

**RULES OF THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
CHAPTER 40D-4, F.A.C.
INDIVIDUAL ENVIRONMENTAL RESOURCE PERMITS**

**ADOPTED BY REFERENCE IN CHAPTER 62-330, F.A.C. FOR USE BY DEP
FINAL EFFECTIVE 9-4-05**

[Note: the rules below are the sections of Chapter 40D-4, F.A.C., incorporated by reference in paragraph 62-330.200(e), F.A.C., effective on 9-4-05 for use by the Department within the SWFWMD. This document reflects the sections of Chapter 40D-4, F.A.C., in effect through 6-30-05, together with changes made to those rules through paragraph 62-330.200(e), F.A.C., effective 9-4-05. Every attempt has been made to accurately merge the text of those rules., however, if any errors exist in this document, the actual adopted text of 40D-4, F.A.C., as adopted on 6-30-05, together with the actual text of Chapter 62-330, F.A.C., adopted on 9-4-05, will control.]

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40D-4.021 Definitions.

When used in this chapter and Chapters 40D-40 and 40D-400, F.A.C.:

(1) "Alteration" means any activity resulting in substantial expansion or change of a surface water management system that will increase or decrease the design discharge of the system, increase pollutant loading, change the point or points of discharge, or intrude into or otherwise adversely impact wetlands by rim ditching, draining, filling or excavation. Routine custodial maintenance and repairs shall not constitute alterations.

(2) "Basis of Review for Environmental Resource Permit Applications within the Southwest Florida Water Management District," or "Basis of Review" is the document incorporated by reference in Rule 40D-4.091, F.A.C., which provides threshold design, administrative and technical criteria for permit applicants.

(3) "Conceptual Permit" means an environmental resource permit issued by the District which approves the concepts of a phased development master plan for a surface water management system or for a mitigation bank which is binding upon the District and the permittee based upon the rules in effect at the time of filing of the conceptual application and constitutes final District action so that construction and operation permits for each phase will be reviewed under the permitting criteria in effect when the application for the conceptual permit was filed.

(4) "Construction" means any on site activity which will result in the creation of a new surface water management system, or the abandonment or alteration of an existing surface water

management system, including the building, assembling, expansion or recontouring of the property; the erection of buildings or other structures, or any part thereof; or land clearing.

(5) "Construction permit" means an environmental resource permit issued by the District authorizing construction, alteration or abandonment of a surface water management system in accordance with the terms and conditions of the permit.

(6) "Embedment" is the placement of transmission or distribution lines, pipes or cables into the bottoms of waters of the state by minimal displacement of bottom material and without the creation of a trench, or trough, through the use of techniques such as plowing-in, weighing-in, or non-trenching jets.

(7) "Entrenchment" is the placement of transmission or distribution lines, pipes or cables into the bottoms of waters of the state by the creation of a defined trench, or trough, through the use of such devices as clamshells, dredges, trenching jets, or other devices which produce similar results.

(8) "Environmental Resource Permit" means a conceptual, individual or general permit for a surface water management system issued pursuant to Part IV, Chapter 373, Florida Statutes.

(9) "General Permit" means an Environmental Resource Permit issued or denied by District staff.

(10) "Individual Permit" means an Environmental Resource Permit issued or denied by the District Governing Board.

(11) "New surface water management system" means any surface water management system which is not in existence on October 1, 1984, or not authorized to be constructed on October 1, 1984.

(12) "Noticed General Permit" means an Environmental Resource Permit issued or denied by staff.

(13) "Operation permit" means a phase of an environmental resource permit issued by the District authorizing the operation and maintenance of a surface water management system in accordance with the terms and conditions of the permit.

(14) "Project Area" means the area within the total land area, as defined in subsection 40D-4.021(11), F.A.C., which is or will be served by a surface water management system to be permitted.

(15) "Prospecting" — means activities considered normal and reasonably necessary to retrieve samples of subsurface geologic sediments for the specific purpose of locating, mapping, and determining the quality and quantity of sedimentary strata or natural deposits.

(16) "Site Conditions Assessment Permit" [Note: this definition has not been adopted for use by DEP.]

(17) "Surface waters" are defined in subsection 373.019(16), Florida Statutes.

(18) "Surface water management system" or "system" means any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works or any combination thereof. The terms "surface water management system" or "system" include areas created by filling or by dredging as those terms are defined in subsections 373.403(13) and 373.403(14), Florida Statutes.

(19) "Surface waters of the state" means those surface waters regulated pursuant to subsection 403.031(13), Florida Statutes.

(20) "Total land area" means land holdings under common ownership or control which are contiguous, or land holdings which are served by a common surface water management system.

(21) "Wetlands" means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.

(22) The definitions listed in Chapters 40D-400, F.A.C., are also applicable to this chapter and Chapter 40D-40, F.A.C.

Specific Authority 373.044, 373.113, 373.118, 373.149, 373.171 FS. Law Implemented 373.403, 373.419 FS. History—Readopted 10-5-74, Formerly 16J-4.02, Amended 10-1-84, 3-1-88, 9-11-88, 10-3-95, 7-23-96, 2-27-02, 9-26-02, 2-19-04.

40D-4.041 Permits Required.

(1) Unless expressly exempt by law or District rule an Environmental Resource Permit shall be obtained from the District prior to:

- (a) The construction and operation of any new surface water management system, or
 - (b) The alteration, abandonment, or removal of any surface water management system.
 - (c) The establishment of a mitigation bank.
- (2) The District issues the following types of Environmental Resource Permits:

(a) General permits for construction, alteration, operation, removal or abandonment of surface water management systems for projects which have, either singularly or cumulatively, minimal environmental impact.

- 1. General permits are issued pursuant to Chapter 40D-40, F.A.C.
- 2. Noticed general permits are issued pursuant to Chapter 40D-400, F.A.C.

(b) Individual permits for construction, alteration, operation, removal or abandonment of surface water management systems for projects not meeting the criteria to qualify for a general permit under Chapter 40D-40 or 40D-400, F.A.C., and for mitigation banks.

