

Rules of the South Florida Water Management District

Consumptive Use Chapter 40E-2, F.A.C



Effective: March 18, 2010

CHAPTER 40E-2 Consumptive Use

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40E-2.010 Review of Consumptive Use Permit Applications.

Consumptive use permit applications are processed pursuant to Section 120.60, Florida Statutes, Part VI of Chapters 40E-1 and 28-107, F.A.C.

Specific Authority 120.54(5), 120.60 FS. Law Implemented 120.54(5), 120.60 FS. History—New 7-2-98.

40E-2.011 Policy and Purpose.

(1) It is the policy of the District to control all water uses within its boundaries, pursuant to the provisions of Chapter 373, Florida Statutes, and Chapter 62-40 and Title 40E, F.A.C.

(2) The rules in this chapter implement the comprehensive water use permit system contemplated in Part II of Chapter 373, Florida Statutes.

(3) Additional rules relating to water use are found in Chapter 40E-5, F.A.C., (Artificial Recharge), Chapter 40E-8, F.A.C., (Minimum Flows and Levels), Chapter 40E-10, F.A.C., (Water Reservations), Chapters 40E-20, F.A.C., (General Water Use Permits), 40E-21, F.A.C., (The Water Shortage Plan), 40E-22, F.A.C., (Regional Water Shortage Plans) and 40E-23, F.A.C., (Water Resource Caution Areas).

(4) Standards for the construction, repair and abandonment of water wells are found in Chapters 40E-3 (Water Wells) and 40E-30 (General Permits for Water Wells), F.A.C.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.103(1), 373.203, 373.216, 373.249 FS. History—New 9-3-81, Formerly 16K-2.01, Amended 7-4-82, 2-24-85, 11-18-91, 8-1-02, 8-31-03, 7-2-09.

40E-2.031 Implementation.

(1) The effective dates for the water use permitting program established in this chapter are:

(a) If the use or withdrawal of water exceeds 100,000 gallons per day, the effective dates are:

1. January 12, 1977, for the portion of the District formerly within the Ridge and Lower Gulf Coast Water Management District,
2. March 2, 1974, for the remainder of the District;

(b) If the use or withdrawal of water does not exceed 100,000 gallons per day, the effective date is January 14, 1979.

(2) The effective dates specified in subsection (1) are used to determine the two year period provided in Section 373.266, Florida Statutes, for existing water users to file initial applications.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.103(1), 373.216, 373.226 FS. History—New 9-3-81, Formerly 16K-2.011.

40E-2.041 Permits Required.

(1) Unless expressly exempt by law or District rule, a water use permit must be obtained from the District prior to any use or withdrawal of water.

(2) The District issues water use permits in two forms, individual water use permits and general water use permits. An individual water use permit may be obtained by meeting the requirements of this chapter. Chapter 40E-20, F.A.C., provides the requirements for qualifying for a general water use permit.

(3) Under certain circumstances the Board or the Executive Director may issue a temporary water use permit pursuant to Rule 40E-2.441, F.A.C., and Section 373.244, Florida Statutes.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.103(1), 373.219, 373.244 FS. History—New 9-3-81, Formerly 16K-2.03(1), (2).

40E-2.051 Exemptions.

No permit is required under Rule 40E-2.041, F.A.C., for the following water uses:

(1) Water used strictly for domestic use at a single family dwelling or duplex provided that the water is obtained from one withdrawal facility for each single family dwelling or duplex.

(2) Water used strictly for fire fighting purposes.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.219 FS. History—New 9-3-81, Formerly 16K-2.025, Amended 2-24-85, 4-20-94, 3-15-10.

40E-2.061 No-Notice General Permit by Rule.

(1) The Board hereby grants a general water use permit by rule to each person that does not otherwise require a consumptive use permit, within the District to use, withdraw, or divert water at a single family dwelling or duplex including, but not limited to, home lawn and ornamental irrigation, car washing, and other incidental uses provided that water is obtained from a single on-site withdrawal facility, such as a

private irrigation well or surface water diversion, for each single family dwelling or duplex, provided that landscape irrigation is conducted in accordance with Chapters 40E-21 and 40E-24, F.A.C., or with any approved variance, and that the amount of water used is limited to only that necessary for efficient utilization.

(2) The filing of an application for a permit under this rule is not required.

(3) When reclaimed water is available, the use of a private irrigation well or surface water diversion for home lawn and ornamental irrigation is not authorized under this section. Reclaimed water is deemed available when reclaimed water is provided by a utility through a point of connection at the property boundary.

(4) Persons using or proposing to use water in a manner that differs from the conditions imposed by Chapter 40E-24, F.A.C., shall apply for a modification of this permit pursuant to subsection 40E-2.331(4), F.A.C.

(5) This no notice general permit by rule does not apply to domestic uses of water, such as water used for household purposes of drinking, bathing, cooking, sanitation, or other indoor uses, at single family dwellings and duplexes, which are addressed by subsection 40E-2.051(1), F.A.C.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.118, 373.219, 373.223 FS. History—New 3-15-10.

