

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

[Note: the rules below are the sections of Chapter 40D-40, F.A.C., incorporated by reference in paragraph 62-330.200(e), F.A.C., effective 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 2-1-05.]

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40D-40.011 Policy and Purpose

The rules in this chapter grant general environmental resource permits for certain specified surface water management systems which have been determined to be not harmful to the water resources of the District and to be not inconsistent with the objectives of the District. The purpose of this chapter is to set forth the requirements for qualifying for a general permit and the conditions under which they may be exercised. Non-exempt surface water management systems which do not qualify for a noticed general environment resource permit pursuant to Chapter 40D-400, F.A.C. or a general permit under this chapter are required to obtain individual permits. The District reserves the right to require an individual permit for any surface water management system which: does not comply with the provision of this chapter; may be harmful to the water resources of the District; or is inconsistent with the overall objectives of the District.

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 373.103(1), 373.413(1), 373.416, 373.419, 373.429, F.S. History – New 10-1-84, Amended 3-1-88, 10-3-95, 9-26-02.

40D-40.021 Definitions

As used in this chapter:

- (1) "Public highway project" means a road and associated facilities located within a right of way dedicated to the public for highway purposes, which are constructed, altered, operated, maintained or funded by the United States, the State of Florida, a county, or municipality.
- (2) "Incidental Site Activities" means the following activities in uplands that are conducted as part of the construction of a system proposed in an environmental resource permit application: land clearing, grading, excavation of borrow areas for on-site grading, road and building subgrade construction (excluding foundation construction), unpaved access road construction, utility installation, fence installation, construction trailer installation, construction phase surface water management, erosion and sediment control measures, and similar preliminary activities.
- (3) Other terms have the same meaning as defined in Rule 40D-4.021, F.A.C.

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 373.413, 373.416, 373.419, 403.031(3), F.S. History – New 10-1-84, Amended 3-1-88, 8-3-03.

40D-40.031 Implementation, Effective Date and Applicability

- (1) This rule specifies the effective dates for the permit program developed pursuant to Part IV, Chapter 373, F.S.:
- (2) If the surface water management system meets the conditions of subsections 40D-40.302(1) through (4), F.A.C., the effective date is October 1, 1984.
- (3) Amendments to these rules adopted October 27, 1987, including the Basis of Review, are effective March 1, 1988, and apply to permit applications filed on or after March 1, 1988.

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 373.416, 373.414, 373.419, F.S. History – New 10-1-84, Amended 3-1-88, 10-3-95.

40D-40.040 General Environmental Resource Permits

- (1) Three types of General Environmental Resource Permits are issued pursuant to this Chapter and Chapter 40D-4, F.A.C. They are:
 - (a) General Environmental Resource Permit for Minor Surface Water Management systems. The conditions for issuance for this permit are contained within Section 40D-40.301, F.A.C.;
 - (b) General Environmental Resource Permit for Surface Water Management Systems. The conditions for issuance of this permit are contained within Section 40D-40.302, F.A.C.;
 - (c) General Environmental Resource Permit for Site Conditions Assessment. The conditions for issuance of this permit are contained within section 40D-40.302, F.A.C.
- (2) General Environmental Resource Construction and Operation Permits are required prior to the construction, alteration, removal, maintenance, operation or abandonment of certain surface water management systems.
- (3) Site Conditions Assessment Permits are optional general permits that are issued as the first phase of construction permitting which identify and document the boundaries of certain

existing site conditions found within a project area. At a minimum, all site conditions assessment permits shall evaluate, and identify if present, the landward extent of wetlands and other surface waters; the level and landward extent of the 100 year flood plain; seasonal high water levels; and existing watershed delineations. Additional site conditions boundaries may be requested by the applicant and evaluated for permitting by the District. A site conditions assessment permit does not authorize construction, alteration, operation, or abandonment of a surface water management system or establishment of a mitigation bank, but it can be formally modified by the permittee to apply for either an individual or a general construction and operation permit.

(4) An activity which requires both a general 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, 373.118, 373.421(2), F.S. Law Implemented 373.413, 373.414, 373.416, 373.419, 373.427, F.S. History – New 10-3-95, Amended 7-23-96, 10-16-96, 7-2-98, 9-26-02.

40D-40.041 Noticed General Permit for Construction, Alteration of Operation of Surface Water Management Systems

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 120.60(2), 373.413, 373.416, F.S. History – New 3-1-88, Amended 1-11-93, Repealed 10-3-95.

