) The rules contained in this chapter shall apply to projects which do not have a complete permit application, as evidenced by a letter of completeness from the District prior to the effective date of these rules, unless the project is grandfathered pursuant to Section 373.414, F.S.

Rulemaking Authority 373.044, 373.113, 373.118(1) FS. Law Implemented 373.103(1), Part IV, Ch. 373 FS. History–New 9-3-81, Amended 12-1-82, 7-26-87, 4-20-94, 10-3-95, 12-1-11.

40E-40.041 Permit Thresholds.

(1) Any non-exempt surface water management systems which do not qualify for a no notice or noticed general environmental resource permit, and do not exceed the threshold for individual permits as listed below, shall obtain a standard permit.

(2) Threshold conditions are as follows:

(a) The construction or alteration of a surface water management system, including dredging and filling, is proposed in, on, or over a total of one acre or more of wetlands or other surface waters; however, calculation of the one acre area shall not include:

1. Ditches and wholly owned ponds that were constructed in uplands;
2. Any isolated wetlands with a surface area of less than 0.5 acres.

(b) The system serves a project area of 100 acres or more in total land area;

(c) The system includes more than nine proposed boat slips.

(3) Notwithstanding the provisions of subsection (2), phases within a conceptually approved project shall be processed as standard permits provided:

(a) The proposed activity is consistent with the conceptual approval permit;

(b) The approved conceptual plan includes the location and acreage of wetlands onsite, an assessment of wetland impacts, and a conceptual mitigation plan (if required);

(c) The approved conceptual plan includes the approximate size, location, and discharge points of the proposed stormwater management system.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.406(5), 373.413(1), 373.416 FS. History–New 4-20-94, Amended 10-3-95, 5-28-00, 6-26-02, 12-1-11.

40E-40.042 Standard General Permit for Incidental Site Activities.

(1) Incidental site activities shall be conducted pursuant to the requirements of this rule.

(2) For purposes of this rule, “Incidental site activities” means site activities in uplands which may be conducted in conjunction and conformance with the work set forth in an individual permit such as: land clearing in uplands; minimal earthwork, lake construction; road subgrade construction; foundation construction; utility installation; fence installation; construction trailer installation; unconnected drainage facility construction; or other similar activities.

(3) In order to receive a permit under this rule the applicant must:

(a) Submit an environmental resource permit application deemed complete, as evidenced by a letter of completeness from the District;

(b) Receive a preliminary staff recommendation of approval of such application;

(c) Submit Form 0444 and plans or a description of incidental site activities proposed, including proposed

locations for work; and

(d) Provide reasonable assurances that the conditions specified in Rule 40E-40.302, F.A.C., have been met.

(4)(a) The permittee shall not construct any works or engage in any land clearing activities within 50 feet of the landward extent of wetlands or other surface waters or proposed upland preservation areas on the project site.

(b) The permittee shall excavate no closer than 200 feet of the landward extent of wetlands or other surface waters on the project site, or as otherwise specified in the permit.

(5) An application for a Standard Permit for Incidental Site Activities, Form No. 0444 must be submitted to conduct incidental site activities pursuant to this rule. Form No. 0444, December 2011,

<http://www.flrules.org/Gateway/reference.asp?No=Ref-00113>, is incorporated by reference herein and available at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6436, or (561) 682-6436.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 120.60(2), 373.103(4), 373.118, 373.413, 373.416 FS. History—New 9-3-81, Formerly 16K-4.021(1), 16K-4.022(1), Amended 12-1-82, 7-26-87, 4-20-94, 10-3-95, 5-28-00, 12-15-11.

40E-40.051 Standard Permit Authorization.

(1) Application procedures for standard environmental resource permits are set forth in Rule 40E-1.603, F.A.C., and are incorporated by reference in this rule.

(2) Standard environmental resource permit authorizations are set forth in Rule 40E-4.303, F.A.C., and are incorporated by reference in this rule.