(c) Conceptual permits are individual permits for mitigation banks and projects to be developed in phases which approve the concepts of a phased development master plan. A conceptual permit does not authorize construction, alteration, operation, or abandonment of a surface water management system or establishment of a mitigation bank.

- (d) Site conditions assessment permits [Note: This paragraph has not been adopted by DEP]

(3) A General Permit for Minor Surface Water Management Systems is required for a surface water management system, otherwise exempt from permitting under subsection 40D-4.051(3) or (4), F.A.C., unless the system is exempt by statute or rule from storm water quality regulation or has received storm water quality review and approval by the District or by a DEP permit, license or certification.

(4) Any dredging or filling in, on, or over surface waters of the State which is authorized by a general or individual permit issued under Chapter 40D-4, 40D-40, or 16J-4, F.A.C., as such Chapters existed prior to October 3, 1995, but which is not authorized by a permit or exemption under Chapter 62-312, F.A.C., as such Chapter existed prior to October 3, 1995, shall require an Environmental Resource Permit prior to the dredging or filling. However, such dredging or filling shall be exempt from the requirements of paragraphs 40D-4.301(1)(a) through (e) and (g) through (k), F.A.C.

(5) A proprietary authorization is required by Chapters 253 and 258, F.S., for activities which are located on submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund. Such authorization shall be reviewed by the District for activities which also require an environmental resource permit or exemption under Chapters 40D-4, 40D-40, and 40D-400, F.A.C., or a permit under subsections 373.414(11)-(16), F.S., under Section 373.427, F.S., Chapters 18-20 and 18-21, F.A.C., and Rules 62-312.065 and 62-343.075, F.A.C.

(6)(a) The owner/operator of any system for a mining or mining related activity that has an exemption confirmation letter issued by the District or the Department pursuant to Rule 40D-45.051, F.A.C., as that rule existed prior to October 9, 2001, must apply for an Environmental Resource Permit from the District or the Department in accordance with the division of responsibilities outlined in the Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., and Aquaculture General Permits Under Section 403.814, F.S., Between Southwest Florida Water Management District and Department of Environmental Protection, dated October 27, 1998. The application shall be provided no later than May 1, 2004, and be completed no later than May 1, 2005, and shall include the system for mining, mining related activities, and reclamation activities.

(b) During the application period the system for a mining or mining related activity previously exempt under Rule 40D-45.051, F.A.C., shall be operated in accordance with any plans, terms and conditions approved in the exemption confirmation letter and shall not affect the quality of receiving waters such that the applicable water quality standards set forth in Chapters 62-4, 62-302, 62-520, 62-522, and 62-550, F.A.C., including any antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), subsections 62-4.242(2) and (3), and Rule 62-302.300, F.A.C., and any special standards for Outstanding

Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated, and shall not otherwise harm the water resources. If an owner/operator proposes modifications to a system at any time, such modification shall be immediately subject to permitting under Chapter 40D-4, F.A.C., as provided in Rule 40D-4.054, F.A.C.

Specific Authority 373.044, 373.113, 373.118, 373.149, 373.171 FS. Law Implemented 373.413, 373.416, 373.426, 373.427 FS. History— Readopted 10-5-74, Amended 12-31-74, 9-4-77, 6-7-78, Formerly 16J-4.04, 16J-4.10(1), (2), (4), Amended 10-1-84, 3-1-88, 10-3-95, 7-23-96, 10-16-96, 4-17-97, 10-11-01, 7-16-02, 9-26-02, 3-26-03.

40D-4.051 Exemptions.

The following activities are exempt from permitting under this chapter:

- (1) The activities specified in Section 373.406, F.S.
- (2) The construction, alteration, or operation of a surface water management system for agricultural or silvicultural activities which satisfies the following requirements:
 - (a) The total land area does not equal or exceed 10 acres;
 - (b) The area of impervious surface will not equal or exceed 2 acres;
 - (c) The activities will not be conducted in wetlands;
 - (d) The activities will not be conducted in existing lakes, streams, or other watercourses;
 - (e) The surface water management system will not utilize drainage pumps or operable discharge structures;
 - (f) The activities will not utilize storm drainage facilities larger than one 24-inch diameter pipe, or its hydraulic equivalent;
 - (g) Discharges from the site will meet applicable state water quality standards, as set forth in Chapter 62-302 and Rule 62-4.242, F.A.C.;
 - (h) The activities are part of a conservation plan prepared or approved by a local Soil and Water Conservation District Board organized pursuant to Chapter 582, F.S., (S. C. S.). If the S. C. S. conservation plan is not implemented according to its terms, the exemption created in this subsection does not apply;
 - (i) The activities can otherwise reasonably be expected not to have significant adverse water resource impacts; and
 - (j) The surface water management system can be effectively maintained.
- (3) All normal and necessary farming and forestry operations as are customary for the area, which can be conducted without the construction or alteration of a surface water management system. In order to qualify for this exemption, such operations and facilities shall not impede or divert the flow of surface waters entering or leaving the operation or intrude into or otherwise substantially and adversely impact significant wetlands.
- (4) Phosphate mining, phosphate mining related surface water management systems, and reclamation and restoration conducted in accordance with Chapter 62C-16, F.A.C., are exempt from the requirements of this chapter, provided that all conditions for exemption in Rule 40D-4.053, F.A.C., are met.
- (5) Any system for a mining or mining related activity which has a valid permit issued by the District or the Department pursuant to Rule 40D-45.041, F.A.C. This exemption shall be for the plans, terms and conditions approved in the permit issued pursuant to Chapter 40D-45, F.A.C. If an operator of a system previously permitted under Chapter 40D-45, F.A.C., proposes an "alteration" as the term is defined in subsection 40D-4.021(7), F.A.C., such system shall be reviewed under the provisions of Chapter 40D-4, F.A.C.
- (6) Construction or private use of a single family dwelling unit, duplex, triplex or quadruplex that is not part of a larger common plan of development or sale and does not involve wetlands or other surface waters.
- (7) Routine maintenance of a surface water management system; however, maintenance of surface water management systems will be considered in conjunction with the applications for construction, alteration, or operation.
- (8) In accordance with the provisions of Section 403.813(2), F.S., no permit shall be required under Chapter 40D-4, 40D-40 or 40D-400, F.A.C., for the following activities:
 - (a) The repair or replacement of existing functional pipes or culverts the purpose of which is the discharge or conveyance of stormwater. In all cases, the invert elevation, the diameter, and the length of

the culvert shall not be changed. However, the material used for the culvert may be different from the original material. This exemption does not authorize the repair, replacement, or alteration of dams, spillways or appurtenant works, nor construction activities or procedures that cause a violation of water quality standards as set forth in Chapter 62-302 and Rule 62-4.242, F.A.C.