40D-40.042 General Permit for Construction, Alteration or Operation of Surface Water Management Systems

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 120.60(2), 373.413, 373.414, 373.416, 373.419, F.S. History – New 10-1-84, Amended 3-1-88, 1-11-93, Repealed 10-3-95.

40D-40.043 List of Entities to Which Permitting Pursuant to This Chapter Has Been Delegated

Specific Authority 373.044, 373.046, 373.113, 373.149, 373.171, F.S. Law Implemented 373.046, 373.103(8), F.S. History – New 11-27-89, Amended 3-1-90, 11-16-92, 6-30-96, Repealed 7-2-98.

40D-40.044 General Permit for Site Conditions Assessment

(1) This general permit identifies and documents the boundaries of certain existing topographic and environmental site conditions within the applicant’s project area that are measurably associated with waters, as described in the application.

(2) A site conditions assessment permit is binding with respect to the permitted project area and constitutes final District action. Any application for a construction and operation permit that is received from a permittee within the duration of the site condition

assessment permit will be evaluated, with respect to the existing conditions that were verified in the permit, according to the applicable District rules in effect at the time the site conditions assessment permit was issued. All other aspects of the application for a construction and operation permit will be evaluated based on the District's rules and permitting criteria in effect at the time the application for a construction or operation permit is complete.

(3) The site conditions assessment permit application processing fee paid by the original permittee, excluding any fees paid for modification of the permit, shall be credited toward a subsequent construction and operation permit issued within the project area during the duration of the site conditions assessment permit. The fee shall be reimbursed after submittal of the project Statement of Completion and as-built information by the original permittee, and operation approval by the District.

(4) A site conditions assessment permit shall neither authorize construction, alteration, operation or maintenance of any surface water management system nor imply approval of any such future activities in, on or over any wetlands or other surface waters, or elsewhere.

(5) The technical and procedural aspects of site conditions assessment permitting are described in the "Basis of Review for Environmental Resource Permit Applications," specifically in Appendix 7 thereof, adopted by reference in section 40D-4.091, F.A.C.

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 373.413, 373.414, 373.416, 373.419, F.S. History – New 7-23-96, Amended 9-26-02.

40D-40.111 Requests for Noticed General Permits

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 373.413, 373.416, 373.419, F.S. History – New 3-1-88. Repealed 10-3-95.

40D-40.112 Content of Application for Standard General Permits

(1) To apply for a general permit, including an application for a general permit for minor surface water management systems, the applicant shall file with the District the application form identified and adopted by reference in Rule 40D-1.659, F.A.C.

(2) The application shall consist of the requirements as stated in Rule 40D-4.101, F.A.C.

(3) A complete application for a general permit for construction and operation shall also constitute an application for certification of compliance with state water quality standards where necessary pursuant to Section 401, Public Law 92-500, 33 U.S.C. Section 1341. Issuance of the construction and operation permit shall constitute certification of compliance with water quality standards unless the permit is issued pursuant to the net improvement provision of section 373.414(1)(b), F.S., or the permit specifically states otherwise.

(4) If a general permit application involves activities located in, on, or over wetlands or other surface waters, as delineated by the methodology authorized in subsection 373.421(1), F.S., then, within three business days of receipt of the application, the District shall forward a copy to the appropriate office of the U.S. Army Corps of Engineers unless specifically authorized by the Corps to do otherwise.

(5) If the application involves activities located in, on, or over wetlands or other surface waters, as delineated by the methodology authorized in subsection 373.421(1), F.S., the District shall forward a copy of notice of the application to and request comments from:

- (a) the Florida Fish and Wildlife Conservation Commission;
- (b) the Florida Department of State, Division of Historical Resources;
- (c) any person who has requested a copy of the specific application that is under review; and
- (d) the Department of Environmental Protection, if the proposed activities have a potential to impact marine listed species.

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 373.413, 373.414, 373.416, 373.419, F.S. History – New 10-1-84. Amended 3-1-88, 10-3-95, 7-23-96, 10-16-96, 9-26-02, 2-19-04.

40D-40.141 Request for Additional Information

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 120.60(2), 373.413, 373.414, 373.416, 373.419, F.S. History – New 10-1-84. Amended 3-1-88. Repealed 10-3-95.

