

Substantial rewording of Rule 40E-4.011. See Florida Administrative Code for present text).

40E-4.011 Policy and Purpose.

- (1) It is the policy of the District to regulate activities in, on or over wetlands or other surface waters and the management and storage of all surface waters within its boundaries pursuant to the provisions of Chapter 373, F.S., and Chapters 40E-4, 40E-40, 40E-41 and 40E-400, F.A.C.
 - (2) This chapter, as well as Chapters 40E-40 and 40E-400, F.A.C., implement the comprehensive permit system contemplated in Part IV of Chapter 373, F.S.
 - (3) The rules relating to environmental resource permits are found in this chapter, Chapter 40E-40, F.A.C. (Environmental Resource Standard General Permits) and 40E-41, F.A.C. (Surface Water Management Basin and Related Criteria). In addition, no notice and noticed environmental resource general permits are found in Chapter 40E-400, F.A.C.
 - (4) Supplemental permit requirements for activities within defined geographical areas are found in Chapters 40E-41 (Surface Water Management Basin and Related Criteria), 40E-61, F.A.C. (Lake Okeechobee Surface Water Management and Improvement Permits), and 40E-63, F.A.C. (Everglades Agricultural Area Surface Water Management and Improvement Permits).
- Specific Authority 373.044, 373.113 F.S. Law Implemented 373.086(1), 373.103(1), 373.103(4), 373.403-.443 F.S. History--New 9-3-81, Formerly 16K-4.01, Amended 4/20/94, 10-3-95.

(Substantial Rewording of Rule 40E-4.021. See Florida Administrative Code for present text).

40E-4.021 Definitions.

When used in this chapter, Chapters 40E-40, 40E-41 and 40E-400, F.A.C.:

- (1) "Abandon" or "abandonment" means cessation of use and maintenance activities or responsibility for a system, or part of a system.
- (2) "Alter" means to extend a dam or works beyond maintenance in its original condition, including changes which may increase or diminish the flow or storage of surface water which may affect the safety of such dam or works.
- (3) "Appurtenant works" means any artificial improvements to a dam which might affect the safety of such dam or, when employed, might affect the holding capacity of such dam or of the reservoir or impoundment created by such dam.
- (4) "Aquatic Preserve" means an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition, as authorized by Chapter 258, F.S.
- (5) "Conceptual Approval" means an environmental resource permit, issued by the District Governing Board, which approves a conceptual master plan for a surface water management system or a mitigation bank. Conceptual approvals constitute final District action, and are binding to the extent that adequate data has been made available for review by the applicant during the review process. To the extent that there is any inconsistency between the permit, staff report, and other information in the application file, the permit and staff report shall control.
- (6) "Conservation Easement" means a right or interest in real property pursuant to Section 704.06, F.S., which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses and which prohibits or limits any or all of the following:
 - (a) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground;
 - (b) dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
 - (c) removal or destruction of trees, shrubs, or other vegetation;
 - (d) excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
 - (e) surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
 - (f) activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
 - (g) acts or uses detrimental to such retention of land or water areas; and

(h) acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

(7) "Construction" means any activity including land clearing, earth moving or the erection of structures which will result in the creation of a system.

(8) "Dam" means any artificial or natural barrier, with appurtenant works, raised to obstruct or impound, or which does obstruct or impound, any of the surface waters of the state.

(9) "Department" means the Florida Department of Environmental Protection.

(10) "Drainage basin" means a subdivision of a watershed.

(11) "Dredging" means excavation, by any means, in surface water or wetlands, as delineated by Section 373.4211, F.S. It also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters or wetlands, as delineated by Section 373.4211, F.S., directly or via an excavated water body or series of water bodies.

(12) "Embedment" means 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.

(13) "Endangered species" means those animal species which are listed as endangered in Section 39-27.003, F.A.C., and those plant species which are listed in 50 Code of Federal Regulations 17.12, when such plants are found to be located in a wetland or other surface water.

(14) "Entrenchment" means 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.

