



## **Audit of Permit Application Process**

**Project #15-08**

**Prepared by**  
Office of the Inspector General

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## SOUTH FLORIDA WATER MANAGEMENT DISTRICT

July 14, 2016

Governing Board Members

Re: Audit of Permit Application  
Process, *Project No. 15-08*

This audit was performed pursuant to the Inspector General's authority set forth in Chapter 20.055, F.S. Our objective primarily focused on examining the consistency of the permit application review and approval process among District staff and determining whether application fees are assessed and collected in accordance with established statutes, regulations, and guidelines. Jankie Bhagudas and I prepared this report.

Sincerely,

A handwritten signature in blue ink, reading "J. Timothy Beirnes".

J. Timothy Beirnes, CPA  
Inspector General

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## BACKGROUND

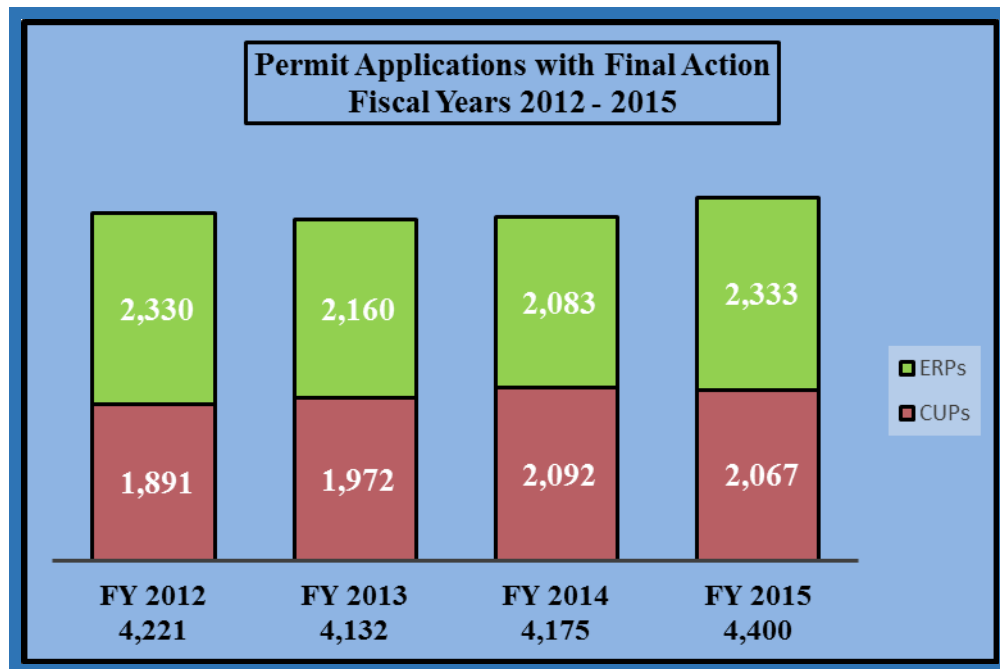
In accordance with the Office of Inspector General's Fiscal Year 2015 Audit Plan, we conducted an Audit of the Permit Application Process.

The Regulation Division's (Regulation) responsibilities include issuing various types of permits, permitting administration and enforcement, working with the Florida Department of Environmental Protection and other water management districts to develop permitting rules. Specifically, District issues various types of permits to manage and protect Florida's water resources, which include wetlands, rivers, streams, lakes, ponds, estuaries, coastal systems, springs, groundwater, and surface water supplies. The following are types of permits issued by the District:

- Environmental Resource
- Consumptive Water Use
- Well Construction
- Everglades Works of the District
- Lake Okeechobee Works of the District
- Right of Way Permits

Regulation permitting staff are responsible for reviewing and approving permit applications. Specifically, the Environmental Permitting Bureau's responsibilities include Environmental Resource Permits (ERPs) and the Water Use Bureau's responsibilities include Consumptive Water Use Permits (CUPs). Both Bureaus are located at District Headquarters. In addition, permitting staff assigned to the Orlando Service Center, Lower West Coast Service Center, Martin / St. Lucie Regulatory Office and the Okeechobee Regulatory Office are responsible for reviewing and processing for ERPs and/or CUPs applications. Designated District staff are authorized to approve specific permits; however, permit denials are approved by the Governing Board. It should be noted that our audit focuses on ERPs and CUPs.

Most permit applications are for ERPs and CUPs. The following chart shows the number of permit applications with final action (e.g., completed, denied, returned, and withdrawn) by the District during four Fiscal Years from 2012 through 2015.



The following table provides details on permit applications during Fiscal Year 2012 to 2015.

Permit Family / Application Status	Final District Action on Permit Applications				
	FY 2012	FY 2013	FY 2014	FY 2015	Total
<b>ERPs</b>					
Completed	2,099	1,975	1,881	2,147	8,102
Denied	16	16	6	4	42
Returned	61	39	15	21	136
Void	49	39	55	44	187
Withdrawn	105	91	125	110	431
Closed	-	-	1	7	8
<b>TOTAL</b>	<b>2,330</b>	<b>2,160</b>	<b>2,083</b>	<b>2,333</b>	<b>8,906</b>
<b>CUPs</b>					
Completed	1,730	1,784	1,952	1,955	7,421
Denied	6	17	3	1	27
Returned	7	2	2	-	11
Void	31	33	27	12	103
Withdrawn	117	136	108	98	459
Closed	-	-	-	1	1
<b>TOTAL</b>	<b>1,891</b>	<b>1,972</b>	<b>2,092</b>	<b>2,067</b>	<b>8,022</b>
<b>TOTAL ERPs &amp; CUPs</b>	<b>4,221</b>	<b>4,132</b>	<b>4,175</b>	<b>4,400</b>	<b>16,928</b>

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### **Environmental Resource Permits (ERPs)**