40D-40.301 Conditions for Issuance of General Permit for Minor Surface Water Management Systems

(1) To obtain this general permit, an applicant must provide reasonable assurance that the following conditions are met and certify that:

- (a) Except for minor residential subdivisions meeting the criteria in subsection (2), the total land area does not equal or exceed 10 acres;
- (b) Except for minor residential subdivisions meeting the criteria in subsection (2), the area of impervious surface shall not exceed two acres,
- (c) The proposed activities will consist of the dredging or filling of less than 100 square feet in wetlands or other surface waters. Road or driveway crossings of ditches constructed in uplands will not be counted against the 100 square foot limit;
- (d) The activities will not utilize pumps for storm water management;
- (e) The activities will not utilize storm drainage facilities larger than one 24-inch diameter pipe, or its equivalent;
- (f) Discharges from the site will meet state water quality standards;
- (g) The proposed building floors will be above the 100 year flood elevation;
- (h) The proposed activities do not cause significant adverse impacts to occur individually or cumulatively;
- (i) The surface water management system can be effectively operated and maintained; and
- (j) The surface water management system will meet the applicable water quality design criteria in the Basis of Review incorporated by reference in Rule 40D-4.091(1), F.A.C. Alternatively, individual lots in minor residential subdivisions may meet the applicable criteria in subsection (2).

(2) Additional criteria for minor residential subdivisions:

(a) Roadways within the subdivision shall consist of paved or unpaved stabilized roads with an unyielding subgrade.

(b) The drainage system shall not act in a manner that would divert and channelize large areas of overland sheet flow, thereby creating point source discharges that will adversely effect wetlands, or areas beyond the applicant's perpetual control.

(c) Point discharges shall not exceed the capacity of receiving waters.

(d) All terminal discharge structures shall be designed to withstand the 25-year, 24-hour post-development discharge without functional failure.

(e) The proposed post-development impervious surface will not exceed a five percent (5%) increase over pre-developed conditions.

(f) Proposed or projected construction shall maintain a minimum 75 foot vegetated buffer, which includes a 25 foot perpetually undisturbed buffer upland of all wetlands and other surface waters. Only the 25 foot perpetually undisturbed buffer shall be required adjacent to an isolated wetland entirely located within an individual residential lot.

(g) Proposed or projected construction shall maintain a minimum 75 foot buffer adjacent to all project boundaries.

(h) The applicant's demonstration of compliance with this subsection shall include provision of a typical lot layout showing proposed driveways, buildings, and other impervious areas and the anticipated percentage of impervious surfaces resulting from projected construction on individual residential lots.

(i) The boundaries of the surface water management system, wetlands, surface waters and buffers shall be recorded in plats or easements and included in any declaration of covenants, conditions, easements and restrictions and shall be identified in all sales contracts by the developer. These recorded documents shall be perpetual and applicable to all future sales of property within the development. Language shall also be contained in the recorded documents notifying all individual lot owners that permits are required if any of the following items are proposed:

1. Alteration to the surface water management system
2. Encroachment into the wetlands, wetland buffers, or adjacent off-site property line buffers.

(3) Applicants required to obtain a permit by subsection 40D-4.041(4), F.A.C. may obtain this general permit if the applicant provides reasonable assurance and certifies that the conditions in paragraphs 40D-40.301(1)(f), (i), (j) and 40D-4.301(4), F.A.C. are met.

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 373.413, 373.414, 373.416, 373.427, F.S. History – New 3-1-88, Amended 10-3-95, 10-16-96, 9-26-02, 2-1-05.

40D-40.302 Conditions for Issuance of General Permits.

In order to qualify for a general permit for construction and operation under this chapter, the applicant must provide reasonable assurance that the surface water management system meets all conditions of subsection 40D-40.302(1), F.A.C., all thresholds in subsection 40D-40.302(2), F.A.C., and all applicable additional conditions of subsections 40D-40.302(3) and 40D-40.302(4), F.A.C. To obtain a general site conditions assessment permit under this chapter, the applicant must provide reasonable assurance that all conditions of subsection 40D-40.302(5), F.A.C., are met. To obtain a permit for construction of incidental site activities under this

chapter, the applicant must provide reasonable assurances that all conditions of subsections 40D-40.302(1) and 40D-40.302(6), F.A.C., are met.

(1) Conditions.

The surface water management system must meet the conditions specified in Rules 40D-4.301 and 40D-4.302, F.A.C.

(2) Thresholds.

(a) The project area except for public highway projects, must be less than 100 acres.