(15) "Environmental resource permit" means a conceptual approval, individual or general permit for a surface water management system issued pursuant to Part IV, Chapter 373, F.S. Environmental resource permit also means a conceptual or individual permit for the establishment and operation of a mitigation bank.

(16) "Estuary" means a semi-enclosed, naturally existing coastal body of water which has a free connection with the open sea and within which seawater is measurably diluted with fresh water derived from riverine systems.

(17) "Filling" means the deposition, by any means, of materials in surface waters or wetlands, as delineated by Section 373.4211, F.S.

(18) "General Permit" means a no notice, noticed or standard general environmental resource permit issued or denied by District staff.

(19) "Impoundment" means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

(20) "Incidental site activities" means those certain site activities in uplands which may be conducted in conjunction with the work proposed in an environmental resource permit application such as: land clearing in uplands; minimal earthwork, lake construction; road subgrade construction; foundation construction; utility installation; fence installation; construction trailer installation; unconnected drainage facility construction; or other similar activities.

(21) "Individual Permit" means an environmental resource permit issued by the District Governing Board.

(22) "Isolated Wetland" means any wetland without a direct hydrologic connection to a lake, stream, estuary, or marine water.

(23) "Lagoon" means a naturally existing coastal zone depression which is below mean high water and which has permanent or ephemeral communications with the sea, but which is protected from the sea by some type of naturally existing barrier.

(24) "Listed Species" means those animal species which are endangered, threatened or of special concern and are listed in Sections 39-27.003, 39-27.004 and 39-27.005, F.A.C., and those plant species listed in 50 Code of Federal Regulation 17.12.

(25) "Maintenance" or "repairs" means remedial work of a nature as may affect the safety of any dam, impoundment, reservoir, or appurtenant work or works, but excludes routine custodial maintenance.

(26) "Operation permit" means a 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.

(RULES ADOPTED FOR DEP BY REFERENCE)

- (27) "Other Surface Waters" means surface waters as described and delineated pursuant to Section 62-340.600, F.A.C., as ratified by Section 373.4211, F.S., other than wetlands.
- (28) "Riprap" means a sustaining wall made to reduce the force of waves and to protect the shore from erosion and consists of unconsolidated boulders, rocks, or clean concrete rubble with no exposed reinforcing rods or similar protrusions.
- (29) "Species of Special Concern" means those animal species listed in Section 39-27.005, F.A.C.
- (30) "State water quality standards" means water quality standards adopted pursuant to Chapter 403, F.S.
- (31) "Stormwater management system" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.
- (32) "Surface Water Management Permit" means a permit issued pursuant to Chapters 40E-4 or 40E-40, F.A.C. prior to October 3, 1995, or that is grandfathered pursuant to Sections 373.414(11)-(16), F.S.
- (33) "Surface water management system" or "system" means a stormwater management system, dam, impoundment, reservoir, appurtenant work or works, or any combination thereof. The terms "surface water management system" or "system" includes areas of dredging or filling as defined by Section 373.403(13) and (14), F.S., respectively.
- (34) "Threatened species" means those animal species listed in Section 39-27.004, F.A.C., and those plant species which are listed as threatened in 50 Code of Federal Regulations 17.12.
- (35) "Total land area" means land holdings under common ownership which are contiguous or land holdings which are served by common surface water management facilities.
- (36) "Vertical seawall" is a seawall the waterward face of which is at a slope greater than 75 degrees to the horizontal. A seawall with sloping riprap covering the waterward face to the mean high water line shall not be considered a vertical seawall.
- (37) "Watershed" means the land area which contributes to the flow of water into a receiving body of water.
- (38) "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 adaptation, 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. The landward extent of wetlands is delineated pursuant to Sections 62-340.100 through 62-340.550, F.A.C., as ratified by Section 373.4211, F.S.
- (39) "Wetland Resource Permit" means a permit issued pursuant to Chapter 62-312, F.A.C. prior to October 3, 1995, or that is grandfathered pursuant to Sections 373.414(11)-(16), F.S.
- (40) "Works" means all artificial structures, including but not limited to ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state.
- Specific Authority 373.044, 373.113 F.S. Law Implemented 373.019, 373.403-.443, 403.031, 704.06 F.S. History--
New
9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-1.05(11), Amended 7-1-86, 4/20/94, 10-3-95.