These permits are required for development or construction activities to prevent flooding, protect the water quality of Florida's lakes and streams from stormwater pollution, and protect wetlands and other surface waters. The District regulates residential and commercial developments, roadway construction, and agriculture; while the Florida Department of Environmental Protection oversees power plants, ports, wastewater treatment plants, and single-family home projects. ERPs are required for the following activities:

- Dredging and filling in wetlands or surface waters
- Constructing flood protection facilities
- Providing storm water containment and treatment
- Site grading
- Building dams or reservoirs
- Other activities affecting state waters

As part of the application review process, Regulation permitting staff determine where the proposed activity will among other things:

- Cause adverse flooding to on-site or off-site property
- Cause adverse water quality and quantity impacts
- Cause adverse impacts to wetlands, fish or wildlife
- Adversely affect public health, safety and welfare
- Impair navigation or surface water flows
- Adversely affect nearby fishing or recreational uses

In addition, if proposed activities would impact wetlands, applicants are required to compensate for those impacts by preserving, restoring, enhancing or creating wetlands either on their property or at an appropriate off-site mitigation location, or by purchasing credits from a mitigation bank. Monitoring of mitigation wetlands is required to ensure their survival and ability to replicate functions of natural wetlands.

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In 2012, the Legislature authorized the Florida Department of Environmental Protection to adopt Statewide ERP (SWERP) rules, in coordination with the five water management districts. Implemented on October 1, 2013, SWERP created statewide rules for ERPs. SWERP standardized language, processing procedures, definitions, and forms that need to be submitted. Permit processing fees are now based upon the area of work activities instead on the entire site or parcel of land. ERPs are governed by various statutes and rules; for example,

- Chapter 373, F.S.
- Chapter 62-330, F.A.C. – Primary ERP program rules adopted by the Florida Department of Environmental Protection and the water management districts.
- ERP's Applicant's Handbook – Volumes I and II. Volume I contains information such as general background information on the ERP program, a summary of the statutes and rules used to authorize and implement the ERP program. It also provides discussion on activities regulated under Chapter 62-330, F.A.C.; types of permits; permit thresholds, and exemptions; conditions for issuing of an ERP, including the environmental criteria used for activities located in wetlands and other surface waters. Volume II addresses regional differences in hydrology, soils, geology, and rainfall specific to each District. It also provides design and performance standards specific to the geographical area of each District.

Three common types of ERPs are as follows:

- **General Permit:** Very specific permit by rule. Each general permit describes a set of criteria that must be met to qualify for the permit. General permits are typically smaller activities that have insignificant impacts.
- **Individual Permit:** Authorizes construction of a project that requires a permit but does not qualify as a general permit. Mitigation bank permits are included in this category. Fee categories for individual permits are based on project area, number of boat slips, and impact size.
- **Conceptual Approval Permit:** Approves a master plan and design concepts for a project to be constructed in phases and does not authorize actual construction.

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Each phase then requires an individual permit to authorize construction. Sometimes, a permit is issued that includes both the conceptual approval and the first phase of construction.

### **Consumptive Water Use Permits**

These permits allow the permittee to withdraw a specified amount of water from the ground, canal, lake, or river for reasonable beneficial uses. The water can be used for public supply (drinking water), agricultural and nursery plant irrigation, golf course irrigation, commercial use, dewatering/mining activities, and power. Pursuant to 40E-2.051, F.A.C., permits are not required for domestic use or firefighting purposes. In addition, pursuant to 40E-2.061, F.A.C., the Governing Board grants Permit by Rule, which does not require an application or permit issuance, for the following: landscape irrigation, short-term dewatering, and closed-loop systems.

CUPs ensure water conservation by preventing wasteful uses. Specifically, these permits set limits on how much water can be withdrawn at each location in the aquifer or from surface water in order to protect water supplies and aquifers from saltwater intrusion damage, and surface water sources from drying up. CUPs are issued for a fixed period of time, and must be renewed prior to the expiration date in order to continue using water.

It is important to note that once a CUP is issued, water use compliance staff monitor the use of water to ensure the permit's special conditions are met; for example, District scientists and environmental analysts evaluate pumpage and monitoring data (such as chlorides, water levels, and turbidity), other compliance reports (such as calibrations, wetland monitoring), and respond to instances of non-compliance. Site inspections may also be conducted to determine compliance and document project activities, withdrawal facilities, and unpermitted uses of water.

In July 2014, the Regulation Division implemented Consumptive Use Permit Consistency (CUPcon), a multi-year statewide effort headed by the Florida Department of Environmental Protection and joined by all five water management districts to streamline and increase consistency in the consumptive use permitting and water supply-related programs. CUPs are governed mainly by the following:

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- Florida Statutes – Chapter 373, Part II, Florida Statutes (F.S.), enables and directs the District to regulate the use of water within its jurisdictional boundaries. The purpose of the water use regulatory program is to ensure that those water uses permitted by the District are reasonable-beneficial, will not interfere with any presently existing legal uses of water, and are consistent with the public interest pursuant to Section 373.223, F.S.
  - District Rules – Chapter 40E-2, Florida Administrative Code (F.A.C.) – details the conditions for issuing all CUPs. In addition, Chapter 40E-1, F.A.C. details the procedures for processing CUP applications.
  - Florida Department of Environmental Protection Rules (FDEP) – Chapter 62-40, F.A.C. – details guidance rules adopted by FDEP.
  - Applicant's Handbook – Details the general procedures and information used by District staff for review of CUP applications. All criteria in the Applicant's Handbook applies to processing individual permit applications, and specified criteria applies to processing of notices of intent for noticed general permits. The primary goal of the criteria are to meet District water resource objectives. The Applicant's Handbook is incorporated by reference into Chapter 40E-2, F.A.C., and must be read in conjunction with Chapter 40E-2, F.A.C., as applicable.

