



**South Florida Water Management District  
Regulatory Peer Review Forum  
July 30, 2010  
9 a.m. – 11:00 a.m.  
SUMMARY**

**Attendees:**

Patrick Martin	Lake Worth Drainage District
Jay Foy	Stormwater J Engineering
Todd McLeod	Civil Design
Bonnie McLeod	Mathews Consulting
Fred Roth	Schorah & Associates
Jorge Szauer	Hazen and Sawyer
Joe Walsh	Lake Worth Drainage District
Becky Serra	Serra Engineering
Dan Clark	Clark & McCarthy
Irene Quincey	PLF, Inc
L. Van Cott	Southern Design Group
Tony Waterhouse	SFWMD – Environmental Resource Regulation Staff
Damon Meiers	SFWMD – Stormwater Division
Steve Sarley	SFWMD – Environmental Resource Regulation Staff
Susan Martin	SFWMD- Office of Counsel

**1. Opening Remarks – Tony Waterhouse**

opened the meeting at about 9:05 a.m.

**2. Discussion on Dry Season Water Conservation Measures**

Discussion was led by Jay Foy who asked for the topic to be included on the agenda. Mr. Foy explained the rationale for his request to discuss this topic. His main focus is to be able pursue higher control elevations for stormwater management systems in the dry season as a water conservation measure. He brought up the possibility of rule changes to facilitate.

Additional thoughts were expressed by the group related to flood protection, potential for conflicts within the communities where these systems are located, impacts on littoral zones. Some concerns were expressed about property owners associations being responsible for operating these systems.

Tony Waterhouse brought up the emergency structure concept developed in the late 1990's in response to flooding events. There have also been discussions related to dry season water conservation measures during the Water Resource Task Force subcommittee meetings that Ken Todd chairs. He also suggested that this concept could probably be implemented in certain places through permits incorporating agreements with the entities responsible for operating the water management systems. There is a limit to the number of places where this concept would work. They would have to be dealt with case by case. He suggested that the District staff would consider this issue further.

### **3. Update on Natural Systems and Consumptive Use**

Tony Waterhouse passed out a flyer associated with upcoming meeting to discuss the issue of natural systems and consumptive use permits, also known as past wetland harm.

There was a brief discussion of some of the concerns expressed by Irene Quincey related to the way wetland impacts from wellfield withdrawals has been implemented in the past.

### **4. Rule Changes**

There was a brief discussion on technical rule changes that will be effective next week. These are minor changes to the BOR and rule chapters and are listed below.

### **5. Next meeting date/other/topics/adjournment**

Next meeting will be held on October 1, 2010

Possible future topics include discussion of Natural Systems and Consumptive Use and the organizational changes in the Water Resource Regulation Department.

Meeting was adjourned at 10:30 am

# Natural Systems Relationship to Water Use Permitting: Past Wetland Harm

Water Resource Regulation Department  
South Florida Water Management District

This is a forum to solicit ideas, concerns, and solutions from the public regarding the issue of “past wetland harm” as it relates to water use permitting. This is also the first of several public forums to discuss topics related to Water Use Permitting.

## TOPICS INCLUDE

- Ongoing District Efforts
- What Is Wetland Harm And How Do We Measure It?
- How Far Back In Time Do We Go?
- What About Other Influences On Water Levels?
- How To Avoid Future Wetland Harm.



## WHEN AND WHERE:

**August 13, 2010:** West Palm Beach, SFWMD Headquarters; B-1 Auditorium, 9:00 am – 12:30 pm  
(3301 Gun Club Road, West Palm Beach, Florida 33406 – Building B-1)

**August 19, 2010:** Orlando Area; Osceola County Commission Chambers; 1:00 – 4:00 pm  
(Osceola Board of County Commissioners Chambers, Administration Building , 1 Courthouse Square, 4th floor Commission Chambers, Kissimmee, Florida 34741)

**September 16, 2010:** Lower West Coast Service Center; Fort Myers 1st Flr Large Conf Rm, 1:00 – 4:00 pm  
(Lower West Coast Service Center; 2301 McGregor Boulevard, Fort Myers, FL 33901)

## CONTACT FOR INFORMATION:

Anita Bain, Division Director  
Environmental Resource Permitting Division  
Email: [abain@sfwmd.gov](mailto:abain@sfwmd.gov)  
Phone: (561) 682-6866

## REGISTRATION:

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**[sfwmd.gov](http://sfwmd.gov)**

**Technical changes to Forms 1105, 1106, and Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, incorporated by reference in Rule 40E-4.091, F.A.C.:**

**Forms 1105 and 1106: Update Natural Resource Management Division Director to Environmental Resource Permitting Division Director, add incorporation language and revision date to footer**