(Substantial Rewording of Rule 40E-4.041. See Florida Administrative Code for present text).

40E-4.041 Permits Required.

- (1) Unless expressly exempt by law or rule, it shall be unlawful for any person to construct, alter, operate,

maintain, remove or abandon any stormwater management system, dam, impoundment, reservoir, appurtenant work or works, or any combination thereof, including dredging or filling without first having obtained an environmental resource permit from the District. This includes the maintenance and operation of existing agricultural surface water management systems and the construction of new agricultural surface water management systems.

(2) The District issues three types of environmental resource permits: conceptual approval permits; individual permits; and general permits.

(a) Conceptual approval permits are issued in individual form only. A conceptual approval may be issued for projects that are to be developed in phases. A conceptual approval does not authorize any construction, alteration, operation, maintenance, removal or abandonment of a surface water management system.

(b) An individual permit shall be issued pursuant to Chapter 40E-4, F.A.C., for projects that do not qualify for general permits based on the threshold conditions set forth in Chapters 40E-40, and 40E-400, F.A.C.

(c) General permits are issued in three forms: no notice, noticed and standard general environmental resource permits. General permits are issued for specified activities or projects that satisfy the thresholds and conditions of Chapters 40E-40, and 40E-400, F.A.C. Standard general permits are issued pursuant to Chapter 40E-40, F.A.C. No notice and noticed general permits are issued pursuant to Chapter 40E-400, F.A.C.

1. If the District notifies an applicant that the system for which a noticed general permit is sought does not qualify for the noticed general permit, the applicant may apply for a standard general or individual permit.

2. The application fee for the noticed general permit shall be applied to the application fee for a standard general or individual permit if the applicant applies for such a permit within 60 days of notification by the District.

(3) The District issues two types of mitigation bank environmental resource permits: conceptual approvals and individual permits, pursuant to Section 4.4 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District - August 1995. A conceptual approval does not authorize the establishment or operation of the mitigation bank. A mitigation bank individual permit authorizes the establishment and operation of a mitigation bank and constitutes authorization pursuant to Chapters 40E-4, 40E-40, or 40E-400, F.A.C., as applicable, to construct any surface water management system proposed as part of the mitigation bank.

(4) Any dredging or filling in, on or over surface waters of the state that is authorized by an individual or general permit issued under Chapters 40E-4 and 40E-40, F.A.C., as these chapters existed prior to October 3, 1995, but is not authorized by a permit or an exemption under Chapter 62-312, F.A.C., (1994) shall require an environmental resource permit prior to the dredging or filling. However, such dredging or filling shall be exempt from the requirements of subsection 40E-4.301(1)(a) through (e) and (g) through (k), F.A.C. Specific Authority 373.044, 373.113, 373.406(5) F.S. Law Implemented 373.103, 373.413, 373.416, 373.426 F.S. History--New 9-3-81, Amended 12-1-82, Formerly 16K-4.03(1), 16K-4.07(1), 16K-4.09(1), Amended, 1/23/94, 4/20/94, 10-3-95.

40E-4.0415 Permit Thresholds.

(1) A system which exceeds any one of the following threshold conditions must obtain an individual environmental resource permit:

(a) the system serves a project of 100 acres or more; or

(b) construction or alteration of the system, including dredging or filling, is proposed in, on, or over a total of one acre or more of wetlands or other surface waters; or

(c) the system includes more than nine proposed boat slips.

(2) Notwithstanding the provisions of subsection (1), the Governing Board may designate specific geographic areas within which individual or standard general environmental resource permits shall be required for the construction, alteration, operation, maintenance, removal or abandonment of surface water management systems which fall below any thresholds or activities set forth in this rule.

Specific Authority 373.044, 373.113, 373.406(5) F.S.