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There are two main types of CUPs that require submittal of an application: noticed general and individual, which are described as follows:

- **Noticed General Permit:** Issued for certain activities that have been determined to have minimal impacts on water resources. These permits must meet certain allocations, facility, and source criteria; for example, groundwater wells cannot be more than eight inches in diameter and surface water facilities cannot have a cumulative intake diameter of more than six inches.
- **Individual Permit:** Issued for activities that do not qualify for exemption, general permit by rule or noticed general permits.

Permit by Rule are granted by the Governing Board pursuant to Rule 40E-2.061, F.A.C., and do not require an application. These are for non-exempt consumptive uses; for example, water use for landscape irrigation at a single family dwelling or duplex, certain short-term dewatering, and closed-loop systems.

In accordance with Chapter 373, Florida Statutes and rules, the following permit reports are available on the District's website:

- Weekly notice of permit applications received for the past three months
- Weekly list of individual applications completed
- Weekly list of individual applications processed
- List of permits issued by the Executive Director for the previous month

Further, to promote transparency and open government Monthly Regulatory Meetings are held to increase public access to the permitting process. The District also submits quarterly and annual permit reports FDEP, which include statistical permit data such as number of applications received and processed, and number of days and costs to process.

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## **OBJECTIVE, SCOPE, AND METHODOLOGY**

Our objective primarily focused on examining the consistency of the application review and approval process among District staff and determining whether application fees are assessed and collected in accordance with established statutes, regulations, and guidelines.

To accomplish our objectives, we obtained an understanding of the permit application process by interviewing Regulation Division staff responsible for the permitting process and reviewed applicable laws, rules, and regulations. We analyzed CUPs and ERPs completed during the period October 1, 2013 to March 31, 2015 to determine whether permits were issued within the timeframes prescribed by Statutes and Rules in order to avoid issuance by default. We also determined whether RAI letters were issued within the timeframes prescribed by rules and the District.

We selected a sample of permits and determined whether the permit review and approval process was consistent among staff at different permitting locations throughout the District and whether permitting data maintained on ePermitting contained adequate documentation. We also determined whether correct permit application fees were collected.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## **AUDIT RESULTS**

### **Executive Summary**

Overall, sufficient controls are in place to ensure that the ERPs and CUPs are issued in compliance with rules and regulations. However, our audit disclosed some minor areas for improvement. Audit tests disclosed that after an application is deemed legally completed, final agency action by the District are issued within timeframes required by statutes and rules. Specifically, our analysis of the period October 1, 2013 to March 31, 2015, disclosed that 4,722 permits (99.98%) were issued within the required timeframes. The one exception was a CUP issued eight days after the default date. We also noted an instance where concurrent ERP and CUP applications were being reviewed; however, due to a communication issue the CUP was issued before the ERP application was deemed legally completed. Due to the inseparable nature of these applications, the District processes them concurrently and final action can only be taken when both are deemed legally completed.

Permitting statutes and rules, require the District to send a RAI letter to the permit applicant within 30 days of receipt of the permit application if it is determined that additional information is needed to evaluate the application. The District has a more stringent internal target that requires RAI letters to be sent to applicants within 21 days of the application receipt date. Although, the District's more stringent internal target of 21 days is not always met, it appears to be effective in providing a margin of safety to ensure that the statutory deadline is met since 100% of the RAIs were sent within the 30-day statutory deadline.

We found that permit application are collected in accordance with permitting rules. Specifically, we sampled 112 permit applications that resulted in fees totaling \$215,536. These applications reflected a cross section of permit types and were processed by different reviewers at the various permit office locations. Our audit tests disclosed three instances where ERP applicants should have been refunded \$6,270; however, these refunds had not been issued. During our audit, the refunds were sent to the applicants.

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Our audit tests disclosed that permit files maintained on ePermitting contained sufficient documentation and permits were mostly approved by authorized District staff as required. Specifically, as part of our audit tests we selected and reviewed 110 permit application files approved during October 1, 2013 to March 31, 2015, that were processed by different reviewers assigned to various permit office locations. Our review disclosed that two letter modifications for individual ERPs did not contain the required Notice of Rights, which addresses procedures to be followed if the applicant desires a public hearing or other review of the District's proposed action. As a result, we reviewed additional ERP letter modifications to determine whether Notice of Rights were included. Based on our review, we concluded that letter modifications approved by the Orlando Service Center did not always contain the Notice of Rights. Specifically, of the 182 letter modifications for individual ERPs reviewed, 87 (48%) did not have Notice of Rights attached to the approval letters transmitted to permittees.

Based on the District's Delegation of Authority and Designation of Responsibilities memorandum, the Assistant Executive Director (AED) is responsible for approving major modifications for certain ERP individual permits and conceptual approval permits. However, audit tests disclosed a major modification of an individual ERP permit in our sample was approved by the Bureau Chief of Environmental Resource Permitting instead of the Assistant Executive Director. As a result, we reviewed similar types of permits to determine whether this was an isolated instance or a practice. Our review disclosed that 14 similar permits were approved by either the Bureau Chief of Environmental Resource Permitting or Service Center Regulatory Administrators. According to ERP permitting staff, it was their intent to authorize the Bureau Chief of Environmental Resource Permitting or Service Center Regulatory Administrators to approve these modifications; however, this is not explicit in the memo. As a result, steps will be taken to explicitly incorporate this authorization in the Delegation of Authority memo.

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## **Permit Application Decisions Issued within Statutory Timeframes**

Overall, sufficient controls are in place to ensure that the final agency action on permit applications are issued within timeframes required by statutes and rules. Permit applications are submitted via the District's ePermitting<sup>1</sup> system, mail, or at District headquarters and service centers. Permitting rules require that the permitting review and approval process adhere to specific time constraints at different phases in the review process.<sup>2</sup> Specifically, based on Volume I of the ERP Applicant's Handbook Rule, for general and individual permit applications final agency action must be issued within 30 days and 60 days, respectively, after an application is deemed legally completed. The timeframes within which agency action is required after CUP general permit applications are deemed legally completed changed as a result of CUPcon. Specifically, pre-CUPcon (i.e., before 7/14/14) final agency action was required within 60 days after a general permit application was deemed legally completed. However, post-CUPcon (i.e., after 7/13/14) final agency action is required within 30 days after the legally completed date. The statutory timeframes for individual CUP applications did not change. The District is required to issue final agency action within 90 days that an individual water use permit application is deemed completed.