(b) The installation, replacement or repair of mooring pilings and dolphins associated with private docking facilities or piers.

(c) The installation and repair of private docks, piers and recreational docking facilities, or piers and recreational docking facilities of local government entities when the local governmental entity's activities will not take place in any manatee habitat, which structures have 1000 square feet or less of surface area over wetlands or other surface waters or 500 square feet or less of surface area over wetlands or other surface waters which are Outstanding Florida Waters. This exemption shall include the construction of structures above the dock or pier area, such as gazebos and boat shelters, provided such structures are not enclosed with walls and doors, are not used for living, commercial purposes, or storage of materials other than those associated with recreational use and provided the structures do not exceed, together with the docking facility or pier, the total area limitations above. To qualify for this exemption, any such structure:

1. Shall be used for recreational, non-commercial activities; and
2. Shall be constructed or held in place by pilings, including floating docks, so as not to involve filling or dredging other than necessary to install the pilings; and
3. Shall not substantially impede the flow of water or create a navigational hazard; and
4. Shall be the sole dock or pier constructed pursuant to this exemption as measured along the shoreline for a minimum distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot. For the purposes of this rule, multi-family living complexes and other types of complexes or facilities associated with the proposed private dock shall be treated as one parcel of property regardless of the legal division of ownership or control of the associated property. Construction of a dock under this exemption does not obligate the District to issue a subsequent permit to construct a channel to provide navigational access to the dock. Activities associated with a dock shall include the construction of the structures attached to the dock which are only suitable for the mooring or storage of boats (i.e., boatlifts). Nothing in this paragraph shall prohibit the Department from taking appropriate enforcement action pursuant to Chapter 403, F.S., to abate or prohibit any activity otherwise exempt from permitting pursuant to this paragraph if the Department can demonstrate that the exempted activity has caused water pollution in violation of Chapter 403, F.S.

(d) The performance of maintenance dredging of existing manmade canals, channels, basins, berths, intake and discharge structures, and previously dredged portions of natural water bodies within drainage rights-of-way or drainage easements which have been recorded in the public records of the county, where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into waters of the state, provided that no more dredging is performed than is necessary to restore the canals, channels, basins, berths, and intake and discharge structures, and previously dredged portions of natural water bodies, to original design specifications, provided that the work is conducted in compliance with Section 370.12(2)(d), F.S., provided that no significant impacts occur to previously undisturbed natural areas, and provided that control devices for return flow and best management practices of erosion and sediment control are utilized to prevent bank erosion and scouring and to prevent turbidity, dredged material, and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. Further, for maintenance dredging of previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements, an entity that seeks an exemption must notify the department or water management district, as applicable, at least 30 days prior to dredging and provide documentation of original design specifications or configurations where such exist. This exemption shall apply to all canals and previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements constructed before April 3, 1970, and to those canals and previously dredged portions of natural water bodies constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption shall not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent wetlands or other surface waters. Where no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund, the Department, the District or the United States Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal, channel, basin, berth or intake or

discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below mean low water.

(e) The installation and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists, or the installation and maintenance to design specifications of boat ramps open to the public in any wetlands or other surface waters where navigational access to the proposed ramp exists and where the construction of the proposed ramp will be less than 30 feet wide and will involve the removal of less than 25 cubic yards of material from the wetlands or other surface waters and the installation of docks with an area of 500 square feet or less over wetlands or other surface waters that are associated with and adjoining the boat ramps constructed pursuant to this exemption. All material removed shall be placed upon a self-contained upland site so as to prevent the escape of the spoil material and return water from the spoil site into the wetlands or other surface waters. For the purpose of this exemption artificial bodies of water shall include, residential canal systems, canals permitted by a District created under Section 373.069, F.S., and artificially created portions of the Florida Intracoastal Waterway.

(f) Construction of seawalls or riprap, including only that backfilling needed to level the land behind seawalls or riprap, in artificially created waterways where such construction will not violate existing water quality standards, impede navigation or adversely affect flood control. An artificially created waterway is defined as a body of water that has been totally dredged or excavated and which does not overlap natural wetlands or other surface waters. For the purpose of this exemption, artificially created waterways shall also include existing residential canal systems. This exemption does not apply to the construction of vertical seawalls in estuaries or lagoons unless the proposed construction is within an existing man-made canal where the shoreline is currently occupied in whole or in part by vertical seawalls.

(g) Construction of private docks in artificially created waterways where construction will not violate water quality standards, impede navigation, or adversely affect flood control.

(h) The replacement or repair of existing docks and mooring pilings provided that no fill material other than the piles is to be used, and provided that the replacement or the repaired dock or mooring pile is in the same location and of the same configuration and dimensions as the dock or mooring pile being replaced or repaired. A dock or mooring pile must be functional and able to provide access to boats moored at the dock or pile before this exemption may be used unless the dock or mooring pile has been rendered nonfunctional by a discreet event such as a storm, collision or fire.

(i) The restoration of a seawall or riprap at its previous location, upland of its previous location, or within 18 inches waterward of its previous location, as measured from the face of the existing seawall slab to the face of restored seawall slab or from the front slope of the existing riprap to the front slope of the restored riprap. No filling can be performed except in the actual restoration of the seawall or riprap. No construction shall be undertaken without necessary title or leasehold interest, especially where private and public ownership boundaries have changed as a result of natural occurrences such as accretion, reliction and natural erosion. This exemption shall be limited to functioning seawalls or riprap. This exemption shall not affect the permitting requirements of Chapter 161, F.S.