(b) Construction or alteration of a system, including dredging or filling to occur in, on or over a total one acre or less of wetlands and other surface waters. For this purpose, calculation of the one-acre area shall not include:

1. Ditches that were originally constructed in uplands.
2. Any wholly owned, isolated wetland or other surface water less than one-half acre and for which mitigation is not required.

(c) The system must not include more than nine proposed boat slips.

(3) Additional Conditions for Surface Water Management Systems Associated with Public Highway Projects.

(a) The public highway project must be located within a right of way dedicated to the public for highway purposes.

(b) The public highway project must not:

1. Drain lands outside the jurisdiction of the constructing or funding public body;
2. Lower or have the potential for lowering the dry season groundwater table outside the project's design drainage area; and
3. Interfere with natural drainage patterns or flows.

(4) Additional Conditions for Phased Construction under Conceptual Permits.

(a) The project phase must comply with the requirements of the conceptual permit.

(b) The project phase must be less than 100 acres and meet the conditions of subsection 40D-40.302(1), F.A.C.

(c) The conceptual permit must have been issued subsequent to October 1, 1984.

(5) Conditions for a General Site Conditions Assessment Permit.

(a) The boundaries of wetlands and other surface waters or other site conditions referenced in the application and subject to assessment and verification by the District shall in fact be true and accurate representations of the actual existing site conditions; and

(b) The project area shall not be in violation of any District rule.

(6) Additional Conditions for an Incidental Site Activities Permit

(a) Notwithstanding the threshold conditions of subsection (2), a permit shall be authorized for incidental site activities that are conducted in connection with a surface water management system proposed in an individual environmental resource permit application provided:

1. Section J of the Environmental Resource Permit Application, Supplemental Information for Authorization to Conduct Incidental Site Activities, was filed

concurrently with the individual environmental resource permit application for the overall system;

2. The applicant submitted an individual environmental resource permit application which incorporates the proposed incidental site activities, including specific descriptions, locations and alignments to identify the incidental site activities and to show that the work will be conducted in conjunction and conformance with the overall project system;

3. The application is complete.

a. For the purposes of this requirement, an application is complete when the applicant has submitted the information required by Form 547.27/ERP (2/03), including Section J, and all additional information timely requested by District staff, all required notice of the application's receipt has been given and all review periods are concluded, and a letter of completeness has been issued by the District.

b. This general permit is not authorized for projects where the applicant has submitted a written request to proceed with processing the permit application in accordance with section 373.4141(1), Florida Statutes.

4. The proposed incidental site activities do not involve construction located in, on or over wetlands or other surface waters and will not be conducted within 50 feet of the landward extent of wetlands, other surface waters, or upland preservation areas, unless another setback is specified in the permit or shown on the permitted construction drawings;

5. Any proposed incidental site activities involving excavation will not be located within 200 feet of the landward extent of wetlands or other surface waters, unless another setback is specified as a condition in the permit or shown on the permitted construction drawings;

6. District staff has reviewed the individual environmental resource permit application and is recommending approval of the individual permit. For the purpose of this section, District staff is recommending approval of the individual permit when the Regulation Department Director has issued a letter informing the applicant that the application is complete and the staff will be recommending approval of the application to the Governing Board;

7. The District has not received any substantial objections to the proposed incidental site activities or the associated individual environmental resource permit application; or all such objections have been withdrawn prior to the time this general permit is issued. As used herein "substantial objection" means a written statement directed to the District regarding a permit which identifies the objector, concerns hydrologic or environmental impacts of the proposed activity, and relates to applicable rule criteria;

8. The applicant has submitted a construction phase surface water management plan for the proposed system and related activities that provides reasonable assurance that the incidental site activities will not result in erosion and sediment deposition in wetlands or off-site, adverse impacts to wetlands, off-site flooding, or violations of state water quality standards;

9. The project area is not in violation of any District rule at the time this general permit is issued; and

10. Public notice of receipt of the individual permit application stated that a request for a general permit for incidental site activities was filed concurrently with the individual application, and if approved, the general permit would allow incidental site activities, as defined in Rule 40D-40.021, F.A.C., to begin prior to final action on the individual permit.

The public notice must also state that Rule 40D-40.381, F.A.C., requires that in the event the individual permit is not issued, the permittee cease incidental site activities and restore the site to previous conditions.

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 373.413, 373.414, 373.416, 373.419, F.S. History – New 10-1-84, Amended 3-1-88, 5-10-88, 9-13-88, 10-3-95, 7-23-96, 7-16-02, 9-26-02, 8-3-03, 2-19-04, 2-1-05.