If the District fails to issue a final agency decision before the statutory deadlines, the permit is automatically considered approved by default. Historically, the District does not issue permits by default. It should be noted that permitting rules allow for certain exceptions to the review timeframe; for example, an applicant can waive his/her right requiring the District to complete its review and issue a final action within the statutory timeframes.

Permit application status are closely monitored by Regulation permitting staff. Timelines are closely monitored to ensure that permits are reviewed and approved within

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<sup>1</sup> ePermitting is the District's online permitting system used to electronically submit permit applications and/or compliance data. It is also used to search for application status and permit information. This system has improved business efficiency and streamlined application processes through a reduction in paperwork, postage and processing times.

<sup>2</sup> The District has more stringent internal targets from the time an application is deemed legally completed date to the final agency action date; for example, certain individual permits must be issued within 25, 40, or 45 days instead of the required 90 days. We did not test for compliance with these internal requirements.

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required timeframes. Regulation staff meet regularly to discuss the status of all permit applications. Specifically, ERP permitting staff meet bi-weekly and CUP permitting staff meet weekly to discuss permit application status. In addition, for projects with concurrent ERP and CUP applications, permitting staff coordinate due to the inseparable nature of the applications.

Audit procedures included an analysis of permits issued, during the period October 1, 2013 to March 31, 2015, to determine whether final agency actions were issued within the timeframes required by statutes and rules, i.e., within required timeframe from legally completed date to final action date. We found that 4,722 of the 4,723 permits (99.98%) in our population were issued within the required timeframe. The one exception was a CUP that was issued eight days after the required issuance date due to a clerical error where the incorrect date was entered into the permitting system at the time of application. We also identified an instance where concurrent ERP and CUP applications were being reviewed; however, due to a communication issue the CUP was issued before the ERP application was deemed legally completed. Due to the inseparable nature of these applications, the District processes them concurrently and final action can only be taken when both are deemed legally completed.

The following tables provide details by permit type and application type that were issued during the period October 1, 2013 to March 31, 2015.

Analysis of Permits Issued within Statutory Timeframes (Legally Completed Date to Final Action Date) October 1, 2013 to March 31, 2015						
Permit Type	Issued Within Statutory Timeframes		Total	Permits Not Analyzed (Note 1)	Total	
	Yes	No				
Environmental Resource Permits						
Individual	2,131	-	2,131	338	2,469	
General	124	-	124	4	128	
Exempt	120	-	120	-	120	
Variance	2	-	2	-	2	
Total ERPs	2,377	-	2,377	342	2,719	
Consumptive Water Use Permits						
Individual	707	-	707	68	775	
General (Note 2)	1,637	1	1,638	154	1,792	
Variance	1	-	1	-	1	
Total CUPs	2,345	1	2,346	222	2,568	
Total Permits Issued within Statutory Timeframes - from Legally Completed Date to District's Final Action Date					4,722	99.98%
Total Permits Not Issued within Statutory Timeframes from Legally Completed Date to District's Final					1	0.02%
Total					4,723	100%

**Note 1**

Transfers, well construction, and compliance modifications due to changes in compliance submission requirements were excluded from our analysis for various reasons. Transfers do not require technical reviews and are mainly transfers of ownership and change in construction phase to operation phase. Further, only a small number of well construction permits are issued by the District. Issuance is mostly delegated to counties within the District's area of responsibility.

**Note 2**

Includes 1,035 permits that were legally completed pre-CUPcon rules (legally completed prior to 7/14/14) and 603 permits that were legally completed post-CUPcon rules (completed after 7/13/14).



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We also noted that 16 of the 4,723 permits were issued after the required timeframes. As a result, we reviewed data maintained in ePermitting and obtained explanations from Regulation permitting staff. We concluded that the reasons were justified and in compliance with permitting rules. Specifically, we found the following:

- In 13 of the 16 instances, permit applicants approved waivers extending the statutory timeframe within which the District was required to approve or deny the applications.
- In 2 of the 16 instances, CUPs was delayed due to a pending ERP applications. These applications are processed concurrently and final agency action can only be taken after both applications are deemed legally completed.
- In the remaining instance, the applicant requested time extensions to file petitions for administrative hearings.

Our results are detailed in the tables on the following pages.

Environmental Resource Permits		
Type	Description	# of Permits
Individual	Construction, conceptual approvals, construction and conceptual modifications extensions, informal wetland determinations, letter modifications, and extensions	2,131
Rules	Must be issued within 60 days of the legally completed date; certain exceptions allowed	
Processing Time	<p><u>Total days from receipt to final agency action (includes all time, e.g., RAIs, waivers, extensions, and concurrent reviews):</u></p> <p>➤ 1,579 (74%) were approved within 60 days of application receipt date and 552 (26%) were approved more than 60 days after application receipt date. This was primarily due to requests for additional information by the District.</p>	
Conclusion	<p>All permit applications were issued in accordance with statutory requirements. Specifically,</p> <p>➤ 2,122 of the 2,131 (99.60%) permits, were issued within 60 days of the legally completed date.</p> <p>➤ Nine of the 2,131 permits (0.40%) were issued more than 60 days after the legally completed date. In these instances, applicants approved waivers extending the statutory timeframe within which the District was required to approve or deny the applications. However, the following minor exceptions should be noted:</p> <ul style="list-style-type: none"> <li>• In two of the instances where applicants waived the review timeframes, outdated waivers forms were used. Specifically, the forms indicated a waiver of the 90-day review timeframe; however, as of 10/1/13, ERP rules were changed to a 60-day review timeframe (from legal completion date to final agency action date).</li> <li>• In two instances the waivers were not reflected in the ePermitting database. ERP staff stated that the applicant provided waivers; however, they were not uploaded to ePermitting. Upon our request, staff obtained one of the waivers. The other waiver was not provided.</li> </ul>	