(j) The maintenance of functioning insect control structures, and the maintenance of functioning dikes and functioning irrigation and drainage ditches, including roadway ditches, provided that the spoil material is deposited on a self-contained upland spoil site which will prevent the escape of the spoil material and return water into wetlands or other surface waters. In the case of insect control structures, if the cost of using a self-contained upland spoil site is so excessive as determined by the Department of Agriculture and Consumer Services, pursuant to subsection 403.088(1), F.S., that it will inhibit the proposed insect control, existing spoil sites or dikes may be used, upon notification to the District. In the case of insect control where upland spoil sites are not used pursuant to this exemption, turbidity control devices shall be used to confine the spoil material discharge to that area previously disturbed when the receiving body of water is used as a potable water supply, is designated as approved, conditionally approved, restricted or conditionally restricted waters for shellfish harvesting by the Department, or functions as a habitat for commercially or recreationally important shellfish or finfish. In all cases, no more dredging is to be performed than is necessary to restore the dike or irrigation or drainage ditch to its original design specifications. This exemption shall apply to man-made trenches dug for the purpose of draining water from the land or for transporting water for use on the land and which are not built for navigational purposes.

(k) The restoration of less than 100 feet in length of existing insect control impoundment dikes and the connection of such impoundments to tidally influenced waters. Such impoundments shall be

connected to tidally influenced waters for at least 6 months each year, beginning September 1, and ending February 28. The connection shall be of sufficient cross-sectional area to allow beneficial tidal influence. Restoration shall involve no more dredging than needed to restore the dike to original design specifications, and such that the final elevation of the dredge area shall be within 2 feet of immediately adjacent bottom elevations. For the purposes of this paragraph, restoration shall not include maintenance of impoundment dikes of insect control impoundments.

(l) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of wetlands or other surface waters, except in Class I and Class II waters and aquatic preserves, provided that no dredging or filling is necessary.

(m) The replacement or repair of subaqueous transmission and distribution lines laid on or embedded in, the bottoms of wetlands or other surface waters.

(n) The construction of seawalls or riprap in wetlands or other surface waters, where such construction is between and adjoins at both ends existing seawalls or riprap, follows a continuous and uniform construction line with the existing seawalls or riprap, is no more than 150 feet in length, and does not violate existing water quality standards, impede navigation adversely or affect flood control. However, this shall not affect the permitting requirements of Chapter 161, F.S. In estuaries and lagoons construction of vertical seawalls is limited to the circumstances and purposes stated in subsections 373.414(5)(b)1.-4., F.S.

(o) The replacement or repair of existing open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width, provided that no more dredging or filling in wetlands or other surface waters is performed than that necessary to replace or repair pilings and that the structure to be replaced or repaired is the same length, the same configuration, and in the same location as the original bridge. No debris from the original bridge shall be allowed to remain in wetlands or other surface waters.

(9) The following activities shall not be required to obtain a permit under Chapter 40D-4, 40D-40, or 40D-400, F.A.C.:

(a) Activities necessary to preserve, restore, repair, remove, or replace an existing communication or power pole or line, provided that work does not involve dredge or fill activities other than the removal of the existing structure and the installation of the new structure, and in the case of a power pole or line, the activity does not increase the voltage of existing power lines. An activity does not qualify to use this exemption if it results in relocation of an existing structure or facility more than 10 feet in any direction from its original location, or if it involves the construction of new power or telephone lines or the repair and replacement of existing structures that require dredge or fill activities to provide access to the site.

(b) The installation, removal, and replacement of utility poles that support telephone or communication cable lines, or electric distribution lines of 35kV or less, together with the bases and anchoring devices to support those poles, as specified below. For the purpose of this exemption, "anchoring device" shall mean steel guy wires fastened to the ground and "base" shall mean a concrete or steel foundation not exceeding four feet in radius, used to support a utility pole. This exemption shall be subject to the following conditions:

1. No more than 15 utility poles may be installed, removed, or replaced in wetlands;

2. This exemption shall not apply in surface waters other than wetlands;

3. The temporary disturbance to wetlands shall be limited to a length of 0.5 miles, an areal extent of 0.5 acre, and a width of 30 feet to access the site to actually install, remove, or replace the utility poles; thereafter, maintenance of the utility right of way in wetlands shall be limited to a cleared corridor that does not exceed a total width of 15 feet and a total area of 0.25 ac.;

4. This exemption shall not apply in forested wetlands located within 550 feet from the mean or ordinary high water line of a named waterbody that is designated as an Outstanding Florida Water or an Outstanding National Resource Water, or to activities in any aquatic preserves;

5. There shall be no permanent placement of fill other than utility poles and anchoring devices;

6. There shall be no dredging or filling of fill pads or access roads except for temporary mats, which may be used to access pole installation sites, and all temporary mats shall be removed within thirty days after the installation, removal or replacement of the utility poles, associated bases, and anchoring devices;

7. The installation of the utility pole(s) and associated bases and anchoring devices shall not interfere with navigation or impede water flow in wetlands;

8. Turbidity, sedimentation, and erosion shall be controlled during and after construction to prevent violations of state water quality standards due to construction related activities;

9. Except for the permitted structures, pre-construction ground elevations and the contours of all soils that are disturbed by construction activities, including vehicle ruts in wetlands, shall be restored within 30 days of completion of the installation of the utility line or cable, and restored grades shall be stabilized within 72 hours following completion of elevation and contour restoration to minimize erosion;

10. Vehicle usage in wetlands shall be conducted so as to minimize tire rutting and erosion impacts;

11. Water jets shall not be used except for those which are a pre-engineered part of the pole, and provided that the water for the jets is either recirculated on site or is discharged in a self-contained upland disposal site;

12. Vehicular access in wetlands shall be limited to existing roads, trails, rights-of-way or easements, and to other previously disturbed corridors where they exist; and

13. The permittee shall provide an annual report to the District which summarizes the activities conducted under this exemption for the period from January 1 to December 31 of each year, including: the acreage of temporary impacts in wetlands resulting from the use of temporary mats and the clearing of wetland vegetation; the extent of permanent impacts to wetlands including the number of poles and structures in wetlands and the acreage of clearing in wetlands; the voltage of all electric lines that are installed; the number of times this exemption is used; the specific location of each line that is installed (including the county, the section, township, and range, and the identity of permanent landmarks such as roads and named wetlands and other surface waters within or adjacent to the work location), and the number of times and locations where water jets are used.