(3) Agency action shall be taken no later than 60 days after a standard permit application is declared complete, unless waived by the applicant or stayed by the filing of a petition for an administrative hearing.

(4) For applications for standard permits, the Executive Director, Assistant Executive Director, Regulation Division Director, Regulation Division Assistant Director, Environmental Resource Permitting Bureau Chief, and Service Center Administrators, shall conduct review and issue these permits.

(5) For standard environmental resource permit applications, or permit applications under Sections 373.414(11)-(16), F.S., which involve activities located on submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund under Chapters 253 or 258, F.A.C., the District shall conduct concurrent application and review procedures in accordance with Section 373.427, F.S., Chapter 18-21, F.A.C., and Rules 62-343.075 and 18-18.014, F.A.C.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.103(2), (6), 373.427 FS. History—New 10-3-95, Amended 4-1-96, 5-28-00, 7-19-07, 12-1-11.

40E-40.061 Delegation of Authority Pertaining to General Environmental Resource Permits, General Surface Water Management Permits and Associated Sovereign Submerged Lands Authorizations.

(1) The Governing Board delegates to and appoints the Executive Director, Assistant Executive Director, Regulation Division Director, Regulation Division Assistant Director, Environmental Resource Permitting Bureau Chief and Service Center Administrators, as its agents to review and take final action on all general environmental resource and surface water management permit applications issued under Chapter 40E-40, F.A.C. However, staff recommendations for denial of general permit applications shall be considered by the Governing Board.

(2) The Board of Trustees of the Internal Improvement Trust Fund, pursuant to Rule 18-21.0051, F.A.C., has delegated to the Governing Board the authority to review and take final agency action on certain applications to use sovereign submerged lands. Rule 18-21.0051, F.A.C., also provides that the Governing Board may delegate review and decision-making authority to District staff. Therefore, the Governing Board further delegates this authority to the Executive Director, Assistant Executive Director, Regulation Division Director, Regulation Division Assistant Director, Environmental Resource Permitting Bureau Chief and Service Center Administrators, when an application to use sovereign submerged lands involves an activity which is to be reviewed pursuant to the general permit procedures of Chapters 40E-1, 40E-40, or 40E-400, F.A.C.

Rulemaking Authority 120.53(1), 373.044, 373.113, 373.118 FS. Law Implemented 120.53, 373.016, 373.118 FS. History–New 4-1-96, Formerly 40E-1.6015, Amended 5-28-00, 7-19-07.

40E-40.091 Publications, Rules and Interagency Agreements Incorporated by Reference.

All publications, rules and interagency agreements incorporated by reference are set forth in Rule 40E-4.091, F.A.C.

Rulemaking Authority 120.54(8), 373.044, 373.046, 373.113, 373.171, 373.414, 403.812 FS. Law Implemented 120.54(8), 373.046, 373.403, 373.413, 373.414, 373.416, 373.429 FS. History–New 11-15-92, Amended 1-23-94, 4-20-94, 10-3-95.

40E-40.101 Content of Permit Application.

The content requirements for environmental resource permit applications are set forth in Rule 40E-4.101, F.A.C., and are incorporated by reference in this rule.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.117, 373.413, 373.416, 373.426 FS. History–New 10-3-95.

40E-40.141 Request for Additional Information.

The District may request additional information from standard permit applicants in accordance with paragraph 40E-1.603(1)(c), F.A.C.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.416, 373.419 FS. History–New 9-3-81, Amended 4-20-94, 10-3-95, 4-14-03, 12-1-11.

40E-40.302 Conditions for Issuance of Permits.

In order to qualify for a standard permit under this chapter, the applicant must give reasonable assurances that the surface water management system meets the following general conditions:

(1) The surface water management system must meet the criteria specified in Rules 40E-4.301 and 40E-4.302, F.A.C.