**1.1 Objectives – Correct term “Rule” to “paragraph” See 1B-30.0015**

Under Part IV of Chapter 373, F.S., and Chapters 40E-4, 40E-40, and 40E-400, F.A.C., the District is responsible for the permitting of construction, alteration, operation, maintenance, removal and abandonment of surface water management systems within its jurisdictional boundaries. The objective of this document is to identify the permit review criteria and information used by District staff when reviewing permit applications. The objective of the permit application review process is to insure that the permit authorizes activities which are not harmful to the water resources of the District and are not inconsistent with water resource objectives of the District. This document has been adopted by reference in paragraph Rule 40E-4.091(1)(a), F.A.C.

**2.34 "Species of Special Concern" rule reference repealed; correct term of “Section” to “Rule” per 1B-30.0015** - Those animal species listed in Rule Section ~~68A-27.005~~ 39-27.005, F.A.C.

**3.3 Phased Projects – Add “F.A.C.” to cite**

Projects which are to be developed in phases will require the submission of a master plan of the applicant's contiguous land holdings. The primary interest of the District is to insure continuity between phases, satisfactory completeness of individual phases should the project be incomplete as planned, and preservation of adjacent property owners' rights. This includes adjacent property owners created by the sale of incomplete phases. See Rule 40E-4.305, F.A.C. for further information regarding conceptual approval permits.

**4.1.1 Environmental Conditions for Issuance rule reference repealed; correct term of “paragraphs”, “subsections” and “Rules” per 1B-30.0015**

The District addresses the conservation of these beneficial functions in the permitting process by requiring applicants to provide reasonable assurances that the following conditions for issuance of permits, set forth in Rules Sections 40E-4.301 (Conditions for Issuance) and 40E-4.302 (Additional Conditions for Issuance), F.A.C., are met. Applicants must provide reasonable assurance that:

- (c) a regulated activity will not adversely affect the quality of receiving waters such that the water quality standards set forth in chapters ~~62-3~~, 62-4, 62-302, 62-520, 62-522, and 62-550, F.A.C., including any anti-degradation provisions of paragraphs sections 62-4.242(1)(a) and (b), subsections 62-4.242(2) and (3), and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections

~~sections~~ 62-4.242(2) and (3), F.A.C., will be violated (paragraph 40E-4.301(1)(e), F.A.C.).

- (d) a regulated activity located in, adjacent to or in close proximity to Class II waters or located in waters classified by the Department as approved, restricted, or conditionally restricted for shellfish harvesting as set forth in Chapter 5L-1 ~~46R-7~~, F.A.C., will comply with the additional criteria in subsection 4.2.5 of the Basis of Review (paragraph 40E-4.302(1)(c), F.A.C.);

#### **4.2.2 Fish, Wildlife, Listed Species and their Habitats Update agency name**

As part of the assessment of the impacts of regulated activities upon fish and wildlife and their habitats, the District will provide a copy of all notices of applications for standard general, individual, and conceptual approval permits which propose regulated activities in, on or over wetlands or other surface waters to the Florida Fish and Wildlife Conservation Commission ~~Florida Game and Fresh Water Fish Commission~~ for review and comment. In addition, the District staff may solicit comments from the Florida Fish and Wildlife Conservation Commission ~~Florida Game and Fresh Water Fish Commission~~ regarding other applications to assist in the assessment of potential impacts to wildlife and their habitats, particularly with regard to listed wildlife species. Where proposed activities have a potential to impact listed marine species, the District will provide a copy of the above-referenced types of applications to the Department of Environmental Protection, Office of Protected Species.

#### **4.2.3 Public Interest Test Add term “subparagraph” per 1B-30.0015**

In determining whether a regulated activity located in, on, or over surface waters or wetlands is not contrary to the public interest, or if such an activity significantly degrades or is within an Outstanding Florida Water, that the regulated activity is clearly in the public interest, the District shall consider and balance, and an applicant must address, the following criteria:

- (a) Whether the regulated activity will adversely affect the public health, safety, or welfare or the property of others (subparagraph 40E-4.302(1)(a)1., F.A.C.);
- (a) Whether the regulated activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats (subparagraph 40E-4.302(1)(a)2., F.A.C.);
- (b) Whether the regulated activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling (subparagraph 40E-4.302(1)(a)3., F.A.C.);
- (d) Whether the regulated activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity (subparagraph 40E-4.302(1)(a)4., F.A.C.);
- (e) Whether the regulated activity will be of a temporary or permanent nature (subparagraph 40E-4.302(a)5., F.A.C.);



- (f) Whether the regulated activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of section 267.061, F.S. (subparagraph 40E-4.302(1)(a)6., F.A.C.); and
- (g) The current condition and relative value of functions being performed by areas affected by the proposed regulated activity (subparagraph 40E-4.302(1)(a)7., F.A.C.).