(c) The installation of aids to navigation, including bridge fender piles, "No Wake" and similar regulatory signs, and buoys associated with such aids, provided that the devices are marked in accordance with Section 327.40, F.S.

(d) Maintenance of minor silvicultural surface water management systems as described in subsection 40D-400.500(4), F.A.C., which were permitted under Part IV of Chapter 373, F.S., or were constructed prior to the requirements for a permit under this part, provided such maintenance is conducted in accordance with the performance standards set forth in subsection 40D-400.500(5), F.A.C.

(e) The construction or maintenance of culverted driveway or roadway crossings and bridges of artificial waterways, subject to the following provisions:

1. This exemption shall apply only to wholly artificial, non-navigable drainage conveyances.

2. The construction project area shall not exceed one acre, and the construction shall be for a discrete project that is not part of a larger plan of development which requires permitting under Chapters 40D-40 and 40D-400, F.A.C., or this chapter.

3. The artificial waterway in existing condition shall be not more than 4 feet deep, measured from the top of bank to the bottom of the artificial waterway.

4. The person performing the exempt activity shall ensure that the size and capacity of the culvert(s) will be adequate to pass normal high water stages of the artificial waterway without causing adverse impacts to upstream or downstream property, but the culvert(s) shall not be larger than one 24 inch diameter pipe, or its equivalent; and in no instance shall the culvert(s) provide a smaller cross-sectional area or discharge capacity than any upstream culvert.

5. The elevation of the culvert invert shall be at the existing bottom grade of the artificial waterway.

6. The length of the driveway or roadway crossing the waterway shall not exceed 30 feet from top of bank to top of bank.

7. The top width of the driveway or roadway shall not exceed 20 feet, the toe to toe width shall not exceed 40 feet, and side slopes shall be no steeper than 3 feet horizontal to 1 foot vertical.

8. Clean fill used for the crossing shall be obtained from an upland borrow pit or from a dredge site that is in compliance with the regulatory requirements of Part IV, Chapter 373, F.S., either through a permit, or an exemption.

9. There shall be no additional dredging, filling, or construction activities within the artificial waterway or project area, except those directly involved in the construction or operation and maintenance of the culverted crossing and those exempted from regulation under Part IV, Chapter 373, F.S.

10. All temporary fill in construction areas shall be removed and the area regraded to original elevations and revegetated.

11. The person performing the exempt activity shall implement measures for erosion and pollution control using best management practices, including turbidity curtains or similar devices and other site specific practices, in strict adherence to the Florida Department of Transportation's "Standard Specifications for Road and Bridge Construction," and Chapter 6 of the Department's "Florida Development Manual," to prevent violations of state water quality standards. Temporary erosion controls shall be implemented prior to and during construction, and permanent erosion control measures for all exposed soils shall be completed within 7 calendar days of the most recent construction activity.

12. Any spoil material from construction or maintenance shall be used or disposed of on an upland portion of the property or shall be transported off site and deposited on a self-contained upland spoil site that is in compliance with the permitting requirements of Chapters 40D-4 and 40D-40, F.A.C., as applicable.

13. If dewatering is performed, all temporary fill dikes and dewatering discharges shall be installed and constructed so that no upstream flooding or impoundment occurs and to prevent siltation, erosion or turbid discharges into waters of the State in violation of state water quality standards. Any temporary works shall be completely removed, and all areas upstream and downstream from the crossing shall be restored to grades, elevations and conditions which existed before the construction.

14. This exemption shall apply only to a maximum of 2 crossings on any total land area of property with a minimum distance of 500 feet between crossings.

15. This exemption shall not apply to activities involving relocation or other alteration of all or part of the artificial waterway, or construction for other than the proposed culvert crossing, except as exempted by Chapter 373, F.S., or this section.

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

(g) Installation of piling support structures associated with water testing or monitoring equipment by the Department or the Districts, provided that flow or navigation are not impeded.

(10) Surface Waters or Wetlands Created by Mosquito Control Activities. Construction, alteration, operation, maintenance, removal, and abandonment of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, or works, in, on, or over lands that have become surface waters or wetlands solely because of mosquito control activities undertaken as a part of a governmental mosquito control program, and which lands were neither wetlands nor other surface water before such activities, shall be exempt from the provisions in this chapter adopted by the District to implement subsections 373.414(1) through (6); 373.414(7), F.S., regarding any authority granted pursuant to Sections 373.414, F.S. (1991); 373.414(8) and 373.414(10), F.S.

(11) Exemptions for Treatment or Disposal Systems.

(a) Alteration and maintenance of the following shall be exempt from the provisions in Chapter 40D-4, F.A.C., implementing subsections 373.414(1) through 373.414(6), 373.414(8), and 373.414(10), F.S.; and subsection 373.414(7), F.S., regarding any authority to apply state water quality standards within any works, impoundments, reservoirs, and other watercourses described in this subsection and any authority granted pursuant to Section 373.414, F.S. (1991):

1. Works, impoundments, reservoirs, and other watercourses constructed and operated solely for wastewater treatment or disposal in accordance with a valid permit reviewed or issued under Rules 62-28.700, 62-302.520 or Chapters 62-17, 62-600, 62-610, 62-640, 62-650, 62-660, 62-670, 62-671, 62-673, 62-701, F.A.C., or Section 403.0885, F.S., or rules implementing Section 403.0885, F.S., except

for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to Chapter 62-611, F.A.C., or Section 403.0885, F.S., or its implementing rules.

