

NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT

Memorandum

TO : Regulations Committee / Governing Board

FROM : Division of Resource Regulation

DATE : June 13, 2011

SUBJECT: (1) Submittal of Rulemaking "Regulatory Plan" for July 1, 2011 - June 30, 2012
(2) Overview of Changes to the Rulemaking Process

ACTION REQUESTED: Approval of Recommendation

On January 4, 2011, the Governor issued Executive Order Number 11-01. This was superseded on April 8, 2011, by Executive Order 11-72. These Orders directed agencies to suspend all rulemaking activity, identify rules duplicative of statute or no longer necessary, and submit a "Regulatory Plan" that identifies both the rules to be eliminated and the rules the agencies wish to otherwise amend in the coming year. The Plan is due annually by July 1 to the Office of Fiscal Accountability and Regulatory Reform (OFARR).

The District administers seven rule chapters (Chapters 40A-1 through 40A-4, 40A-6, 40A-44 and 40A-21, Florida Administrative Code). Earlier this year, staff reviewed each chapter pursuant to the directives of the executive orders and presented those findings to the Governing Board in March. Subsequently, per the directive of the EO 11-72, staff has developed the District's 2011-2012 Regulatory Plan to be submitted to OFARR (Attachment I). The Plan is comprised of a letter and a summary (or listing) of the rules proposed for revision. In addition to the revisions proposed pursuant to EO 11-72, staff has included amendments requested by the Joint Administrative Procedures Committee (JAPC), e.g., changing "may" to "shall" to remove what could be considered "unbridled discretion" when making certain decisions.

Attachment II provides an early draft of the actual amendments to the rules included in the Plan. The effect of these amendments, in total, will reduce the volume of district rules, clarify rule language, and reduce cost, time and effort of the public. The amendments will not change the manner in which the District has administered the respective rules for the past several decades. Staff is also of the opinion that none of the amendments will increase the regulatory burden to the public. However, the proposed changes will be further reviewed in this regard. Once finalized, the proposed amendments will be reviewed by District legal counsel, advertised in the Florida Administrative Weekly, presented at possible public workshops, and reviewed by the Small Business Advocacy Counsel, the Joint Administrative Procedures Committee, etc.

OFARR has proposed that we complete our rulemaking by summer 2012. We anticipate requesting the Governing Board adopt the amendments included in the Plan well before the deadline. Throughout the rulemaking process, staff will seek public comment, suggestions and insight.

One related note, at the time the Governor required the suspension of all rulemaking (EO 11-01), staff was considering the development of significant updates to several of our rules. These updates are not developed sufficiently at this time to be included in the Regulatory Plan. Additionally, recent legislative sessions made major changes to the rule amendment process. Rulemaking is now significantly slower, more complex and costly to the District. Proceeding first with the modest revisions contained in the Regulatory Plan will allow us to determine how best to proceed in late FY12 with more substantive amendments. At the June Regulations Committee meeting, staff will provide an overview of how the rulemaking process has changed.

Recommendation:

Staff recommends the Regulation Committee approve the submittal of the "Northwest Florida Water Management District Regulatory Plan for 2011-2012" to the Office of Fiscal Accountability and Regulatory Reform and authorize staff to proceed with rulemaking.

Attachments:

- Attachment I: NFWFMD Regulatory Plan for 2011-2012
- Attachment II: Preliminary amendments to District Rules

Attachment I

Northwest Florida Water Management District

Regulatory Plan

2011 – 2012



Douglas E. Barr
Executive Director

Northwest Florida Water Management District

152 Water Management Drive, Havana, Florida 32333-4712
(U.S. Highway 90, 10 miles west of Tallahassee)

(850) 539-5999 • (Fax) 539-2693

July XX, 2011

Mrs. Patricia Nelson
Deputy Director
Office of Fiscal Accountability and Regulatory Reform
The Capitol 1702H
Tallahassee, FL 32399-0001

RE: Northwest Florida Water Management District
Regulatory Plan 2011-2012

Dear Mrs. Nelson:

Attached, pursuant to the Governor's Executive Orders 11-01 and 11-72, is the Northwest Florida Water Management District Regulatory Plan for the year July 1, 2011 - June 30, 2012. The rule revisions identified in the plan are substantially the same revisions provided to your office in March and are summarized below.

1. Legislative Mandates:
 - None.
2. Governor Executive Orders 11-01 and 11-72, or rule revision identified prior to January 1, 2011:
 - Rule Repeals: 11 + 2 appendices
 - Rule Revisions: 32
3. Requested by the Public:
 - None have been requested.

The District prior to noticing these rule revisions will submit the "Rulemaking Authorization Form" to your office, along with the necessary documentation. Likewise, if we determine other rulemaking is necessary in the coming year, we will request authorization before proceeding.