40D-40.321 Duration of Permits

Unless revoked or otherwise modified, or specifically stated as a limiting condition of the permit the duration of all general permits issued pursuant to this Chapter, other than those authorizing incidental site activities, is as specified in Rule 40D-4.321, F.A.C. The duration of a general permit authorizing incidental site activities shall be 90 days.

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 373.413, 373.416, 373.419(2), F.S. History – New 10-1-84, Amended 3-1-88, 10-3-95, 9-26-02, 8-3-03.

40D-40.331 Modification of Permits

A request for modification to renew or extend a permit issued under this chapter shall be made in accordance with this rule. Requests to modify permits shall be made:

- (1) in accordance with Rules 40D-4.091, 40D-4.331, 40D-40.040, 40D-40.112, 40D-40.301 and 40D-40.302, F.A.C. for general construction and operation permits and as applicable for all site conditions assessment permits; or
- (2) by letter for general construction and operation permits provided the requested modification does not exceed the conditions of subsection 40D-4.331(2)(b), F.A.C.

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 373.413, 373.416(1), 373.429, F.S. History – New 10-1-84, Amended 3-1-88, 10-3-95, 7-23-96, 4-17-97, 9-26-02.

40D-40.341 Revocation of Permits

Specific Authority 373.044, 373.113, F.S. Law Implemented 120.60(6), 373.429, 373.430(1), F.S. History – New 10-1-84, Repealed 7-2-98.

40D-40.351 Transfer of Permits

Transfer of permits shall be made in accordance with Rule 40D-4.351, F.A.C.

Specific Authority 373.044, 373.113, F.S. Law Implemented 373.413, 373.416(2), F.S. History – New 10-1-84.

40D-40.381 General Conditions

The general permits issued pursuant to this chapter shall be subject to the following limiting conditions;

- (1) For construction and operation permits the general conditions of Rule 40D-4.381, F.A.C. shall apply.

(2) For site conditions assessment permits the general conditions of Rule 40D-4.381, F.A.C. are inapplicable and only the following limiting general conditions shall apply.

(a) The boundaries of wetlands and other surface waters or other site conditions referenced in the application for assessment and evaluation by the District must have been true and accurate representations of the actual existing site conditions at the time of permit issuance.

(b) The site conditions assessment permit shall be invalid for construction permitting purposes following changes to physical conditions on site that alter site conditions boundaries, or the discovery of false or inaccurate information submitted in the application.

(c) A site conditions assessment permit is the first phase of a construction permit. A site conditions assessment permit shall neither authorize construction, alteration, operation or maintenance of any surface water management system nor imply approval of any such activities in, on or over any wetlands or other surface waters, or elsewhere. At the time of application for modification of a site conditions assessment permit to a construction permit for a project area, the permittee shall submit a copy of the deed or other evidence of ownership, evidence of an easement or other documents evidencing authorization to perform the proposed work as provided in the environmental resource permit application form incorporated by reference in Chapter 40D-1, F.A.C.

(3) For general permits authorizing incidental site activities, the following limiting general conditions shall also apply:

(a) If the decision to issue the associated individual permit is not final within 90 days of the issuance of the incidental site activities permit, the site must be restored by the permittee within 90 days after notification by the District. Restoration must be completed by re-contouring the disturbed site to previous grades and slopes and re-establishing and maintaining suitable vegetation and erosion control to provide stabilized hydrologic conditions. The period for completing restoration may be extended if requested by the permittee and determined by the District to be warranted due to adverse weather conditions or other good cause. In addition, the permittee shall institute stabilization measures for erosion and sediment control as soon as practicable, but in no case more than 7 days after notification by the District.

(b) The incidental site activities are commenced at the permittee's own risk. The Governing Board will not consider the monetary costs associated with the incidental site activities or any potential restoration costs in making its decision to approve or deny the individual environmental resource permit application. Issuance of this permit shall not in any way be construed as a commitment to issue the associated individual environmental resource permit.

(4) All general permits shall be subject to other reasonable conditions as are necessary to ensure that the permitted system will meet the conditions for issuance in Rules 40D-4.301 and 40D-4.302, F.A.C.

Specific Authority 373.044, 373.113, 373.118, F.S. Law Implemented 373.117, 373.413, 373.414, 373.416, 373.419, F.S. History – New 10-1-84, Amended 3-1-88, 10-3-95, 7-23-96, 9-26-02, 8-3-03, 2-19-04.