**4.2.3.1 bold, capitalize and add period after first sentence to make heading consistent with 4.2.3.2, 4.2.3.3, 4.2.3.4, 4.2.3.5, 4.2.3.6 and 4.2.3.7**

**Public Hhealth, Ssafety, or Wwelfare or the Property of Others.** In reviewing and balancing the criterion regarding public health, safety, welfare and the property of others in paragraph 4.2.3(a), the District will evaluate whether the regulated activity located in, on, or over wetlands or other surface waters will cause:

**4.2.3.3 Navigation, Water Flow, Erosion and Shoaling correct typo in subsection (a)**

In reviewing and balancing the criterion on navigation, erosion and shoaling in paragraph 4.2.3(c), the District will evaluate whether the regulated activity located in, on or over wetlands or other surface waters will:

- (a) significantly impede navigability or enhance navigability. The District will consider the current navigational uses of the surface waters and will not speculate on uses which may occur in the future. Applicants proposing to construct bridges or other traversing works must address adequate horizontal and vertical clearance for the type of watercraft currently navigating the surface waters. Applicants proposing to construct docks, piers and other works which extend into surface waters must address the continued navigability of these waters. An encroachment into a marked or customarily used navigation channel is an example of a significant impediment to navigability. Applicants proposing temporary activities in navigable surface waters, such as the mooring of construction barges, must address measures for clearly marking the work as a hazard to navigation, including nighttime lighting. The addition of navigational aids may be beneficial to navigation. If an ~~and~~ applicant has a U.S. Coast Guard permit issued pursuant to 14 U.S.C. Section 81 (1993), 33 C.F.R. Section 62 (1993) for a regulated activity in, on or over wetlands or other surface waters, submittal of this permit with the application may assist the applicant in addressing this criterion.

**4.2.4.4 Temporary Mixing Zones Add F.A.C. to cite; correct term of “Rule” and “subsection” per 1B-30.0015**

A temporary mixing zone for water quality during construction or alteration may be requested by the applicant. The District shall review such request pursuant to Rule sections 62-4.242 and subsection 62-4.244(5), F.A.C., in accordance with the Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S. adopted by reference in Rule Section 40E-4.091, F.A.C.

**4.2.7 Secondary Impacts Add F.A.C. to cite**

- (b) An applicant shall provide reasonable assurance that the construction, alteration, and intended or reasonably expected uses of a system will not adversely impact the ecological value of uplands to Bald Eagles (*Haliaeetus leucocephalus*) and aquatic or wetland dependent listed animal species for enabling existing nesting or denning by these species, but not including:
  - 1. areas needed for foraging; or
  - 2. wildlife corridors, except for those limited areas of uplands necessary for ingress and egress to the nest or den site from the wetlands or other surface water;

Table 4.2.7-1 identifies those aquatic or wetland dependent listed species that use upland habitats for nesting or denning.

For those aquatic or wetland dependent listed animal species for which habitat management guidelines have been developed by the U.S. Fish and Wildlife Service (USFWS) or the Florida Fish and Wildlife Conservation Commission (FWC), compliance with these guidelines will provide reasonable assurance that the proposed system will not adversely impact upland habitat functions described in paragraph (b). For those aquatic or wetland dependent listed animal species for which habitat management guidelines have not been developed or in cases where an applicant does not propose to use USFWS or FWC habitat management guidelines, the applicant may propose measures to mitigate adverse impacts to upland habitat functions described in paragraph (b), provided to aquatic or wetland dependent listed animal species. Secondary impacts to the functions of wetlands or uplands for nesting of Bald Eagles (*Haliaeetus leucocephalus*) will not be considered adverse if the applicant holds a valid permit pursuant to paragraph 68A-16.002(1)(a), F.A.C. (May 15, 2008), or a valid authorization as described in paragraph 68A-16.002(1)(c), F.A.C. (May 15, 2008) for the same activities proposed by the applicant under Part IV of Chapter 373, F.S., or if the applicant demonstrates compliance with the FWC Eagle Management Guidelines incorporated by reference in Rule 68A-16.002, F.A.C. (May 15, 2008).