Environmental Resource Permits		
Types	Description	# of Permits
<b>General</b>	<b>Examples: general, informal wetlands determinations</b>	<b>124</b>
<b>Rules</b>	<b>Must be issued within 30 days of the legally completed date; certain exceptions allowed</b>	
<b>Processing Time</b>	<u><i>Total days from receipt to final agency action (includes all time, e.g., RAIs, waivers, extensions, and concurrent reviews):</i></u>  ➤ 105 (85%) were issued within 30 days of the application receipt date and 19 (15%) were issued more than 30 days after application receipt date.	
<b>Conclusion</b>	All permit applications were issued in accordance with statutory requirements. Specifically,  ➤ 122 of the 124 permits (98.40%) were issued within 30 days of the legally completed date.  ➤ The remaining two permits (1.60%) were issued more than 30 days after the legally completed date; however, in these instances applicants approved waivers extending the statutory timeframe within which the District was required to approve or deny the applications.	
<b>Exemptions</b>	<b>Examples: agricultural, water quality, verifications</b>	<b>120</b>
<b>Rules</b>	<b>No specific approval timeframe. However, efforts are made to approve within 60 days</b>	
<b>Processing Time</b>	➤ 107 (89%) were issued within 60 days of the application receipt date and 13 (11%) were issued more than 60 days after application receipt date.	
<b>Conclusion</b>	➤ All were issued within 60 days of the legally completed date.	
<b>Variances</b>		<b>2</b>
<b>Rules</b>	<b>Must be issued within 90 days the application is deemed legally completed</b>	
<b>Conclusion</b>	Both variances permits was issued within the statutory timeframe. However, we noted the following minor issue:  ➤ Based on the Regulation permitting database, ERP variances are defaulted within 60 days after variance petitions are deemed completed. This should be revised to reflect 90 days.	

Consumptive Water Use Permits		
Types	Description	# of Permits
Individual	Examples: irrigation (< 20 years, <= 3 million gallons per month), letter modifications, mining / dewatering, public water supply	707
Rules	Must be issued within 90 days of the legally completed date; certain exceptions allowed	
Processing Time	<p><u>Total days from receipt to final agency action (includes all time, e.g., RAIs, waivers, extensions, and concurrent reviews):</u></p> <p>➤ 573 (81%) were issued within 90 days of the application receipt date and 134 (19%) were issued more than 90 days after application receipt date. This was primarily due to requests for additional information by the District.</p>	
Conclusion	<p>All permit applications were issued in accordance with statutory requirements. Details are as follows:</p> <p>➤ 705 of the 707 permits (99.70%) were issued within 90 days of the legally completed date.</p> <ul style="list-style-type: none"> <li>• In one instance the applicant granted a waiver of the 90-day review period, which extended the statutory timeframe within which the District was required to approve or deny the application.</li> <li>• In the other instance the CUP application was delayed due to a pending ERP application. Due to the inseparable nature of these applications, the District processes the applications concurrently and final agency action can only be taken after both applications are deemed legally complete. This is also in compliance with permitting rules.</li> </ul>	

Consumptive Water Use Permits		
Types	Description	# of Permits
General	Examples: by rule, letter modification, noticed general) – <i>Legally completed post-CUPcon rules – After 7/13/14</i>	603
Rules	Must be issued within 30 days of the legally completed date; certain exceptions allowed	
Processing Time	<p><u>Total days from receipt to final agency action (includes all time, e.g., RAIs, waivers, extensions, and concurrent review)</u></p> <p>➤ 533 (88%) were issued within 30 days of the application receipt date and 70 (12%) were issued more than 30 days after application receipt date. This was primarily due to requests for additional information by the District needed to process the application.</p>	
Conclusion	<p>All permit applications were issued in accordance with statutory requirements. Specifically,</p> <p>➤ 602 of the 603 permits (99.80%) were issued within the required timeframes. Specifically, 595 were issued within 30 days of the legally completed date. Seven of the remaining eight were modifications to permits issued under previous permitting rules. In these instances, the timeframes in effect at the initial issuance are applied. Specifically, permitting rules allowed 60 days from legally completed to issuance and the modifications were issued within 60 days of the legally completed date.</p> <p>➤ In the remaining instance, the CUP application was delayed due to a pending ERP application. Due to the inseparable nature of these applications, the District processes the applications concurrently and final agency action can only be taken after both applications are deemed completed.</p>	

Consumptive Water Use Permits		
Types	Description	# of Permits
General	Examples: by rule, letter modification, noticed general) – <i>Legally completed pre-CUPcon rules – Before 7/14/14</i>	1,035
Rules	Must be issued within 60 days of the legally completed date; certain exceptions allowed	
Processing Time	<p><u>Total days from receipt to final agency action (includes all time, e.g., RAIs, waivers, extensions, and concurrent review)</u></p> <p>➤ 936 (90%) were issued within 60 days of the application receipt date and 99 (10%) were issued more than 60 days after application receipt date. This was primarily due to requests for additional information by the District</p>	
Conclusion	<p>1033 of the 1035 (99.81%) permit applications were issued in accordance with statutory requirements and two were not (0.19%). Specifically,</p> <p>➤ 1,031 of the permit applications were issued within 60 days of the legally completed date.</p> <p>➤ In one instance the applicant granted a waiver of the 60-day review period, which extended the statutory timeframe within which the District was required to approve or deny the application.</p> <p>➤ In one instance the applicant requested time extensions to file petitions for administrative hearings, which are allowed by the rules.</p> <p>However, for the remaining two we noted the following:</p>	

