

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

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



**Effective July 19, 2007**

On **August 20, 2010** minor corrections were made and incorporated to this Chapter Rule which did not require rulemaking. Since the effective date reflects a rule adopted through rulemaking, the effective date above will remain.

## **CHAPTER 40E-40 GENERAL ENVIRONMENTAL RESOURCE STANDARD PERMITS**

- 40E-40.010 Review of Environmental Resource Standard General Permit Applications
- 40E-40.011 Policy and Purpose
- 40E-40.021 Definitions
- 40E-40.031 Implementation
- 40E-40.041 Permit Thresholds
- 40E-40.042 Standard General Permit for Incidental Site Activities
- 40E-40.051 Standard General Permit Authorization
- 40E-40.061 Delegation of Authority Pertaining to General Environmental Resource Permits, General Surface Water Management Permits and Associated Sovereign Submerged Lands Authorizations
- 40E-40.091 Publications, Rules and Interagency Agreements Incorporated by Reference
- 40E-40.101 Content of Permit Application
- 40E-40.141 Request for Additional Information
- 40E-40.302 Conditions for Issuance of Permits
- 40E-40.321 Duration of Permits
- 40E-40.331 Modification of Permits
- 40E-40.341 District Revocation or Modification of Permits
- 40E-40.351 Transfer of Permits
- 40E-40.381 General Conditions
- 40E-40.391 Forms and Instructions
- 40E-40.407 Permit Application Processing Fees

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

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, F.A.C.

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

### **40E-40.011 Policy and Purpose.**

(1) The rules in this chapter authorize environmental resource standard general 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 general 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 general 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 general 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 general 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.*

#### **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 general 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.*

#### **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 general 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 general 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.*

#### **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, and

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

(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) 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.

*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.*

#### **40E-40.051 Standard General Permit Authorization.**

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

(2) Standard general 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 general 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 general permits, the Governing Board delegates to and appoints the Executive Director, Deputy Executive Director, Water Resource Regulation Department Director, Water Resource Regulation Department Deputy Director, Environmental Resource Permitting Division Director, Division Directors, and Service Center Directors, as its agents for the purposes of reviewing and issuing these permits.

(5) For standard general environmental resource permit applications, or permit applications under subsections 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), 373.103(6), 373.427 FS. History—New 10-3-95, Amended 4-1-96, 5-28-00, 7-19-07.*

**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, Deputy Executive Director, Water Resource Regulation Department Director, Water Resource Regulation Department Deputy Director, Environmental Resource Permitting Division Director, 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 Division Director, 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.

*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 general 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.*

**40E-40.302 Conditions for Issuance of Permits.**

In order to qualify for a standard general 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.*

**40E-40.321 Duration of Permits.**

Unless revoked or otherwise modified, the duration of a standard general 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.*

**40E-40.331 Modification of Permits.**

A request for modification of an environmental resource standard general 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.*

**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 Rules 40E-1.609 and 28-107.004, 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.*

**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 general 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 general 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 general 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.*

**40E-40.391 Forms and Instructions.**

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

(2) Forms and instructions are available at District Service Centers upon request.

*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.*

**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.*