(2) The surface water management system must meet the threshold conditions as set forth in Rule 40E-40.041, F.A.C.

Rulemaking Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.046, 373.413, 373.416 FS. History–New 9-3-81, Formerly 16K-4.021(1)(a), (2), 16K-4.022(1)(a), (b), Amended 12-1-82, 7-26-87, 11-15-92, 4-20-94, 10-3-95, 12-1-11.

40E-40.321 Duration of Permits.

Unless revoked or otherwise modified, the duration of a standard permit authorized pursuant to this chapter is set forth in Rule 40E-4.321, F.A.C.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.413, 373.416, 373.419, 373.426 FS. History–New 9-3-81, Amended 12-1-82, 7-26-87, 4-20-94, 10-3-95, 12-1-11.

40E-40.331 Modification of Permits.

A request for modification of an environmental resource standard permit shall be made in accordance with this chapter, unless the permit has expired or has been otherwise revoked or suspended. Requests to modify such permits shall be made:

(1) In accordance with Rules 40E-1.603 and 40E-40.302, F.A.C.; or

(2) By letter in accordance with paragraph 40E-4.331(2)(b), F.A.C.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.413, 373.416(1) FS. History–New 12-1-82, Amended 4-20-94, 10-3-95, 12-1-11.

40E-40.341 District Revocation or Modification of Permits.

The Governing Board may revoke a permit in accordance with the provisions of Chapter 373, F.S., and Rule 40E-

1.609, F.A.C.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 120.60(6), 373.429 FS. History–New 9-3-81, Formerly 16K-4.021(1)(e), 16K-4.022(1)(f), Amended 12-1-82, 10-3-95, 7-2-98, 12-1-11.

40E-40.351 Transfer of Permits.

Transfer of permits shall be made in accordance with Rule 40E-4.351, F.A.C.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.413, 373.416(2) FS. History–New 12-1-82.

40E-40.381 General Conditions.

(1) The standard permits authorized pursuant to this chapter shall be subject to the general conditions set forth in Rule 40E-4.381, F.A.C.

(2) In addition to the general conditions referenced in subsection (1), the following shall apply to standard permits authorizing incidental site activities:

(a) The permittee shall not construct any works or engage in any land clearing activities within 50 feet of the landward extent of wetlands or other surface waters on the project site.

(b) The permittee shall excavate no closer than 200 feet of the landward extent of wetlands or other surface waters on the project site, or as otherwise specified in the permit.

(c) The property must be restored to the satisfaction of the District if the individual environmental resource permit is denied or the permitted project is otherwise not in accord with the incidental site activities authorized herein.

(d) Any damage to off-site property which may have been caused by the incidental site activities herein must be mitigated.

(e) The activities are commenced at the permittee's own risk.

(f) The permittee shall proceed to timely obtain the individual environmental resource permit.

(3) The standard permit shall be subject to other reasonable conditions as are necessary to assure that the permitted works will meet the conditions for issuance in Rules 40E-4.301 and 40E-4.302, F.A.C.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.117, 373.118, 373.413, 373.416, 373.419 FS. History–New 9-3-81, Formerly 16K-4.021(1)(b), 16K-4.022(1)(c), Amended 7-26-87, 4-20-94, 10-3-95, 4-14-03, 12-1-11.

40E-40.391 Forms and Instructions.

District forms and instructions have been approved by the Governing Board and are set forth in Rule 40E-1.659, F.A.C.

Rulemaking Authority 120.53(1), 373.044, 373.113, 373.118 FS. Law Implemented 120.52(16), 120.53(1), 373.085, 373.116, 373.118, 373.103, 373.106, 373.229, 373.413 FS. History–New 10-3-95, Amended 12-1-11.

40E-40.407 Permit Application Processing Fees.

There shall be a non-refundable permit application processing fee as specified by subsection 40E-1.607(3), F.A.C.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.109 FS. History–New 10-3-95.