

NOTICE OF PROPOSED RULE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

RULE NO.: RULE TITLE:

40E-1.602 Permits Required

40E-1.6058 Posting, Publication and Requests for Notification of Permit Applications or Notices of Intent.

40E-1.659 Forms and Instructions

40E-1.715 Civil Penalty Calculation

PURPOSE AND EFFECT: To delete obsolete language, update rule references and noticing options for permit applications, repeal an unnecessary rule, and update the civil penalties calculation rule to be consistent with Florida Statutes.

SUMMARY: The proposed rule amendments include: 1) deleting obsolete language and updating a rule reference in Rule 40E-1.602; 2) clarifying use of the District's ePermitting system in Rule 40E-1.6058; 3) repealing Rule 40E-1.659, which provides a list of forms and instruction incorporated by reference throughout the District's rules, because it is redundant and not necessary; 4) updating the civil penalty amount in Rule 40E-1.715 to be consistent with section 373.129, F.S., and 5) removing the incorporated civil penalty matrices in Rule 40E-1.715 as not necessary.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The agency has determined that this rule will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The District completed the Governor's Office of Fiscal Accountability and Regulatory Reform (OFARR) form "Is a SERC Required?" and prepared a summary of the proposed rule amendments, both of which are available upon request. Based on the completed "Is a SERC Required?" form and the District's summary and analysis performed to prepare and complete said documents, the proposed rule amendment does not require legislative ratification pursuant to subsection 120.541(3), F.S.

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

RULEMAKING AUTHORITY (formerly “Specific Authority”): 120.53(1), 373.044, 373.113, 373.116, 373.118, 373.171, 373.333(1), 373.4131, 373.4135, 373.4136, 373.416, FS

LAW IMPLEMENTED: 120.60, 120.60(3), 120.69, 373.085, 373.106, 373.113, 373.116, 373.118, 373.119, 373.129, 373.171, 373.209(3), 373.216, 373.309, 373.323, 373.413, 373.4135, 373.4136, 373.414, 373.416, 373.430, 373.603, 668.50, FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Natalie Cole, Environmental Section Administrator, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (561) 682-6033, ncole@sfwmd.gov.

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-1.602 Permits Required.

Unless expressly exempt by statute or District rule, permits must be obtained from the District prior to commencement of the following activities:

(1) through (5) No Change.

(6) A proprietary authorization pursuant to Chapters 253 and 258, F.S., is required and shall be reviewed by the District for all activities which require a permit under Chapter 62-330 or 40E-4, F.A.C., or a permit under Sections 373.414(11)-(16), F.S., and which are located on submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund pursuant to Section 373.427, F.S., Chapter 18-21, F.A.C. and Rules 18-18.014 and ~~62-343.075~~, F.A.C.

(7) and (8) No Change.

~~(9) A Use of Works of the District within the Lake Okeechobee Basin General or Individual Permit must be obtained pursuant to Chapter 40E-61, F.A.C., by any owner of a parcel of land within the Lake Okeechobee Basin.~~

~~(9)~~ (10) An Occupancy or Use of the C-18 Right of Way general or individual permit pursuant to Chapter 40E-62, F.A.C., must be obtained prior to constructing, planting, maintaining, pruning, mooring boats, and placing other items on, across, under, or upon District lands and works along the C-18 canal right of way.

~~(10)~~ (11)) No Change.

Rulemaking Authority 373.044, 373.113, 373.4131, 373.4135 FS. Law Implemented 120.60, 373.085, 373.106, 373.116, 373.118,

373.119, 373.171, 373.216, 373.309, 373.323, 373.413, 373.414, 373.416 FS. History—New 9-3-81, Formerly 16K-1.06, Amended 7-26-87, 5-11-93, 10-3-95, 4-1-96, 10-1-13, 7-14-14, _____.