**Table 4.2.7-1 Move behind section 4.2.7 – right now it is misplaced at end of subsection 4.2.8.2**

#### **4.2.8 Cumulative Impacts add F.S. after cites and delete repealed statute**

- (a) Projects which are existing or activities regulated under Part IV, Chapter 373, F.S., which are under construction, or projects for which permits or determinations pursuant to Sections 373.421 ~~or 403.914~~, F.S., have been sought.
- (b) Activities which are under review, approved, or vested pursuant to Section 380.06, F.S. or other activities regulated under Part IV, Chapter 373, F.S., which may reasonably be expected to be located within wetlands or other surface waters,

in the same drainage basin, based upon the comprehensive plans, adopted pursuant to Chapter 163, F.S., of the local governments having jurisdiction over the activities, or applicable land use restrictions and regulations.

**TABLE 4.2.7-1 Correct misspelled names**  
**LISTED WILDLIFE SPECIES THAT ARE AQUATIC OR WETLAND DEPENDENT**  
**AND THAT USE UPLAND HABITATS FOR NESTING OR DENNING**

**Reptiles**

Species of special concern

Alligator mississippiensis (American alligator)  
 Graptemys barbouri (Barbour's map turtle; Barbour's sawback turtle)  
 Macrolemys temminickii ~~temmincki~~ (alligator snapping turtle)  
 Pseudemys concinna suwanniensis (Suwannee cooter)

**Birds**

Species of special concern

Ajaia ajaia (roseate spoonbill)  
 Ammodramus maritimus junciculus (Wakulla seaside sparrow)  
 Ammodramus maritimus peninsulae (Scott's seaside sparrow)  
 Aramus guarauna ~~quarauna~~ (limpkin)  
 Cistothorus palustris griseus (Worthington's marsh wren)  
 Cistothorus palustris marianae (Marian's marsh wren)  
 Egretta caerulea (little blue heron)  
 Egretta rufescens (reddish egret)  
 Egretta thula (snowy egret)  
 Egretta tricolor (tricolored heron; Louisiana heron)  
 Eudocimus albus (white ibis)  
 Haematopus palliatus (American oystercatcher)  
 Pandion haliaetus (osprey) LISTED ONLY IN MONROE COUNTY  
 Pelecanus occidentalis (brown pelican)  
 Rhynchops niger (black skimmer)

**Mammals**

Endangered

Felis concolor coryi (Florida panther)  
 Microtus pennsylvanicus dukecambelli (Duke's saltmarsh vole; Florida saltmarsh vole)  
 Myotis grisescens (gray bat)  
 Myotis sodalis (Indiana bat)  
 Odocoileus virginianus clavium (Key deer; toy deer)  
 Oryzomys argentatus ~~agentatus~~ (silver rice rat)  
 Sylvilagus palustris hefneri (Lower Keys marsh rabbit)

**4.3.1.6 add F.S. after cite**



Except as provided in subsection 373.414(6), F.S., mitigation for certain mining activities shall be in accordance with subsection 373.414(6), F.S.

**4.3.2 Mitigation Ratio Guidelines** **Correction – “Rule” should be “Chapter”**

a. For applications received on or after February 2, 2004, except as provided in Chapter Rule 62-345, F.A.C., Sections 4.3.2 - 4.3.2.4 are superseded by Chapter Rule 62-345, F.A.C.

**4.3.7.8 Financial Responsibility Conditions** **Correction – “section” should be “Rule” per 1B-30.0015**

For applicants subject to the financial responsibility of subsections 4.3.7 - 4.3.7.9, the District will include the following conditions on the permit.

- (c) When transferring a permit in accordance with Rule section 40E-4.351, F.A.C., the new owner or person with legal control shall submit documentation to satisfy the financial responsibility requirements of subsections 4.3.7 - 4.3.7.9. The prior owner or person with legal control of the project shall continue the financial responsibility mechanism until the District has approved the permit transfer and substitute financial responsibility mechanism.

**4.4.13.5 Procedures for Establishment of Mitigation Banks** **Correction – “section” to “Rule” per 1B-30.0015**

Mitigation Banks established by the Department shall be permitted pursuant to the procedures encompassed in the Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S. adopted by reference in Rule Section 40E-4.091, F.A.C.

**5.1 State Standards – abbreviate F.A.C. to be consistent with other cites**

Projects shall be designed and operated so that off-site discharges will meet State water quality standards, as set forth in Chapter 62-302, F.A.C. ~~Florida Administrative Code~~.

**5.2.2 Land Use and Coverage Criteria** **abbreviate F.S. and F.A.C. to be consistent with other cites**

- (b) Projects having greater than 40% impervious area and which discharge directly to the following receiving waters shall provide at least one half inch of dry detention or retention pretreatment as part of the required retention/detention. Receiving waters being addressed are:
  - 4. Other areas, such as the Savannas in St. Lucie and Martin Counties; the Six Mile Cypress Strand; the Big Cypress area of Collier County; and lands acquired by the District pursuant to Section 373.59, F.S. ~~Florida Statutes~~, Water Management Lands Trust Fund (Save Our Rivers); mitigation bank lands, as set forth in Section 4.4.