Sincerely,

Jean Whitten
Accountability and Regulatory Affairs Officer

Attachment

GEORGE ROBERTS
Chair
Panama City

PHILIP K. McMILLAN
Vice Chair
Blountstown

STEVE GHAZVINI
Secretary/Treasurer
Tallahassee

PETER ANTONACCI
Tallahassee

STEPHANIE BLOYD
Panama City Beach

JOYCE ESTES
Eastpoint

TIM NORRIS
Santa Rosa Beach

JERRY PATE
Pensacola

RALPH RISH
Port St. Joe

NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT REGULATORY PLAN

July 1, 2011 - June 30, 2012

Rules Identified as Needing Repeal or Revision

Per Executive Order 11-01 or 11-72, and Revisions Previously Required by JAPC

Rule Chapter and Title	Rule revisions		Summary of revisions	Notes
	Repeal	Revise		
40A-1, FAC General and Procedural	6	2	Repeals outdated or duplicative sections and revises others that reference a repealed rule.	The change to the noticing provision for General Permits will conform the rule with current Statutory authorizations.
40A-2, FAC Consumptive Uses Of Water	1	1	Duplicates statute.	The revision will simplify the paperwork to the regulated public.
40A-3, FAC Regulation of Wells	1 section and 2 appendices	6	One section being repealed is duplicative of statute; The revisions update the rule to adopt the new forms, correct statutory citations and update references.	Appendices being repealed are outdated application forms. New forms have been adopted earlier in the rule. The proposed modification to this rule updates it and makes it more user friendly.
40A-4, FAC Management and Storage Of Surface Waters	5	8	Sections for repeal contain text no longer relevant to this rule, are contained in other rules, or duplicates statute. The sections for revision eliminate outdated references, or are reworded to add new statutory language or to eliminate text of concern to JAPC, e.g., "may".	Clarifies rule language. Revisions will have no effect on how the program is implemented.
40A-6, FAC Works of The District	2	9	Sections being repealed contain language that is not necessary, is duplicative of statute or is of concern to JAPC (e.g., use of the word "may.")	The revisions will clarify rule intent (e.g. how permits are transferred) and will not affect how the program operates.
40A-44, FAC Regulation of Agricultural And Forestry Surface Water Management Projects	2	8	Sections to be repealed include unnecessary language found in other rule sections, or text redundant of statute. The revisions update old references, recite forms that are presently adopted by reference and revise text requested by JAPC. The sections being revised include "Transfer of Permits" and "Modification of Permits".	The revisions will clarify rule intent (e.g. how permits are transferred) and will not affect how the program is administered.

Attachment II

Northwest Florida Water Management District

Regulatory Plan

2011 – 2012

Specific Amendments Proposed

**Chapter 40A-1, F.A.C.
General And Procedural**

Existing Rules = 19
Recommended for Repeal = 6
Additional Potential Rule Revision = 2

SECTION	Action	Comment
40A-1.004, F.A.C. Agreements	Revise	Updating section to include previously adopted Interagency Agreement.
40A-1.180, F.A.C. Procedures for Contracting for Professional Services	Repeal	Duplicates statute.
40A-1.181, F.A.C. Contract Bidding – Reservation of Rights	Repeal	Duplicates statute.
40A-1.182, F.A.C. Contract Bidding – Resolution of Protest	Repeal	Duplicates statute.
40A-1.205, F.A.C. Suspension, Revocation and Modification of District Permits	Revise	Deletes reference to previously repealed Section 40A-1.521, F.A.C.
40A-1.1020, F.A.C. General Procedures for Permit Applications	Repeal	Redundant of 40A-1.203, F.A.C.
40A-1.1030, F.A.C. Contract Bidding – Resolution of Protest	Repeal	Duplicates statute.
40A-1.1040, F.A.C. General Permits	Repeal	Restates 40A-2.041(3)a., F.A.C.

GENERAL AND PROCEDURAL

40A-1.004 Agreements.

(1) The following agreements have been entered into by the District and are hereby incorporated by reference.

(a) – (e) No change

(f) With the Department of Agriculture and Consumer Services concerning determination of agricultural exemptions dated 2009.

Specific Authority 373.044 FS. Law Implemented 373.046, 373.083 FS. History–New 3-2-00.

40A-1.180 Procedures for Contracting for Professional Services.