40E-1.6058 Posting, Publication and Requests for Notification of Permit Applications or Notices of Intent

(1) Notice of Receipt of Permit Application or Notice of Intent. Persons who wish to be notified ~~in writing or by electronic mail~~ of any permit application or notice of intent which affects a designated geographic area shall notify the District through the District's ePermitting website at www.sfwmd.gov/ePermitting, in writing, or by electronic mail, and shall specify their area of interest by county. Requests must be renewed every 6 months. The District shall provide notice through ePermitting, in writing, or by electronic mail of receipt of a application or notice of intent to all persons who have filed in the preceding 6 months a written or electronic request for notification of any application or notice of intent affecting the designated geographic area in which the proposed activity is to occur.

(2) No Change.

(3) Interested persons shall have the opportunity to view permit applications through ePermitting, or inspect a copy of the permit application at the appropriate District Service Center and submit written comments, which shall be considered by the District if received before the District issues proposed agency action concerning the application. Where appropriate, the District shall request that persons submitting comments furnish additional information reasonably necessary to ascertain the nature of the comments.

(4) Persons who wish to be advised of the proposed agency action regarding a particular permit application shall submit through ePermitting, in writing, or by electronic mail a file a written or electronic request for further notice within 14 days of receipt of the notice of application.

~~(5) The governing board may charge a subscription fee for information requested in accordance with this section to any person who has filed a written or electronic request for notification of any pending applications, pursuant to Rule 40E-1.125, F.A.C.~~

Rulemaking Authority 373.044, 373.113, 373.116, 373.118 FS. Law Implemented 120.60(3), 373.116, 373.118, 668.50 FS. History—New 10-3-95, Amended 7-2-98, 6-12-00, 10-1-06, 12-15-11, 1-19-14, _____.

40E-1.659 Forms and Instructions.

Rulemaking Authority 218.075, 373.044, 373.113, 373.171, 373.4136, 373.416, 695.03, 704.06 FS. Law Implemented 218.075, 373.113, 373.4135, 373.4136, 373.416, 704.06 FS. History—New 9-3-81, Amended 12-1-82, 3-9-83, Formerly 16K-1.90, Amended

7-26-87, 11-21-89, 1-4-93, Formerly 40E-1.901, Amended 5-11-93, 4-20-94, 10-3-95, 6-26-02, 8-14-02, 8-31-03, 9-16-03, 9-20-04, 2-12-06, 1-23-07, 8-7-07, 7-4-10, 12-15-11, 5-20-12, 10-23-12, 10-1-13, 7-14-14, 9-7-15, 8-7-16. Repealed _____.

40E-1.715 Civil Penalty Calculation.

~~(1)~~ Consistency and equitable treatment are essential elements of the District's enforcement guidelines. Therefore, the District has developed two civil penalty matrices (CPM) for use in calculating appropriate civil penalties in enforcement actions. The ~~Consumptive Use CPM, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01532>~~, is incorporated by reference herein and utilized for violations of Chapters 40E-2, 40E-3, 40E-5, 40E-20 and 40E-21, F.A.C. The ~~Environmental Resource CPM, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01533>~~, is incorporated by reference herein and utilized for violations of Chapters 40E-4, 40E-40, 40E-41, 40E-61, 40E-63 and 40E-400, F.A.C. Copies of the CPMs are also available at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33405, 1(800) 432-2045, ext. 6436, or (561) 682-6436.

~~(1) (2)~~ The District has the authority under Section 373.129, F.S. to assess ~~The CPM is the initial basis for determining the appropriate amount for a particular penalty. The CPM reflects the District's statutory authority under Section 373.129, F.S., to seek civil penalties of up to \$15,000~~ \$10,000 per day, per violation. ~~The CPM is comprised of two principle components:~~

- ~~(a) The actual or potential harm to the public and the environment that may occur as a result of the violation; and~~
- ~~(b) The extent of deviation from statutory or regulatory requirements.~~

~~(2) (3)~~ No Change.

~~(3) (4)~~ No Change.

~~(4) (5)~~ No Change.

Rulemaking Authority 120.53(1), 373.044, 373.113, 373.333(1) FS. Law Implemented 120.69, 373.129, 373.209(3), 373.430, 373.603 FS. History—New 10-3-95, Amended 10-23-12, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jill Creech, Regulation Director

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 8, 2024

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: December 28, 2023