5. Outstanding Florida Waters as defined in Chapter 62-302, F.A.C. Florida Administrative Code; and Aquatic Preserves as created and provided for in Chapter 258, F.S. Florida Statutes.

#### **5.9.1 abbreviate to be consistent with other cites**

- (a) There are areas within the District where water quality considerations are extremely important, because of the sensitivity of the area. These areas include:
  1. Lake Okeechobee and the Kissimmee River.
  2. Water bodies designated as Class I or Class II waters by the Florida Department of Environmental Protection.
  3. Canals back-pumped to Lake Okeechobee or to the Conservation areas, or proposed for back-pumping.
  4. Sensitive areas, such as the Savannas in St. Lucie and Martin Counties, the Six Mile Cypress Strand and Estero Bay Aquatic Preserve in Lee County and the Big Cypress area of Collier County.
5. Outstanding Florida Waters as defined in Chapter 62-302, F.A.C. Florida Administrative Code

### **9.0 OPERATING ENTITY REQUIREMENTS**

#### **9.1 General Requirements – abbreviate to be consistent with other cites; add “paragraph” to citation in (b) per 1B-30.0015**

- (a) The District considers the following entities acceptable to satisfy permit limiting condition 40E-4.381(1)(h):
  1. Local governmental units including counties or municipalities, or Municipal Service Taxing Units.
  2. Active Chapter 298, F.S. Florida Statutes water control districts or drainage districts, or Chapter 190, F.S. Florida Statutes Community Development Districts or Chapter 170, F.S. Florida Statutes, ~~Special Assessment Districts.~~
- (b) To satisfy permit limiting condition paragraph 40E-4.381(1)(h), F.A.C., the Permittee must supply appropriate written proof, such as either by letter or resolution from the governmental entity that the governmental entity will accept the operation and maintenance of all the surface water management system components; or draft corporation/association documents prior to staff report approval. For Class I and II solid waste sites the entity will be responsible for

perpetual maintenance of the surface water management system after closure of the facility.

#### **9.2.2 abbreviate to be consistent with other cites**

- (a) If a Condominium Association is proposed, the Permittee must submit the draft Articles of Incorporation and the Declaration of Condominium, as well as a reference map if referred to in the documents, for review and staff approval of the provisions meeting the requirements of this section. The Permittee must submit a recorded copy of the Declaration of Condominium and associated exhibits, a filed copy of the Articles of Incorporation and a copy of the Certificate of Incorporation prior to or simultaneous with the submittal of the Construction Completion/Construction Certification statement.
- (b) Compliance with the requirements of this section does not relieve the permittee of its duty to comply with the applicable provisions of Florida laws, specifically Chapters 617 or 718, F.S. Florida Statutes.

#### **9.2.4 correct clerical error**

The Association must have the following covenants and restrictions, which shall be set forth in the Declaration of Protective Covenants, Deed Restrictions, Declaration of Condominium, or other recorded document which sets forth the Association's rules and regulations:

- (f) If wetland mitigation monitoring will be required and the operational entity will be responsible to carry out this obligation, the rules and regulations shall state that it will be the association's responsibility to complete the task successfully, including meeting ~~including~~ all conditions associated with mitigation maintenance and monitoring.

### **APPENDIX 6 abbreviate Florida Statutes**

#### **ABOVE GROUND IMPOUNDMENTS**

#### **1.0 INTRODUCTION**

##### **1.1 Purpose**

This Appendix to the South Florida Water Management District's Basis of Review for Surface Water Management Permit Applications has been prepared to elaborate on the criteria and standards applicable to above ground impoundments in accordance with the definition and requirements for "dams" in Part IV of Chapter 373, F.S. Florida Statutes. The content herein is not intended to be all inclusive of all possible situations, but is intended to provide guidelines and basic performance criteria wherever possible on design criteria for the situations commonly encountered for most typical south Florida situations. Because dam performance is a function of construction, operation and maintenance as well as design, information on those subjects is

7/27/10

included. The basic responsibility for dam performance remains vested in the owner or permittee through appropriate representation by his engineer in accordance with State laws.

**Technical changes:**

**40E-0.107 Emergency Action. Rule reference repealed – see attached notice regarding repeal and transfer**

(3) The procedures under this rule are provided in addition to the procedures set forth in Rule 28-106.501 ~~28-107.005~~, F.A.C.