Law Implemented 373.118(1), 373.413(1) F.S. History--New 10-3-95.

40E-4.042 Formal Determination of Wetlands and Other Surface Waters.

(1) In accordance with subsection 373.421(2), F.S., a real property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in real property may petition the District for a formal determination of the landward boundaries of wetlands and other surface waters on that property as defined in chapter 62-340, F.A.C., and ratified by section 373.4211, F.S.

(2) The Executive Director is delegated the authority of the Governing Board to take final action on petitions for formal wetland and other surface water determinations.

(3) The process and procedures for filing a petition for a formal determination of wetlands and other surface waters are set forth in Section 4.5 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District - August 1995 and are incorporated by reference in this rule.

(4) A formal determination shall be binding for five years provided physical conditions on the property do not change so as to alter the boundaries of the wetlands or other surface waters during that period.

(5) In accordance with Section 373.421(4), F.S., a formal determination may be revoked upon a finding that the petitioner submitted inaccurate information to the District.

Specific Authority 373.043, 373.113, 373.421(2) F.S.

Law Implemented 373.421(2) F.S. History--New 10-3-95.

(Substantial Rewording of Rule 40E-4.051. See Florida Administrative Code for present text).

40E-4.051 Exemptions From Permitting. Exemptions from permitting under Chapters 40E-4, 40E-40 and 40E-400, F.A.C. are set forth below. The performance of activities pursuant to the provisions of the exemptions set forth in this section 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. Nothing in this section 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 section if the Department can demonstrate that the exempted activity has caused water pollution in violation of Chapter 403, F.S.

(1) Pipes or Culverts. 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 dam's spillways or appurtenant works, nor construction activities or procedures that cause violation of water quality standards as set forth in Chapter 62-302 and Rule 62-4.242, F.A.C.

(2) Maintenance of Systems.

(a) The performance of maintenance dredging of existing manmade canals, channels, basins, berths, and intake and discharge structures, 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 and return water from the spoil site into wetlands or other surface waters, provided no more dredging is performed than is necessary to restore the canal, channels, basins, berths, and intake and discharge structures to original design specifications, and provided that control devices are used at the dredge site to prevent turbidity and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This exemption shall apply to all canals constructed before April 3, 1970, and to those canals 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.

(b) The maintenance of functioning insect control structures, and the maintenance of functioning dikes and functioning irrigation and drainage ditches, including roadway drainage ditches, provided:

1. 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.

2. 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.

3. 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.

4. This exemption shall apply to manmade 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.

(c) Maintenance of minor silvicultural surface water management systems as described in subsection 40E-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 section 40E-400.500(5), F.A.C.

(d) 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 if feasible, or operated in accordance with an impoundment management plan approved by the District. 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 the final elevation of the dredge area shall be within two feet of immediately adjacent bottom elevations. For the purposes of this paragraph, restoration shall not include maintenance of impoundment dikes of insect control impoundments.

(3) Docking Facilities and Boat Ramps.

(a) The construction, replacement or repair of mooring pilings and dolphins associated with private docking facilities.

(b) The construction of private docks of 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 for docks which are located in Outstanding Florida Waters. This exemption shall include the construction of structures above the dock area, such as boat shelters and gazebos, provided such structures are not enclosed with walls and doors, are not used for residential or 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, the total area limitations above. To qualify for this exemption, any such dock and associated structure:

1. shall be used for recreational, non-commercial activities;

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;

3. shall not substantially impede the flow of water or create a navigational hazard; and

4. shall be the sole dock 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 paragraph, 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 private dock under this exemption does not require the District to issue a subsequent permit to construct a channel to provide navigational access to the dock. Activities associated with a private dock shall include the construction of structures attached to the pier which are only suitable for the mooring or storage of boats (i.e., boatlifts).

(c) Construction of private docks in artificially created waterways where construction will not violate

water quality standards, impede navigation, or adversely affect flood control.

(d) The replacement or repair of existing docks or mooring piles, provided:

1. No fill material other than the piles is used;
2. The replaced or 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; and
3. The 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 such dock or mooring pile has been rendered non-functional by a discrete event such as a storm, flood, accident, or fire.