Consumptive Water Use Permits		
Types	Description	# of Permits
Conclusion	<ul style="list-style-type: none"> <li>A CUP application for a general permit, which is required to be issued within 60 days after the legal completion date, was incorrectly logged in the databases as an individual permit, which is required to be issued within 90 days of the legal completion date. The error was not realized until after the 60-day issuance requirement. Specifically, the permit was issued 68 days after the legally completed date, i.e., eight days after the 60-day default. Permitting staff should ensure that application are logged correctly in the database. CUP staff stated that to avoid this oversight in the future, they are double checking the fee codes and permit type for accuracy.</li> <li>CUP and ERP applications associated with a project were being reviewed concurrently. Due to the inseparable nature of these applications, the District processes the applications concurrently and the applications are required to reflect the same legally completed date in the regulation database. Further, final agency action is recommended only after both applications are deemed legally completed. Applicants are sent letters informing them of the concurrent reviews and the letters are required to be logged in the regulation database. In this instance, both permits should have reflected a legally completed date of 8/20/14. However, the regulation database was not updated to reflect the concurrency letter sent to the applicant. Loading the letter would have changed the legally completed date to 8/20/14. Instead, the CUP application reflected a legally completed date of 3/20/14 and water use permitting staff focused on issuing the permit before 6/27/14, the default date reflected in the database. As a result, CUP was issued on 6/17/14, 64 days before it should have been deemed legally completed (6/17/14 to 8/20/14). CUP staff has increased quality control and communication with other offices when processing concurrent applications.</li> </ul>	
Variances		1
Rules	Must be issued within 90 days of the legally completed date	
Conclusion	Issued within 90 days of legally completed date.	

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## Recommendations

1. **Ensure that ERP timeframe waivers by applicants reflect current Statutes, Rules, and ERP Applicant's Handbook references.**

**Management Response:** All reviewers in the ERP Bureau were reminded to use the current waiver forms and were given the correct location on our internal web (library) for the form. The relevant SOPs have been reviewed and reflect this requirement.

**Responsible Division:** Regulation Division, ERP Bureau

**Estimated Completion:** Completed

2. **Remind permitting staff to ensure that waivers authorized by applicants waiving their rights to have the District approve or deny permit applicant with the timeframes specified in Statutes, Rules, and the ERP Applicant's Handbook are documented in the Regulation Permitting database.**

**Management Response:** All reviewers in the ERP Bureau were reminded that all documents, including waivers, must be posted to ePermitting by either posting it themselves or giving it to the Permit Technicians to post it for them. The relevant SOPs have been reviewed and reflect this requirement.

**Responsible Division:** Regulation Division, ERP Bureau

**Estimated Completion:** Completed

3. **Accurately log permit application types in the Regulation Permitting database to avoid issuing permits via default.**

**Management Response:** As further clarification, permit application types are either manually logged by Regulatory Support or Service Center staff or automatically interfaced to the database via the ePermitting online permit application submittal.



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Water Use permit review staff (including service center staff) are responsible for verifying the accuracy of the information for water use applications and requesting updates from Regulatory Support staff as applicable. It has always been the expectation that this procedure was to be followed at the Service Centers as well as within the Water Use Bureau in West Palm Beach. While verification of the fee information has always been part of the review process, a Standard Operating Procedure (SOP) more specific to this issue (QA/QC Application Fee Categories and Permit Types) was formally documented, distributed to staff and posted to the internal server on August 12, 2014. The relevant fields in the Fee Table in the Regulatory database have been updated to reflect the 90 day default as per rule.

**Responsible Division:** Regulation Division, Regulatory Support, Water Use Bureau, and Orlando Service Center

**Estimated Completion:** Completed

**4. Ensure that all hold for concurrency letters are entered in the Regulation Permitting database's Permitting Application Tracking System (PATs).**

**Management Response:** Concur with recommendation. It is the existing procedure (existing SOP) to enter concurrency letters in the database at the time of distribution. It has always been the expectations that this procedure was to be followed at the Service Centers as well as within the Water Use Bureau in West Palm Beach. This is a currently established SOP (Concurrency Letter Distribution Process). Water Use and Service Center staff were reminded to follow the SOP. All reviewers in the ERP Bureau have been instructed to notify their counterparts in the Water Use Bureau as to concurrency.

**Responsible Division:** Regulation Division, WU Bureau

**Estimated Completion:** Completed

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5. **Require permitting staff working on concurrent permits to increase communication in order to avoid issuing permits before both are deemed legally completed.**

**Management Response:** Concurrent applications are discussed at each weekly Water Use Project Review meeting in West Palm Beach. Service Center staff conference into these meetings and ERP Bureau sends a representative. The Orlando Service Center also holds bi-weekly meetings where concurrent application status is discussed. Staff are reminded regularly of the importance of coordinating with their ERP counterparts. In addition, all reviewers in the ERP Bureau were instructed to notify their counterparts in the affected Bureau as to the concurrency. The relevant SOPs have been reviewed and reflect this requirement.

**Responsible Division:** Regulation Division, Orlando Service Center

**Estimated Completion:** Completed

6. **Revise the default date in the Regulation Permitting database for ERP variances to reflect that decisions must be made within 90 days once applications are deemed legally completed.**

**Management Response:** All reviewers were reminded that variances must be entered into the Regulatory database in the proper fields to ensure that all dates reflect the proper time for every application. The relevant SOPs have been reviewed and reflect this requirement.

**Responsible Division:** Regulation Division, ERP Bureau

**Estimated Completion:** Completed

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## **Statutory Deadline Met for Sending Request for Additional Information (RAI) Letters**

Based on statutes and permitting rules, within 30 days of the receipt of a permit application the District is required to send a RAI letter to the permit applicant if it is determined that additional information is needed to evaluate the application. The District has a more stringent internal target that requires RAI letters to applicants within 21 days of the application receipt date or receipt of a response to a previous RAI letter if additional information is needed. It should be noted that before RAI letters are sent, Regulation permitting staff contact applicants via phone and/or email to obtain additional information in order to expedite the review and decision process. If these means are not successful then RAI letters are sent. A RAI letter stops the District's time clock. Depending on the permit type and the number of RAI letters, the applicant has anywhere from 90 days to 30 days to supply the requested information. If the applicant does not meet these deadlines, the permit may be denied unless a written request for an extension is received before the deadline. Further, upon the receipt of the requested information, the time clock restarts, i.e., the District must evaluate and request any additional information within the 30-day / 21-day timeframes. If the District fails to meet the 30-day deadline, the permit is automatically deemed legally completed.