2. Works, impoundments, reservoirs, and other watercourses constructed solely for wastewater treatment or disposal before a construction permit was required under Chapter 403, F.S., and operated solely for wastewater treatment or disposal in accordance with a valid permit reviewed or issued under Rules 62-28.700, 62-302.520 or Chapter 62-17, 62-600, 62-610, 62-640, 62-650, 62-660, 62-670, 62-671, 62-673, or 62-701, F.A.C.; or Section 403.0885, F.S., or rules implementing Section 403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to Chapter 62-611, F.A.C., or Section 403.0885, F.S., or its implementing rules;

3. Works, impoundments, reservoirs, and other watercourses of less than 0.5 acres in combined area on a project-wide basis, constructed and operated solely for stormwater treatment in accordance with a noticed exemption under Chapter 62-25, F.A.C., or a valid permit issued under Chapters 40D-4, 62-25 (excluding Rule 62-25.042, F.A.C.), Chapter 62-330, F.A.C., except those permitted as wetland stormwater treatment systems.

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

(b) Alteration and maintenance of the following shall be exempt from the provisions in Chapter 40D-4, F.A.C., adopted to implement subsections 373.414(1), 373.414(2)(a), 373.414(8), and 373.414(10), F.S.; and subsections 373.414(3) through 373.414(6), F.S.; and subsection 373.414(7), F.S., regarding any authority to apply state water quality standards within any works, impoundments, reservoirs, and other watercourses described in this subsection and any authority granted pursuant to Section 373.414, F.S. (1991), except for authority to protect threatened and endangered species in isolated wetlands:

1. Works, impoundments, reservoirs, and other watercourses of 0.5 acre or greater in combined area on a project-wide basis, constructed and operated solely for stormwater treatment in accordance with a noticed exemption under Chapter 62-25, F.A.C., or a valid permit issued under Chapters 40D-4, 62-25 (excluding Rule 62-25.042, F.A.C.), Chapter 62-330, F.A.C., except those permitted as wetland stormwater treatment systems.

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

(c) The exemptions in paragraphs (a) and (b) above shall not apply to works, impoundments, reservoirs or other watercourses that are:

1. Currently wetlands which existed before construction of the stormwater treatment system and were incorporated in it;

2. Being altered through expansion into wetlands or other surface waters; or

3. Wetlands created, enhanced or restored as mitigation for wetland or surface water impacts under a permit issued by the Department or the District.

(d) Alterations and maintenance of works, impoundments, reservoirs and other watercourses exempt under this subsection shall not be considered in determining whether the wetland permitting thresholds in Chapters 40D-4 or 40D-40, F.A.C., are met or exceeded.

(e) Works, impoundments, reservoirs and other watercourses exempt under this subsection, other than isolated wetlands in systems described in paragraph (b) above, shall not be delineated under Section 373.421, F.S.

(f) This exemption shall not affect the application of state water quality standards, including those applicable to Outstanding Florida Waters, at the point of discharge to waters as defined in subsection 403.031(13), F.S.

(g) As used in this subsection, "solely for" means the reason for which a work, impoundment, reservoir, or other watercourse is constructed and operated, and such construction and operation would not have occurred but for the purposes identified in paragraphs (a) and (b) above. Furthermore, the phrase does not refer to a work, impoundment, reservoir, or other watercourse constructed or operated for multiple purposes. Uses, such as occasional recreational uses, will not render the exemption inapplicable, so long as the incidental uses are not part of the original planned purpose of the work, impoundment, reservoir or other watercourse. However, for those works, impoundments, reservoirs, or other watercourses described in subparagraphs (a)3. and (b)1., use of the system for flood attenuation, whether originally planned or unplanned, shall be considered an incidental use so long as the works,

impoundments, reservoirs, and other watercourses are no more than two acres larger than the minimum area required to comply with the applicable stormwater treatment requirements of Chapters 62-25, 62-330, 40D-4, F.A.C. For the purposes of this subsection, reuse from a work, impoundment, reservoir, or other watercourse is part of treatment or disposal.

(12) The performance of activities pursuant to the provisions of the exemptions described above does not relieve the person or persons who are using the exemption or who are constructing or otherwise implementing the activity from meeting the permitting or performance requirements of other District rules.

Specific Authority 373.044, 373.113, 373.149, 373.171, 373.414(9) FS. Law Implemented 373.406, 373.413, 373.414(9) FS. History—Readopted 10-5-74, Formerly 16J-4.05, Amended 10-1-84, 10-1-86, 3-1-88, 1-24-90, 10-3-95, 4-18-01, 5-17-01, 4-9-02, 2-19-04, 6-30-05.

40D-4.053 Conditions for Exemptions.

The exemption for phosphate mining and related activities provided in subsection 40D-4.051(4), F.A.C., is subject to the following conditions:

(1) Activities associated with mining operations as defined by and subject to Sections 378.201-.212, F.S., and included in a conceptual reclamation plan or modification application submitted prior to July 1, 1996, shall continue to be exempt under subsection 40D-4.051(4), F.A.C.

(2) The operator shall certify to the District prior to mining, with existing mines certifying by January 1, 1987, and provide sufficient information to demonstrate that all facilities are and will be designed, constructed and operated to avoid damage to off-site property or the public caused by:

- (a) Floodplain development, encroachment or other alteration,
- (b) Retardance, acceleration or diversion of flowing water,
- (c) Reduction of natural water storage areas,
- (d) Excessive discharge or facility failure, or
- (e) Other activities adversely impacting off-site water flows or levels.

(3) The operator shall submit to the District a copy of each Annual Report submitted to the Department of Environmental Protection in accordance with Rule 62C-16.0091, F.A.C.