(e) The construction and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists, or the construction 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.

(4) Shore Stabilization.

(a) 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.

(b) The restoration of a seawall or riprap at its previous location or upland of or within one foot waterward of its previous location. 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. Restoration and repair shall be performed using the criteria set forth in Section 373.414(5), F.S. This exemption shall be limited to functioning seawalls or riprap. This exemption shall not affect the permitting requirements of Chapter 161, F.S.

(c) The construction of private vertical seawalls in wetlands or other surface waters, other than in an estuary or lagoon, and the construction of riprap revetments, 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, does not violate state water quality standards, impede navigation, or adversely affect flood control. However, this exemption shall not affect the permitting requirements of Chapter 161, F.S. Construction shall be in accordance with Section 373.414(5), F.S.

(5) Transmission and Distribution Lines and Utility Poles.

(a) 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.

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

(c) Activities necessary to preserve, restore, repair, remove, or replace an existing communication or power pole or line, provided that the work does not involve dredge and 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 construction of new power or telephone lines or the repair and replacement of existing structures that require dredge and fill activities in order to provide access to the site.

(d) 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, without the need for dredging, 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.

(6) Bridges, Driveways and Roadway Crossings.

(a) 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:

1. No more dredging or filling in wetlands or other surface waters is performed than that necessary to replace or repair pilings;
2. The structure to be replaced or repaired is the same length, the same configuration, and in the same

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location as the original bridge; and

3. No debris from the original bridge shall be allowed to remain in wetlands or other surface waters.

(b) The construction or maintenance of culverted driveway or roadway crossings and bridges of artificial waterways, provided:

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 40E-400, 40E-40, 40E-4, 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 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 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 permitting requirements of Part IV, Chapter 373, F.S., either through a permit or exemption issued by the District;

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 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 40E-4 and 40E-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 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; and

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 section 40E-4.051, F.A.C.

(7) Aids to Navigation.

The installation of aids to navigation, including bridge fender piles, "No Wake" and similar regulatory signs,

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and buoys associated with such aids, provided that the devices are marked in accordance with Section 327.40, F.S.

(8) The Use of Rotenone by the Florida Game and Fresh Water Fish Commission.

The use of rotenone, by the Florida Game and Fresh Water Fish Commission, in conducting tests related to its responsibility regarding fish management. The chemical selected shall be used at no more than the strength approved by the United States Environmental Protection Agency (EPA) label specifications. In addition, the chemical shall be used only under the direct on-site supervision of a staff member of the Florida Game and Fresh Water Fish Commission.

(9) Construction of Freshwater Fish Attractors.

Construction of freshwater fish attractors by Florida Game and Fresh Water Fish 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 of an 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.

(10) Installation of Piling Support Structures Associated With Water Testing or Monitoring Equipment by the Department or the District.

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

(11) Agriculture, silviculture, floriculture, and horticulture as specified in Section 373.406(2) and (3), F.S., provided that:

1. Alteration of the topography of any tract of land for purposes consistent with the practice of agriculture, silviculture, floriculture, and horticulture, provided such alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters.

2. Construction, operation, or maintenance of any agricultural closed system. This exemption does not eliminate the necessity to meet generally accepted engineering practices for construction, operation, and maintenance of dams, dikes, or levees.

Specific Authority 373.044, 373.113, 373.171 F.S. Law Implemented 373.406, 373.413, 373.416, 403.813(2) F.S. History--New 9-3-81, Amended 1-31-82, 3-9-83, Formerly 16K-4.02, Amended 4-20-94, 10-3-95.

(Substantial Rewording of Rule 40E-4.301. See Florida Administrative Code for present text).

40E-4.301 Conditions for Issuance of Permits.