40E-2.091 Publications Incorporated by Reference.

The “Basis of Review for Water Use Permit Applications within the South Florida Water Management District – March 18, 2010,” is hereby published by reference and incorporated into this chapter. A current version of this document is available upon request.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.042, 373.0421, 373.109, 373.196, 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.236, 373.239, 373.250 FS. History—New 9-3-81, Formerly 16K-2.035(1), Amended 2-24-85, 11-21-89, 1-4-93, 4-20-94, 11-26-95, 7-11-96, 4-9-97, 12-10-97, 9-10-01, 12-19-01, 8-1-02, 6-9-03, 8-31-03, 4-23-07, 9-13-07, 2-13-08, 10-14-08, 7-2-09, 3-18-10.

40E-2.101 Content of Application.

(1) Applications for permits required by this chapter shall be filed with the District. The application shall contain:

(a) The following parts of Form 0645 Water Use Permit Applications, as incorporated by reference in Rule 40E-1.659, F.A.C.;

1. Part RC-1A Administrative Information for Water Use Permit Applications;
2. Part RC-1W Application for a Water Use Permit;

(b) The appropriate permit application processing fee required by Rule 40E-1.607, F.A.C.;

(c) The information required in subsection 373.229(1), Florida Statutes; and

(d) Information sufficient to show that the use meets the criteria and conditions established in Rule 40E-2.301, F.A.C.

(2) The application must be signed by the applicant or the authorized agent of the applicant.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.103(1), 373.219, 373.223, 373.229 FS. History—New 9-3-81, Amended 12-1-82, 2-24-85, 11-21-89, Repromulgated 1-4-93, Amended 4-20-94, 8-1-02.

40E-2.301 Conditions for Issuance of Permits.

(1) In order to obtain a permit, permit renewal, or permit modification under this chapter, an applicant must give reasonable assurances that the proposed water use at the time the permit application is deemed complete:

- (a) Will not cause harmful saline water intrusion;
- (b) Will not harm offsite land uses;
- (c) Will not cause harm to wetlands or other surface waters;
- (d) Will not cause pollution of the water resources;
- (e) Is otherwise a reasonable-beneficial use as defined in subsection 373.019(13), F.S., with consideration given to the factors set forth in Rule 62-40.410, F.A.C.;
- (f) Will not interfere with presently existing legal uses;
- (g) Is in accordance with Section 373.2295, F.S., concerning interdistrict transfer of groundwater and Section 373.223(3), F.S., concerning water transport and use of groundwater or surface water across county boundaries.
- (h) Makes use of a reclaimed water source in accordance with the criteria contained in the “Basis of Review for Water Use Permit Applications within the South Florida Water Management District”, incorporated by reference in Rule 40E-2.091, F.A.C.
- (i) Is in accordance with the established minimum flows and levels and implementation provisions in Chapter 373, F.S., this chapter and Chapter 40E-8, F.A.C.; and
- (j) Is consistent with Sections 373.016 and 373.036, F.S., and otherwise is consistent with the public interest as prescribed by Chapter 373, F.S., and this chapter.
- (k) Will not withdraw water reserved under Chapter 40E-10, F.A.C.

(2) In order to satisfy the conditions for permit issuance in subsection (1), the permit applicant must provide reasonable assurances that the criteria in the “Basis of Review for Water Use Permit Applications within the South Florida Water Management District”, incorporated by reference in Rule 40E-2.091, F.A.C., are met.

Rulemaking Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.036, 373.042, 373.103(4), 373.1501, 373.1502, 373.223, 373.229, 373.2295, 373.470 FS. History—New 8-14-02, Amended 8-31-03, 4-23-07, 2-13-08, 7-2-09.

40E-2.321 Duration of Permit.

General Duration Provision. When requested by an applicant, a consumptive use permit shall have a duration of 20 years provided the applicant provides sufficient data to demonstrate reasonable assurance that the proposed use meets the conditions for issuance for the requested 20 year permit duration; or otherwise, permits may be issued for a shorter duration that reflects the period for which such reasonable assurances can be provided. This determination will be made pursuant to requirements in Rule 40E-2.301, F.A.C., and the “Basis of Review for Water Use Permit Applications within the South Florida Water Management District”, incorporated by reference in Rule 40E-2.091, F.A.C.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.236 FS.

History—New 9-3-81, Amended 2-24-85, 4-20-94, 7-11-96, 8-31-03, 4-23-07, 2-13-08.

40E-2.331 Modification of Permits.

(1) A permittee shall apply to the District for approval of any modification of an unexpired permit pursuant to Section 373.239, F.S., and Rule 40E-1.609, F.A.C.

(2) Applications for modification, except letter modifications issued pursuant to subsection (4), shall contain the information required in Rule 40E-2.101, F.A.C., will be evaluated using the criteria specified in Rule 40E-2.301, F.A.C., and will be subject to the limiting conditions specified in Rule 40E-2.381, F.A.C. Modifications shall be approved if criteria in Rule 40E-2.301, F.A.C., are met.