**40E-1.021 Definitions. Correction to website address**

When used in this chapter, Chapters 40E-4, 40E-40, 40E-41, 40E-61, and 40E-400, F.A.C.:

(1) “e-Permitting website” means the District’s website address for e-Permitting at <http://www.sfwmd.gov/ePermitting> ~~http://my.sfwmd.gov/ePermitting~~. After accessing the e-Permitting website, the user clicks the start icon on the e-Permitting homepage.

**40E-1.601 General. Rule reference repealed – see attached notice regarding repeal and transfer**

All District actions regarding the application for issuance, denial, modification, suspension, and revocation of permits shall be governed by Sections 120.569, 120.57, and 120.60, F.S., and the rules in Chapter 28-106 ~~28-107~~, F.A.C., and this part.

**40E-1.603 Application Procedures for Conceptual Approval, Individual and General Permits. Rule reference repealed – see attached notice regarding repeal and transfer; correction from “rule” to “chapter” per 1B-30.0015**

(1) The following procedures for processing permit applications or notices of intent apply in addition to the requirements of Section 120.60, F.S., and Chapter Rule 28-106 ~~28-107.002~~, F.A.C.

**40E-1.608 Denial of Permits. Rule reference repealed – see attached notice regarding repeal and transfer**

(1) Procedures concerning the District’s denial of permit applications are contained in the Uniform Rules of Procedure, Chapter 28-106 ~~Rule 28-107.003~~, F.A.C.

**40E-1.609 Suspension, Revocation and Modification of Permits. Rule reference repealed – see attached notice regarding repeal and transfer**

(1) Procedures concerning the District’s suspension, revocation and modification of a permit are contained in the Uniform Rules of Procedure, Rule 28-106.2015 ~~28-107.004~~, F.A.C.

**40E-1.611 Emergency Action. Rule reference repealed – see attached notice regarding repeal and transfer**

The following applies to emergency actions, in addition to the procedures in Uniform Rules of Procedure Rule 28-106.501 ~~28-107.005~~, F.A.C.

**40E-1.615 Coordinated Agency Review Procedures for the Florida Keys Area of Critical State Concern. Rule reference repealed**

(3)(a) The Coordinated Review Application shall consist of the application information required by Rules 40E-1.603 ~~or 40E-1.606~~, F.A.C., and Rules 40E-2.101 (Content of Application) or 40E-4.101 (Content of Application), F.A.C.

**40E-1.659 Forms and Instructions. Correct telephone number and delete obsolete forms or forms not required to be used by public**

The following forms and instructions are incorporated by reference throughout the District's rules as specified below and are listed herein for convenience. Copies can be obtained without cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045 ~~432-8045~~, ext. 6436, or (561) 682-6436 or online at [www.sfwmd.gov](http://www.sfwmd.gov):

Form No.	Date	Title
0113	8-95	<del>Surface Water Management Permit No.</del>
0115	8-95	<del>Surface Water Management Permit Modification No.</del>
0119	8-95	<del>Wetland Resource Permit No.</del>
0122	4-93	<del>Application to the South Florida Water Management District for Authority to Utilize Works or Land of the District</del>
0145	8-95	<del>Environmental Resource Permit No.</del>
0157	8-95	<del>Environmental Resource Permit Modification No.</del>
0299	1-90	<del>Water Use Permit No.</del>
0779	5-92	<del>Guidance for Preparing an Application for a "Works of the District" Permit in the Everglades/ Application for a Works of the District Permit</del>
0941	8-95	<del>Environmental Resource Standard/Noticed General Permit No.</del>
0942	8-95	<del>Surface Water Management General Permit No.</del>
0970	8-07	<del>Applicant Transmittal Form for Requested Additional Information</del>

**40E-1.711 Orders of Corrective Action and Consent Agreements. Rule reference repealed – see attached notice regarding repeal and transfer**

(1) Orders of Corrective Action.

(a) An order of corrective action may accompany and be served with an administrative complaint upon an alleged violator pursuant to Rule 28-106.2015 ~~40E-1.705~~, F.A.C. An order of corrective action shall include a description of remedial action, with implementation timeframes, and shall, if applicable, set forth any damages, costs of investigation, or other demands that the District is authorized to recover pursuant to Chapter 373 or Chapter 403, F.S. Unless a responsive pleading and request for a Section 120.57, F.S., administrative hearing is filed within fourteen (14) days after service of the order of corrective action, the order for corrective action shall become final and effective, and shall constitute a final adjudication of the matters alleged, subject only to judicial review under Chapters 120 or 373, F.S.

(b) No Change.

(2) through (3) No Change.



**40E-4.010 Review of Environmental Resource Permit Applications. Rule reference repealed – see attached notice regarding repeal and transfer**

Environmental Resource permit applications are processed pursuant to the provisions of Section 120.60, F.S., Part VI of Chapter 40E-1 and 28-106 ~~28-107~~, F.A.C.