(4) For mines that have already received a permit under the rules of the Department of Environmental Protection adopted pursuant to Sections 403.91-.929, 1984 Supplement to the Florida Statutes 1983, the operator shall provide documentation of such permit to the District. For mines that qualify under the provision of subsection 373.414(15), F.S., the operator shall submit to the District a copy of the application for a permit required under subsection 373.414(15) and Sections 403.91-.929, 1984 Supplement to the Florida Statutes 1983, concurrent with the submittal of any such application made to the Department of Environmental Protection in accordance with the “operating Agreement concerning Regulation Under Part IV, Chapter 373, F.S., and Aquaculture General Permits Under Section 403.814, F.S., Between Southwest Florida Water Management District and Department of Environmental Protection, dated October 27, 1998, and shall fulfill the requirements of subsection 40D-4.053(2), F.A.C., that apply to such application prior to issuance by the Department of Environmental Protection of its proposed agency action.

(5) The location of any existing point of discharge authorized in a previous permit issued by the Department of Environmental Regulation, the Department of Environmental Protection, or the District shall not be changed, and the volume and frequency of such discharge shall not be exceeded.

(6) Natural drainage from off-site up gradient areas shall not be interrupted so as to cause damage to off-site property or the public, and natural drainage patterns on undisturbed lands shall be maintained to the maximum extent achievable without adversely altering the time, stage, volume and point or manner of discharge or dispersion.

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.406, 373.413 FS. History—New 10-1-86, Amended 2-19-04.

40D-4.054 Alteration of Exempt Projects.

A permit may be required for alteration of a previously exempt surface water management system.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.406, 373.413 FS. History—New 10-1-84.

40D-4.301 Conditions for Issuance of Permits.

- (1) In order to obtain a general, individual, or conceptual permit under this chapter or Chapter 40D-40, F.A.C., an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal or abandonment of a surface water management system:
 - (a) Will not cause adverse water quantity impacts to receiving waters and adjacent lands;
 - (b) Will not cause adverse flooding to on-site or off-site property;
 - (c) Will not cause adverse impacts to existing surface water storage and conveyance capabilities;
 - (d) Will not adversely impact the value of functions provided to fish and wildlife, and listed species including aquatic and wetland dependent species, by wetlands, other surface waters and other water related resources of the District;
 - (e) Will not adversely affect the quality of receiving waters such that the water quality standards set forth in Chapters 62-4, 62-302, 62-520, 62-522 and 62-550, F.A.C., including any antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), subsections 62-4.242(2) and (3), and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated;
 - (f) Will not cause adverse secondary impacts to the water resources;
 - (g) Will not adversely impact the maintenance of surface or ground water levels or surface water flows established pursuant to Chapter 373.042, F.S.;
 - (h) Will not cause adverse impacts to a work of the District established pursuant to Section 373.086, F.S.;
 - (i) Is capable, based on generally accepted engineering and scientific principles, of being effectively performed and of functioning as proposed;
 - (j) Will be conducted by an entity with financial, legal and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued; and
 - (k) Will comply with any applicable special basin or geographic area criteria established pursuant to this chapter.
- (2) If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the applicant shall comply with the requirements set forth in Section 3.2.4.5 of the Basis of Review.
- (3) The standards and criteria contained in the Basis of Review for Environmental Resource Permit Applications shall determine whether the reasonable assurances required by subsection 40D-4.301(1) and Rule 40D-4.302, F.A.C., have been provided.
- (4) An activity which requires both an environmental resource permit, or a permit under subsections 373.414(11)-(16), F.S., and a proprietary authorization under Chapter 253 or 258, F.S., shall be subject to the requirements and procedures in Section 373.427, F.S., Chapters 18-20 and 18-21, F.A.C., and Rules 62-312.065 and 62-343.075, F.A.C.

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.042, 373.403, 373.413, 373.416, 373.426, 373.427 FS. History— Readopted 10-5-74, Amended 12-31-74, 6-7-78, Formerly 16J-4.06(3), (4), (5), (6), (8), Amended 10-1-84, 6-2-85, 4-2-87, 3-1-88, 10-3-95, 10-16-96, 9-26-02.

40D-4.302 Additional Conditions for Issuance of Permits.

- (1) In addition to the conditions set forth in Rule 40D-4.301, F.A.C., in order to obtain a general, individual, or conceptual permit under this chapter an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, and abandonment of a system:
 - (a) Located in, on, or over wetlands or other surface waters as delineated pursuant to the methodology authorized by subsection 373.421(1), F.S., will not be contrary to the public interest, or if such an activity significantly degrades or is within an Outstanding Florida Water, that the activity will be clearly in the public interest, as determined by balancing the following criteria as set forth in subsections 3.2.3 through 3.2.37 of the Basis of Review for Environmental Resource Permit Applications within the Southwest Florida Water Management District adopted by reference in Rule 40D-4.091, F.A.C.:
 1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;

2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
5. Whether the activity will be of a temporary or permanent nature;
6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of Section 267.061, F.S.; and
7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

(b) Will not cause unacceptable cumulative impacts upon wetlands and other surface waters, as set forth in subsections 3.2.8 through 3.2.8.2 of the Basis of Review for Environmental Resource Permit Applications within the Southwest Florida Water Management District adopted by reference in Rule 40D-4.091, F.A.C.

(c) Located in, adjacent to or in close proximity to Class II waters or located in Class II waters or Class III waters classified as approved, restricted or conditionally restricted for shellfish harvesting pursuant to Chapter 5L-1, F.A.C., will comply with the additional criteria in subsection 3.2.5 of the Basis of Review for Environmental Resource Permit Applications adopted by reference in Rule 62-330.200(3)(e), F.A.C.

(d) Which constitute vertical seawalls in estuaries or lagoons, will comply with the additional criteria provided in subsection 3.2.6 of the Basis of Review for Environmental Resource Permit Applications.

(2) The District shall take into consideration a permit applicant's violation of any Department rules adopted pursuant to Sections 403.91-929, F.S. (1984 Supp.), as amended, which the District had the responsibility to enforce pursuant to delegation or any District rules adopted pursuant to Part IV, Chapter 373, F.S., relating to any other project or activity and efforts taken by the applicant to resolve these violations, when determining whether the applicant has provided reasonable assurance that District permitting standards will be met.

Specific Authority 373.016, 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.042, 373.409, 373.413, 373.414, 373.416, 373.426 FS. History—New 10-3-95, Amended 9-26-02, 2-19-04, 6-30-05.