(3) Proposed increases in allocation will be treated as new uses to the extent the proposed allocation exceeds the existing allocation.

(4)(a) Modification of an existing water use permit shall be approved by letter, provided the permit is in compliance with all applicable limiting conditions and the modification request:

1. Does not result in an increase in the amount of the permit allocation;
2. Does not modify the existing permit expiration date, except that when the permit duration is based upon the current lease expiration date, the permit duration shall be extended by letter modification to the new lease date, but shall not exceed the applicable permit duration pursuant to Rule 40E-2.321, F.A.C.;
3. Does not potentially interfere with any presently existing legal use of water, cause environmental harm, saltwater intrusion, pollution of the water resources, harm to offsite land uses, does not withdraw water reserved under Chapter 40E-10, F.A.C., or does not otherwise raise issues requiring a Staff determination of whether such impacts would occur pursuant to the “Basis of Review for Water Use Permit Applications within the South Florida Water Management District”, incorporated by reference in Rule 40E-2.091, F.A.C.; and
4. Does not change the permitted withdrawal source(s) or use classification.
5. Does not result in a modification of the permit which must be approved by the Governing Board pursuant to Section 373.239(2), F.S.
6. Does not allow more cumulative days and time to conduct landscape irrigation pursuant to Chapter 40E-24, F.A.C., for those permits classified as landscape irrigation use.

(b) The timeframes set forth in Rule 40E-1.603, F.A.C., shall apply to the processing of letter modifications.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.223, 373.229, 373.239 FS. History—New 9-3-81, Formerly 16K-2.09(1), Amended 4-20-94, 7-11-96, 4-9-97, 12-10-97, 8-1-02, 4-23-07, 2-13-08, 7-2-09, 3-15-10.

40E-2.341 Revocation of Permits.

Violations of this chapter may result in the revocation or suspension of the authorization in whole or in part in accordance with the provisions of Chapter 373, including Sections 373.119 and 373.243, Florida Statutes, Chapter 120, Florida Statutes, and Rules 40E-1.609 and 28-107.004, F.A.C.

Specific Authority 373.044, 373.113 FS. Law Implemented 120.60(6), 373.103(4),

373.219, 373.229 FS. History—New 4-20-94, Amended 7-2-98.

40E-2.351 Transfer of Permits.

A permittee must comply with the requirements of Rule 40E-1.6107, F.A.C., in order to obtain a permit transfer to a new permittee. If the permit transfer is in conjunction with an application for permit modification, the permit shall be transferred at the time of permit modification if all applicable permit transfer criteria are met. Upon approval, all terms and conditions of the permit shall be binding on the transferee.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.223, 373.229, 373.239 FS. History—New 9-3-81, Formerly 16K-2.09(2), Amended 4-20-94.

40E-2.381 Limiting Conditions.

The Board shall impose on any permit granted under this chapter such reasonable standard and special permit conditions as are necessary to assure that the permitted use or withdrawal will be consistent with the overall objectives of the District, will not be harmful to the water resources of the District, is reasonable-beneficial, will not interfere with any presently existing legal uses, and is consistent with the public interest. Standard permit conditions in Section 5.1 of the “Basis of Review for Water Use Permit Applications within the South Florida Water Management District”, incorporated by reference in Rule 40E-2.091, F.A.C., shall be set forth in the permit. Special permit conditions, including those specified in Section 5.2 of the “Basis of Review for Water Use Permit Applications within the South Florida Water Management District”, incorporated by reference in Rule 40E-2.091, F.A.C., shall be set forth in the permit.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.219(1) FS. History—New 9-3-81, Amended 2-24-85, 7-26-87, 4-20-94, 7-11-96, 4-9-97, 12-10-97, 9-10-01, 8-1-02, 4-23-07, 2-13-08.

40E-2.441 Temporary Permits.

The Board or the Executive Director may issue temporary water use permits under the provisions of Section 373.244, Florida Statutes.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.244 FS. History—New 9-3-81, Amended 4-20-94.

40E-2.451 Emergency Authorization.

(1) Permission to begin use, withdrawal, or diversion of water prior to the issuance of a permit may be applied for in writing, when emergency conditions exist which would justify such permission. However, no such permission shall be granted unless the use, withdrawal, or diversion is already being considered for a permit under Rule 40E-2.041, F.A.C. A serious set of unforeseen or unforeseeable circumstances must exist to create an emergency. Mere carelessness or lack of planning on the part of the applicant shall not be sufficient grounds to warrant the granting of emergency authorization.

(2) Emergency authorizations shall be administered pursuant to Rule 40E-1.6115, F.A.C.

Specific Authority 373.044, 373.113 FS. Law Implemented 120.60(5), 373.219 FS. History—New 9-3-81, Formerly 16K-2.11, Amended 4-20-94, 7-2-98.

40E-2.501 Permit Classification.

Each water use permit shall be classified according to source, use and method of withdrawal. The source use and method of withdrawal classes are listed in Rules 40E-21.611 through 40E-21.691, F.A.C.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.246 FS. History—New 9-3-81, Formerly 16K-2.12(2), Amended 7-4-82.