Audit procedures entailed determining adherence with the 30-day timeframe required by rules and statutes and 21-day internal District target. Based on information maintained in the Regulation permitting database, 1,157 permit applications resulted in 1,396 RAI letters to permit applicants for permits completed during the period October 1, 2013 to March 31, 2015. As shown in the following table, 59% of RAI letters were sent within 21 days of application receipt; however, 100% of the RAIs were sent within the 30-day statutory requirement. The following table details the results of our analysis.

Analysis of RAI Letters for Applications Completed During October 1, 2013 to March 31, 2015					
Number of Applications w/ RAI Letters					
ERPs	709				
CUPs	448				
TOTAL	1,157				
Met District's Internal Target of 21 Days for RAI Letters					
App. Type	Yes		No		Total
ERPs	422	47%	481	53%	903
CUPs	406	82%	87	18%	493
TOTAL	828	59%	568	41%	1,396
Met Rule Requirement of 30 Days for RAI Letters					
App. Type	Yes		No		Total
ERPs	903	100%	-	-	903
CUPs	493	100%	-	-	493
TOTAL	1,396	100%	-	-	1,396

Therefore, the District's more stringent internal target of 21 days appears to be effective in providing a margin of safety to ensure that the statutory 30-day deadline is met.

It should be noted that the 30-day clock can be stopped and re-started for various reasons, which must adequately justified and documented. Regulation permitting staff explained that in some cases an application review, RAI responses, and additional document submission may result in significant modification to the permit application that also stop and re-start the clock. We noted six instances where it appears that RAI letters for ERP applications were sent more than 30 days after the application receipt date and second or third letters were sent 30 days after the receipt of a preceding RAI response. However, our audit disclosed that the 30-day time clocks were justifiably stopped because the permitting staff considered the permit applications significantly modified.

### **Permit Application Fees Correctly Assessed**

Overall, permit application fees are collected in accordance with permitting rules. For the 5,287 permit issued during the period October 1, 2013 to March 31, 2015, the District collected over \$4 million in permit application fees. The District is required to assess application fees in accordance with Chapter 40E-2, F.A.C. for certain CUP

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applications and Chapter 62-330, F.A.C. for certain ERP applications. Permit fees are required to be paid when applications are filed and are assessed in order to defray costs such as evaluating, processing, monitoring and inspecting for permit compliance. Fees are non-refundable unless it is determined that a fee is not required or an incorrect fee has been paid.

New CUP application fees ranging from \$0.00 to \$11,500 became effective on July 31, 2014. There is no cost associated with a Permit by Rule and the fee for a Noticed General Permit is \$100 if applied for online via ePermitting, or \$350 if applied using a hard-copy (paper) application form. Fees for individual CUP permit applications are based on the maximum monthly allocation required for the project and the duration of the water use permit. New ERP application fees ranging from \$0.00 to \$25,000 became effective on October 1, 2013. Fees for ERP applications vary depending on the type of activity and the size of the project area.

Regulation permit reviewers are required to ensure that the fees are submitted along with each application. In instances where applicants submit the incorrect amounts, permit staff notify applicants and ensure that the correct amounts are remitted before the permits are issued. There are also instances where applicants have to be refunded because they submitted more than the amount required. In these instances, any excess are required to be refunded. The reviewers' supervisors are required to ensure that the correct fees have been assessed.

Audit procedures entailed determining whether permit application fees were assessed in accordance with permitting rules. Our sample consisted of 112 permit applications that resulted in fees totaling \$215,536. These applications reflected a cross section of permit types and were processed by different reviewers at the various permit office locations. Our audit tests disclosed three instances where ERP applicants should have been refunded \$6,270; however, they were not. It should be noted that these three applications were processed at the Lower West Coast office. During our audit, the applicants were refunded. Details of our audit tests are described in the following table.

Results of Sampled Permit Applications			
Permit Application Type	Examples of Permit Applications	Test Sample of Applications	Number of Exceptions
CUP	Letter Modification, Noticed General, Short-Term Dewatering, Various Types of Irrigation, Mining / Dewatering, Industrial, and Transfers	57	None
ERP	Letter Modification, General, Individual, Conceptual Approval, Informal Wetland Determinations	55	3
<b>Total</b>		<b>112</b>	
Details of Exceptions			
Modification of Individual Permit – Application # 150109-21	<p><b><u>Purpose:</u></b> Authorize construction and operation of a project that includes 0.04 acres of wetland impacts for the modification to the layout of the golf course serving a development.</p> <p><b><u>Finding:</u></b> Applicant paid \$3,300; however, permit fee should be \$1,200 because project area was less than 10 acres. Applicant was not refunded. During the audit, we questioned the fee. <i>As a result, the applicant was refunded \$2,100.</i></p>		
Minor Modification – Application # 140130-6	<p><b><u>Purpose:</u></b> Ownership transfer.</p> <p><b><u>Finding:</u></b> Applicant paid \$3,170. Application was downgraded to a minor modification, which costs \$250; however, applicant was not refunded. During the audit, we questioned the \$3,170 fee. <i>As a result, the applicant was refunded \$2,920.</i></p>		
Letter Modification with Transfer – Application # 140507-6	<p><b><u>Purpose:</u></b> Modification of a 5.35 acre parcel previously approved with three proposed buildings with parking and loading areas. Modification eliminated the proposed buildings and the construction of a parking area, which resulted in a reduction of impervious area to 2.01 acres.</p> <p><b><u>Finding:</u></b> Applicant paid \$1,500 for an individual modification with transfer. During the audit, we questioned the \$1,500 fee. Regulation staff determined that the correct fee should be \$250. <i>As a result, the applicant was refunded \$1,250.</i></p>		

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## **Recommendations**

- 7. Require reviewers and supervisors to ensure that correct fees are assessed and any fee refunds are processed in a timely manner.**

**Management Response:** All supervisors and reviewers were reminded that all fees must be verified at the issuance of the permitting action and that any refund due to the applicant must be processed per the refund SOPs. The relevant SOPs have been reviewed and reflect this requirement. In addition, the three refunds that were due that were identified in the audit have been processed.