40D-4.381 General Conditions.

(1) The following general conditions shall be a part of all permits issued pursuant to this chapter and Chapter 40D-40, F.A.C.

(a) All activities shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit.

(b) This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications, shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.

(c) Activities approved by this permit shall be conducted in a manner which does not cause violations of state water quality standards. The permittee shall implement best management practices for erosion and a pollution control to prevent violation of state water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.

(d) Water quality data for the water discharged from the permittee's property or into the surface waters of the state shall be submitted to the District as required by the permit. Analyses shall be performed according to procedures outlined in the current edition of Standard Methods for the Examination

of Water and Wastewater by the American Public Health Association or Methods for Chemical Analyses of Water and Wastes by the U.S. Environmental Protection Agency. If water quality data are required, the permittee shall provide data as required on volumes of water discharged, including total volume discharged during the days of sampling and total monthly volume discharged from the property or into surface waters of the state.

(e) District staff must be notified in advance of any proposed construction dewatering. If the dewatering activity is likely to result in offsite discharge or sediment transport into wetlands or surface waters, a written dewatering plan must either have been submitted and approved with the permit application or submitted to the district as a permit prior to the dewatering event as a permit modification. A water use permit may be required prior to any use exceeding the thresholds in Chapter 40D-2, F.A.C.

(f) Stabilization measures shall be initiated for erosion and sediment control on disturbed areas as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 7 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(g) Off site discharges during construction and development shall be made only through the facilities authorized by this permit. Water discharged from the project shall be through structures having a mechanism suitable for regulating upstream stages.

(h) The permittee shall complete construction of all aspects of the surface water management system, including wetland compensation (grading, mulching, planting), water quality treatment features, and discharge control facilities prior to beneficial occupancy or use of the development being served by this system.

(i) The following shall be properly abandoned or removed:

1. Any existing wells in the path of construction shall be properly plugged and abandoned by a licensed well contractor.
2. Any existing septic tanks on site shall be abandoned at the beginning of construction.
3. Any existing fuel storage tanks and fuel pumps shall be removed at the beginning of construction.

(j) All surface water management systems shall be operated to conserve water in order to maintain environmental quality and resource protection; to increase the efficiency of transport, application and use; to decrease waste; to minimize unnatural runoff from the property; and to minimize dewatering of offsite property.

(k) At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District a written notification of commencement indicating the actual start date and the expected completion date.

(l) Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the occupation of the site or operation of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of that phase or portion of the system to a local government or other responsible entity.

(m) Within 30 days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by Sections 373.117 or 403.0877, or Chapters 471, 472, 481, or 492, F.S., utilizing the required Statement of Completion and Request for Transfer to Operation Entity Form 62-343.900(7), effective July 4, 1995, and adopted by reference in Rule 62-343.900, F.A.C. Additionally, if deviation from the approved drawings are discovered during the certification process the certification must be accompanied by a copy of the approved permit drawings with deviations noted.

(n) This permit is valid only for the specific processes, operations and designs indicated on the approved drawings or exhibits submitted in support of the permit application. Any substantial deviation from the approved drawings, exhibits, specifications or permit conditions, including construction within the total land area but outside the approved project area(s), may constitute grounds for revocation or enforcement action by the District, unless a modification has been applied for and approved pursuant to Rule 62-343.100, F.A.C. Examples of substantial deviations include excavation of ponds, ditches or sump areas deeper than shown on the approved plans.

(o) The operation phase of this permit shall not become effective until the permittee has complied with the requirements of the conditions in subsection (1) above, the District in accordance with

subsections 2.6 through 2.6.3 of the Basis of Review for Environmental Resource Permit Applications within the Southwest Florida Water Management District adopted by reference in Rule 40D-4.091, F.A.C., determines the system to be in compliance with the permitted plans, and the entity approved by the District accepts responsibility for operation and maintenance of the system. The permit may not be transferred to the operation and maintenance entity approved by the District until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall request transfer of the permit to the responsible operation and maintenance entity approved by the District, if different from the permittee. Until the permit is transferred pursuant to subsection 2.6.1 of the Basis of Review for Environmental Resource Permit Applications within the Southwest Florida Water Management District adopted by reference in Rule 40D-4.091, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

(p) Should any other regulatory agency require changes to the permitted system, the District shall be notified in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.

(q) This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations including a determination of the proposed activities' compliance with the applicable comprehensive plan prior to the start of any activity approved by this permit.

(r) This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40D-4 or 40D-40, F.A.C.

(s) The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the activities authorized by the permit or any use of the permitted system.

(t) Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Rule 40D-4.042, F.A.C., and subsections 3.4 through 3.4.6 of the Basis of Review for Environmental Resource Permit Applications within the Southwest Florida Water Management District adopted by reference in Rule 40D-4.091, F.A.C.

(u) The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of the permitted system or the real property at which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rule 62-343.130, F.A.C. The permittee transferring the permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to such sale, conveyance or other transfer.

(v) Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with District rules, regulations and conditions of the permits.

(w) If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the District and the Florida Department of State, Division of Historical Resources.

(x) The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.

(2) In addition to those general conditions set forth in subsection (1), the Department shall impose on any permit granted under rules adopted by reference from Chapters 40D-4 and 40D-40, F.A.C., such reasonable project-specific conditions as are necessary to assure that the permitted system will be consistent with the overall objectives of the District and will not be harmful to the water resources of the District.

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.042, 373.403, 373.409, 373.413, 373.414, 373.416, 373.426 FS. History—Readopted 10-5-74, Amended 12-31-74, 6-7-78, Formerly 16J-4.06(7), 16J-4.11, 16J-4.10(3), Amended 10-1-84, 3-1-88, 10-3-95, 10-16-96, 10-11-01, 2-19-04.

40D-4.461 Inspection.

Inspection of permitted systems shall be conducted in accordance with Section 373.423, Florida Statutes.

*Specific Authority 373.044, 373.133, 373.149, 373.171 FS. Law Implemented 373.423 FS. History—
Readopted 10-5-74, Formerly 16J-4.09, Amended 10-1-84.*