(1) In order to obtain a standard general, individual, or conceptual approval permit under this chapter or Chapter 40E-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 by wetlands and other surface waters;
- (e) will not adversely affect the quality of receiving waters such that the water quality standards set forth in chapters 62-3, 62-4, 62-302, 62-520, 62-522 and 62-550, F.A.C., including any antidegradation provisions of sections 62-4.242 (1)(a) and (b), 62-4.242(2) and (3), and 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in sections 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.;

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(h) will not cause adverse impacts to a work of the District established pursuant to Section 373.086, F.S.;

(i) will be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed;

(j) will be conducted by an entity with the sufficient financial, legal and administrative capability to ensure 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 in Chapter 40E-41, F.A.C.

(2) If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the applicant must comply with the requirements set forth in subsection 4.2.4.5 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District - August 1995.

(3) The standards and criteria, including the mitigation provisions, and the provisions for elimination or reduction of impacts, contained in the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District - August 1995 adopted by reference in Rule 40E-4.091, F.A.C., shall determine whether the reasonable assurances required by subsection 40E-4.301(1) and section 40E-4.302, F.A.C., have been provided.

Specific Authority 373.016, 373.044, 373.113 F.S. Law Implemented 373.016, 373.413, 373.416, 373.426 F.S.

History--New 9-3-81, Amended 1-31-82, 12-1-82, Formerly

16K-4.035(2), 16K-4.30, Amended 7-1-86, 3-24-87, 4-15-87, 7-9-87, 4-21-88, 4/20/94, 10-3-95.

40E-4.302 Additional Conditions for Issuance of Permits.

(1) In addition to the conditions set forth in section 40E-4.301, F.A.C., in order to obtain a standard general, individual, or conceptual approval permit under this chapter or chapter 40E-40, F.A.C., 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 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 4.2.3. through 4.2.3.7 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District - August 1995:

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 4.2.8. through 4.2.8.2 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District - August, 1995.

(c) Located in, adjacent to or in close proximity to Class II waters or located in Class II waters or Class III waters classified by the Department as approved, restricted or conditionally restricted for shellfish harvesting as set forth and incorporated in Chapter 16R-7, F.A.C., will comply with the additional criteria in subsection 4.2.5 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District -

August 1995 adopted by reference in Section 40E-4.091, F.A.C.

(d) Which constitute vertical seawalls in estuaries or lagoons, will comply with the additional criteria provided in subsection 4.2.6 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District - August 1995 adopted by reference in Section 40E-4.091, F.A.C.

(2) When determining whether the applicant has provided reasonable assurances that District permitting standards will be met, the District shall take into consideration a permit applicant's violation of any Department rules adopted pursuant to sections 403.91 - 403.929, F.S. (1984 Supp.), as amended, which the District had the responsibility to enforce pursuant to a 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. The Department's delegation to the District to enforce the rules adopted pursuant to Sections 403.91-403.929, F.S. (1984 Supp.), as amended, is set forth in the "Operating Agreement Concerning Management and Storage of Surface Waters Regulation, and Wetland Resource Regulation Between South Florida Water Management District and Department of Environmental Regulation, dated October 27, 1992."; and Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., between the South Florida Water Management District and the Department of Environmental Regulation dated January 18, 1994, incorporated by reference in Rule 40E-4.091, F.A.C.

Specific Authority 373.016, 373.044, 373.113, 373.171, 373.414(9) F.S. Law Implemented 373.016, 373.042, 373.409, 373.413, 373.414, 373.416, 373.426, 380.23, F.S. History--New 10-3-95.

(Substantial Rewording of Rule 40E-4.381. See Florida Administrative Code for present text).

40E-4.381 General Conditions.

(1) The following general conditions shall be applicable to and binding on all permits issued pursuant to this chapter and chapter 40E-40, F.A.C., unless waived or modified by the Governing Board upon a determination that the conditions are inapplicable to the activity authorized by the permit. These conditions are enforceable under Part IV, Chapter 373, F.S.

(a) All activities authorized by this permit 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 and Part IV, Chapter 373, F.S.

(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 the 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 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. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), incorporated by reference in Rule 40E-4.091, F.A.C. unless a project-specific erosion and sediment control plan is approved as part of the permit. 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) The permittee shall notify the District of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District an Environmental Resource Permit Construction Commencement Notice Form No. 0960 indicating the actual start date and the expected completion date.