**Responsible Division:** Regulation Division, ERP Bureau

**Estimated Completion:** Completed

- 8. Consider reviewing completed ERP applications processed by Lower West Coast permitting staff over the past year to ensure correct fees were assessed. However, if significant issues are found consider expanding the review to include prior years.**

**Management Response:** As agreed by the Regulation Division and the Office of the Inspector General, an analysis will be conducted to review the past one year of applications processed by the Lower West Coast and if any significant number of issues are found concerning refunds the analysis will go back further.

**Responsible Division:** Regulation Division, ERP Bureau, Lower West Coast Service Center

**Estimated Completion:** Analysis to be completed by July 29, 2016

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## **Permits Adequately Documented and Properly Authorized**

Overall, our audit tests disclosed that permit files maintained on ePermitting contained sufficient documentation and permits were approved by authorized District staff. Specifically, as part of our audit tests we selected and reviewed 110 permits (42 CUPs and 58 ERPs) that were processed by different reviewers assigned to various permit office locations and approved during October 1, 2013 to March 31, 2015. Audit procedures included reviewing files maintained on ePermitting to determine whether the permits contained certain basic information. Based on our tests, we concluded that most of the permits in our sample consistently included the following:

- Permit Conditions
- Notice of Rights
- Detailed Staff Reports
- Authorized Approval
- Exhibits

Further, depending on the CUP type, permit exhibits included the following: project location maps of facilities such as wells, pumps, and culverts, descriptions of wells and pumps, calculations of irrigation requirements, requirements by permit condition report; summary of water use demands and recommended allocation components and dewatering plans. We also found that depending on the ERP type permit exhibits included the following: site location maps, construction plans, stormwater management plans, and transfer authorizations. However, our audit procedures disclosed the following exceptions:



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### **Notice of Rights**

Two of the 14 letter modifications for individual ERPs in our sample did not contain the required Notice of Rights, which addresses procedures to be followed if the applicant desires a public hearing or other review of the District's proposed action. Notice of Rights should be attached to all permit actions. As a result, we reviewed additional ERP letter modifications to determine whether they included Notice of Rights. Based on our review, we concluded that letter modifications approved by the Orlando Service Center did not always contain the Notice of Rights. Specifically, of the 182 letter modifications for individual ERPs, 87 (48%) did not have Notice of Rights attached to the approval letters transmitted to permittees.

### **Permit Approvals**

Based on the District's Delegation of Authority and Designation of Responsibilities memorandum, the Assistant Executive Director is responsible for approving the following types of ERPs:

*Individual permits, conceptual approval permits, and major modifications for projects of 100 acres or more of the project area, 10 acres or more of work in wetlands or other surface waters, or 50 or more boat slips and any associated sovereign submerged lands authorizations.*

Our audit tests disclosed an instance where the modification of an individual ERP permit authorizing phased construction consistent with conceptual approval with a project area of 128 acres was approved by the Bureau Chief of Environmental Resource Permitting instead of the Assistant Executive Director. As a result, we reviewed similar types of permits issued during the period October 1, 2013 to March 31, 2015, to determine whether this was an isolated instance or a practice. Our review disclosed that 14 other ERP major modifications permits authorizing phased construction consistent with conceptual approval were either approved by either the Bureau Chief of Environmental Resource Permitting or Service Center Regulatory Administrators.

ERP permitting staff explained that it has been common practice for the Bureau Chief of Environmental Resource Permitting or Service Center Regulatory Administrators to approve major permit modifications that authorizes phased

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construction consistent with conceptual approval. According to the Assistant Director of the Regulation Division, prior to adoption of the SWERP rules, a provision in Chapter 40E-40, F.A.C. allowed certain District staff, as opposed to the Governing Board, to authorize permits for modification of a conceptual permit consistent with the assumptions made in the original conceptual permit. The assistant director added that along with SWERP rules, a rule was adopted (Chapter 40E-1.607(3)(a)(4)(b), F.A.C.) to create a new fee code and continue the same approval procedure allowing Bureau Chiefs or Regulatory Service Center Administrators, instead of the AED, to approve these permits since the AED reviewed and authorized the original conceptual permit. The Assistant Director also stated that Environmental Resource Permitting Bureau staff attempted to incorporate this in the Delegation of Authority memo. However, this is not explicit in the memo. As a result, staff will pursue actions to explicitly incorporate this authorization in the Delegation of Authority memo.

## **Recommendations**

### **9. Implement additional controls to ensure that a Notice of Rights is attached to all permits application decisions.**

**Management Response:** All supervisors and reviewers in the Orlando Service Center were reminded that all permitting actions need to be accompanied by a Notice of Rights. The relevant SOPs have been reviewed and reflect this requirement.

**Responsible Division:** Regulation Division, Orlando Service Center

**Estimated Completion:** Completed

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**10. Revise the District's Delegation of Authority and Designation of Responsibilities memorandum to authorize the Bureau Chief of Environmental Resource Permitting and Service Center Regulatory Administrators to approve modifications of conceptual permits that are consistent with the assumptions made in the original conceptual permit.**

**Management Response:** The Regulation Division will work with the Office of Counsel and the Executive office to update the District's Delegation of Authority and Designation of Responsibilities memorandum as reflected in the audit recommendations.

**Responsible Division:** Regulation Division

**Estimated Completion:** To be completed by August 31, 2016