**40E-4.021 Definitions. Correction to website address**

(12) “e-Permitting website” means the District’s website address for e-Permitting at <http://www.sfwmd.gov/ePermitting> ~~<http://my.sfwmd.gov/ePermitting>~~. After accessing the e-Permitting website, the user clicks the start icon on the e-Permitting homepage.

**40E-4.051 Exemptions From Permitting. correct name of agency; correct law implemented**

(8) Construction of Freshwater Fish Attractors.

Construction of freshwater fish attractors by Florida Fish and Wildlife Conservation Commission ~~Florida Game and Fresh Water Fish Commission~~, U.S. Forest Service, and county and municipal governments, provided that the material to be used shall be clean concrete, rock, brush, logs, or trees, and shall be free of soils, preservatives, oil, grease, debris, litter, putrescible substances, “white goods,” asphalt materials, tires, or other pollutants, and shall be firmly anchored to the bottom of the waterbody. The size of an individual fish attractor shall not exceed one quarter of an acre in area. The material shall be placed so that the top of the fish attractor is at least three (3) feet below the surface of the water at ordinary low water and shall be outside any posted navigational channels. No fish attractor material shall be placed on or in areas vegetated by native aquatic vegetation. The site shall be marked with a buoy or buoys to ensure that no material is deposited outside of the site.

*Specific Authority 373.044, 373.113, 373.171, F.S. Law Implemented 373.406, 373.413, 373.416, 373.813(1), 403.813(1), ~~403.813(2)~~; F.S. History – New 9-3-81, Amended 1-31-82, 3-9-83, Formerly 16K-4.02, Amended 4-20-94, 10-3-95, 5-28-00, 9-2-01, 4-14-03, 9-9-07.*

**40E-4.0515 Exemptions From Specified Review Criteria. delete comma and add “and” to (1)(a)4., (1)(b)2. and (1)(g)**

Exemptions from specified review criteria under Chapters 40E-4 and 40E-40, F.A.C., are as follows:

(1) Exemptions for Treatment or Disposal Systems.

(a) 1. through 3. No Change.

4. Works, impoundments, reservoirs, and other watercourses of less than 0.5 acres in combined areas on a project-wide basis, constructed and operated solely for stormwater treatment before a permit being required under Chapters 62-25; and 40E-4, F.A.C.

(b) No Change.

1. No Change.

2. Works, impoundments, reservoirs, and other watercourses of 0.5 acres or greater in combined area on a project-wide basis, constructed and operated solely for stormwater treatment before a permit was required under Chapters 62-25; and 40E-4, F.A.C.

(c) through (f) No Change.

(g) As used in this subsection, “solely for” means the reason for which a work, impoundment, reservoir, or other watercourse is constructed and operated, and such construction and operation would not have occurred but for the purposes identified in paragraphs (a) and (b)

above. Furthermore, the phrase does not refer to a work, impoundment, reservoir, or other watercourse constructed or operated for multiple purposes. Incidental uses, such as occasional recreational uses, will not render the exemption inapplicable, so long as the incidental uses are not part of the original planned purpose of the work, impoundment, reservoir or other watercourse. However, for those works, impoundments, reservoirs, or other watercourses described in subparagraphs (a)3. and (b)1., use of the system for flood attenuation, whether originally planned or unplanned, shall be considered an incidental use so long as the works, impoundments, reservoirs, and other watercourses are no more than two acres larger than the minimum area required to comply with the applicable stormwater treatment requirements of Chapters 40E-4, 62-25; and 62-330, F.A.C. For the purposes of this subsection, reuse from a work, impoundment, reservoir, or other watercourse is part of treatment or disposal.

**40E-4.331 Modification of Permits. Change title**

(2) (a) through (b) No Change.

(c) Modifications pursuant to paragraph (2)(b) above are acknowledged and approved by letter from the Water Resource Regulation Department Director or designee through correspondence to the permittee.

**40E-4.341 District Revocation or Modification of Permits. Rule reference repealed – see attached notice regarding repeal and transfer**

(1) The Governing Board may revoke a permit in accordance with the provisions of Sections 373.429 and 120.60(5), F.S., and Rules 40E-1.609 and 28-106.2015 ~~28-107.004~~, F.A.C.

**40E-4.381 General Conditions. correct typo, and correct clerical error**

(1) No Change.

(a) through (l) No Change.

(m) The permittee must obtain a water use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to subsection 40E-20.302(4), F.A.C., also known as at the “No Notice” rule.

(n) through (s) No Change.