(e) When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an Annual Status Report Form. Status Report Forms shall be

submitted the following June of each year.

(f) 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 law, utilizing the supplied Environmental Resource Permit Construction Completion/Construction Certification Form No.0881. The statement of completion and certification shall be based on on-site observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the District that the system is ready for inspection. 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. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawing. All surveyed dimensions and elevations shall be certified by a registered surveyor.

(g) The operation phase of this permit shall not become effective: until the permittee has complied with the requirements of condition (f) above, has submitted a Request for Conversion of Environmental Resource Permit from Construction Phase to Operation Phase, Form No.0920; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District - August 1995, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

(h) Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use 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 the phase or portion of the system to a local government or other responsible entity.

(i) For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District - August 1995, prior to lot or unit sales or prior to the completion of the system, whichever occurs first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State where appropriate. For those systems which are proposed to be maintained by the county or municipal entities, final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.

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

(k) This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. 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 40E-4 or Chapter 40E-40, F.A.C.

(l) The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license,

easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.

(m) The permittee must obtain a water use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to subsection 40E-20.302(4), F.A.C., also known as the "No Notice" rule.

(n) The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.

(o) 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 section 373.421(2), F.S., provides otherwise.

(p) The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 40E-1.6105 and 40E-1.6107, F.A.C. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.

(q) 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 the plans and specifications approved by the permit.

(r) If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate District Service Center.

(s) 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 Governing Board shall impose on any permit granted under this chapter and chapter 40E-40 F.A.C., such reasonable project-specific special conditions as are necessary to assure that the permitted system will not be inconsistent with the overall objectives of the District or will not be harmful to the water resources of the District, as set forth in District rules. Upon receipt of notice of proposed agency action, any substantially affected persons shall have the right to request a hearing in accordance with Rules 40E-1.511 and 40E-1.521, F.A.C.

Specific Authority 373.044, 373.113, F.S. Law Implemented 373.103, 373.116, 373.229, 373.413, 373.416, 373.421, 373.422, 373.426 F.S. History--New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.07(3), 16K-4.38, Amended 7-1-86, 4/20/94, 10-3-95.

(Substantial Rewording of Rule 40E-4.455, See Florida Administrative Code for present text).

40E-4.451 Emergency Authorization.

(1) The District issues two types of emergency authorizations as set forth below:

(a) Authorization to begin construction, alteration, operation, maintenance, removal or abandonment of a system prior to obtaining a permit may be applied for, in writing, when emergency conditions justify. However, no such permission shall be granted unless an environmental resource permit application for the proposed activity has been submitted. A serious set of unforeseen or unforeseeable circumstances must exist to create an emergency. Mere carelessness or lack of planning on the part of the applicant shall not be sufficient grounds to warrant the granting of emergency authorization.

(b) Upon the District's determination that an emergency exists within its geographic jurisdiction or any part thereof, the Executive Director shall issue an emergency order which shall describe the conditions which are causing the emergency and the type of corrective action necessary to minimize or abate the emergency condition.

1. An emergency exists when immediate action is necessary to protect the public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural, or other reasonable uses.

2. The emergency order shall be delivered by service of process or by personal delivery by an agent of

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the District to the person responsible for conducting the corrective actions, or their agent. Such action shall include appropriate public notice in accordance with Chapter 50, F.S.

(2) The Executive Director has discretion to grant emergency authorization pursuant to subsections (1)(a) or (1)(b) of this rule. The emergency authorization shall be presented to the Governing Board for concurrence at its next regularly scheduled meeting. Failure to receive the Governing Board's concurrence shall automatically invalidate the emergency authorization.

(3) All emergency authorization orders shall expire upon the granting or denial of the pending permit application, or as otherwise specified in the emergency authorization order.

Specific Authority 373.044, 373.113 F.S. Law Implemented 120.59(3), 373.119(2) 373.413, F.S. History--New 9-3-81, Formerly 16K-4.13, Amended 10-3-95.