(2) In addition to those general conditions set forth in subsection (1), the Governing Board shall impose on any permit granted under this chapter and Chapter 40E-40, F.A.C., such reasonable project-specific special conditions as are necessary to ensure ~~assure~~ that the permitted system will meet the conditions for issuance in Rules 40E-4.301 and 40E-4.302, F.A.C. Upon receipt of notice of proposed agency action, any substantially affected persons shall have the right to request a hearing in accordance with Rules 40E-1.511 and 40E-1.521, F.A.C.

**40E-40.010 Review of Environmental Resource Standard General Permit Applications. Rule reference repealed – see attached notice regarding repeal and transfer**

Environmental Resource Standard General permit applications are processed pursuant to Section 120.60, F.S., Part VI of Chapter 40E-1, F.A.C., and Chapter 28-106 ~~28-107~~, F.A.C.

**40E-40.042 Standard General Permit for Incidental Site Activities. Change in title**

(5) Authorization to conduct incidental site activities pursuant to this rule must be approved by the Water Resource Regulation Department Director or designee by letter to the applicant.

**40E-40.051 Standard General Permit Authorization. Changes in titles**

(4) For applications for standard general permits, the Governing Board delegates to and appoints the Executive Director, Deputy Executive Director, Water Environmental Resources Regulation Department Director, Water Environmental Resources Regulation Department Deputy Director, Environmental Resource Permitting Natural Resource Management Division Director, Surface Water Management Division Directors and Service Center Directors, as its agents for the purposes of reviewing and issuing these permits.

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

(1) The Governing Board delegates to and appoints the Executive Director, Deputy Executive Director, Water Environmental Resources Regulation Department Director, Water Environmental Resources Regulation Department Deputy Director, Environmental Resource Permitting Natural Resource Management Division Director, Surface Water Management Division Directors and Service Center Directors, 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, Deputy Executive Director, Water Resource Regulation Department Director, Water Resource Regulation Department Deputy Director, Environmental Resource Permitting Natural Resource Management Division Director, Surface Water Management Division Directors and Service Center Directors, 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.

**40E-41.143 Application of Part II. Rule references repealed**

(3) All projects located within the Kissimmee River Basin requiring permits pursuant to Rules 40E-6.041 and 40E-6.331, F.A.C., shall comply with the criteria set forth in Rules 40E-6.121, 40E-6.221 ~~40E-6.304~~ and 40E-41.165, F.A.C.

(4) The criteria set forth in Rule 40E-41.165, F.A.C., shall be considered more restrictive than that set forth in Rules 40E-6.121 and 40E-6.221 ~~40E-6.304~~, F.A.C. The most restrictive criteria will be applicable.

**40E-400.010 Review of No Notice and Noticed General Environmental Resource Permit Applications. Rule reference repealed – see attached notice regarding repeal and transfer**

No Notice and Noticed General Environmental Resource permit applications are processed pursuant to the provisions of Section 120.60, F.S., Part VI of Chapter 40E-1, F.A.C., and Chapter 28-106 ~~28-107~~, F.A.C.

**40E-400.417 General Permit for Construction, Alteration or Maintenance of Boat Ramps and Associated Accessory Docks. Update rulemaking authority and law implemented**

*Specific Authority 373.044, 373.113, 373.118, 373.171, 373.406 FS. Law Implemented 373.118, 373.406, 373.413, 373.416, 373.426 FS. History–New 10-3-95, Amended 4-14-03.*

**40E-400.455 General Permit for the Construction of Aerial Pipeline, Cable, or Conduit Crossings of Certain Waters. Spell out Department**

(1)(a) The crossing is not located in Outstanding Florida Waters, Outstanding National Resource Waters, Aquatic Preserves, Class I waters, Class II waters, or waters approved, conditionally approved, restricted or conditionally restricted by the Department of Environmental Protection for shellfish harvesting. For the purposes of this section, aerial pipeline, cable or conduit crossings include pipelines, cables and conduits transporting the following materials: potable water, raw non-wastewater, including well water and reservoir water, reclaimed water, domestic wastewater, phosphate matrix slurry, phosphatic clay or sand tailings, recirculated water from beneficiation processes, electrical power cables and conduits that are not subject to the provisions of Sections 403.52-.539, F.S., and telephone and other electronic communication cables and conduits;

**40E-400.485 General Permit to the Department for Environmental Restoration or Enhancement Activities. Rule reference repealed**

(2) In order to qualify for this general permit, the environmental restoration or enhancement project must comply with any one of the following procedures:

(a) The project is part of a Surface Water Improvement And Management Plan developed pursuant to Section 373.453, F.S., that is reviewed by the Department and approved by a Water Management District ~~in accordance with Section 373.456, F.S.;~~ or