~~(1) — In order to comply fully with the requirements of Section 287.055, Florida Statutes (“Consultants’ Competitive Negotiation Act”), the following procedures shall be followed in selecting firms to provide professional services.~~

~~(2) — Definitions.~~

~~(a) — “Professional Services” means those services within the scope of practice of architecture, professional engineering, or registered land surveying.~~

~~(b) — “Firm” means any individual, firm partnership, corporation, association, or other legal entity permitted by law to practice architecture, landscape architecture, engineering, or land surveying in the State of Florida.~~

~~(c) — “Compensation” means the total amount paid by the District for professional services.~~

~~(d) — “Committee” means the Certification and Selection Committee.~~

~~(e) — “Project” means that fixed capital outlay project, study, or planning activity described in the public notice.~~

~~(f) — A “continuing contract” is a contract for professional services entered into with no time limitation, except that the contract shall provide a termination clause.~~

~~(3) — Public Announcement and Qualification Procedures. The District shall announce, in the Florida Administrative Weekly and/or other appropriate publications, each occasion where the fee for professional services for a planning or study activity exceeds \$6,000, or projects for which the basic construction cost is estimated to be more than \$120,000, except in cases of valid public emergency as certified by the Board. Such notice shall include a general description of the project and shall indicate how interested firms may apply for consideration by the District.~~

~~(4) — Certification and Competition Selection for Projects.~~

~~(a) — There shall be a Certification and Selection Committee comprised of six members as follows: Executive Director of the District, or his designated alternate, and two other staff members appointed by the Executive Director who shall serve to provide the certification function of the committee; the Chairman of the Governing Board of the District, or his designated alternate, and two other Board members appointed by the Chairman of the Governing Board who shall serve to provide the selection function of the committee. Once the Certification and Selection Committee is established, it shall serve throughout the selection process for which it was established.~~

~~(b) — When professional services are required, the Committee shall evaluate current statements of qualifications and performance data submitted by interested firms, and shall conduct discussions with, and may require public presentation by, no less than three firms regarding their qualifications, approach to the project, and ability to furnish the required services.~~

(c) — The Committee shall determine the relative ability of each firm to perform the services required. Each firm determined to be able to provide the services will be so certified by the Committee and shall be eligible for consideration.

(d) — The Committee shall select no less than three firms in order of preference, deemed to be most highly qualified to perform the required services, after considering such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; demonstrated approach to the project; interest; location; recent, current, and projected work loads of the firms; and the volume of work previously awarded to the firm by the District, with the object of effecting an adequate distribution of contracts among qualified firms, provided, however, that such distribution does not violate the principle of selection of the most highly qualified firm. The Committee will report its selections to the Governing Board of the District with the recommendation that the District staff be authorized to negotiate a contract in full accordance with procedures set forth hereafter.

(5) — Competitive Negotiation.

(a) — When authorized by the Governing Board, the Executive Director shall negotiate a contract for professional services for a project with the authorized firms at compensation determined to be fair, competitive, and reasonable. For all lump sum or cost plus a fixed fee professional services contracts over \$50,000, the District shall require the firm receiving the award to execute a truth in negotiation certificate as required in subsection 5(a) of Section 287.055, Florida Statutes.

(b) — Should the District be unable to negotiate a satisfactory contract with any of the selected firms, additional firms shall be selected, and negotiations shall continue until an agreement is reached.

(6) — Prohibition Against Contingency Fees. Each contract for professional services shall contain a prohibition against contingency fees, as required by subsection 287.055(6), Florida Statutes.

(7) — Inconsistency with Section 287.055, Florida Statutes. To the extent any inconsistency may exist between these regulations and Section 287.055, Florida Statutes, the provisions of Section 287.055, Florida Statutes, shall prevail.

Specific Authority 373.044 373.113 FS. Law Implemented 287.055, 373.083 FS. History—New 3-31-80, Formerly 16G-1.47, Formerly 40A-1.801, Amended 5-4-87.

40A-1.181 Contract Bidding - Reservation of Rights.

The District shall reserve the right to reject any or all bids, and such reservation shall be indicated on all advertising and bid invitations. The District shall reserve the right to waive minor irregularities in an otherwise valid bid. A minor irregularity is a variation from the bid invitation terms and conditions which does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the District. Variations which are not minor may not be waived. A bidder may not modify its bid after bid opening. Mistakes clearly evident on the face of the bid documents, such as computation errors, may be corrected by the District.

Specific Authority 373.044, 373.113 FS. Law Implemented 287.005, 373.083 FS. History—New 10-1-84.

40A-1.182 Contract Bidding - Resolution of Protest.

(1) — The District shall give notice of its decision or intended decision concerning a bid solicitation by United States mail or by hand delivery to all bidders. Notice of other decisions or intended decisions concerning a contract award shall be given by posting the bid tabulation at the location of the bid opening or by certified United States mail, return receipt requested. All notices pursuant to this rule shall include the following statement: "Failure to file a protest within the time prescribed in Section 120.53(5), Florida Statutes, shall

constitute a waiver of proceedings under Chapter 120, Florida Statutes. The formal written protest shall state with particularity the facts and law upon which the protest is based.”

(2) — Within 72 hours after a bid tabulation has been posted or after receipt of a notice of decision or intended decision, a person adversely affected by the District’s decision or intended decision shall file with the agency clerk a written notice of protest and shall also file a formal written protest within ten (10) days of filing the notice of protest. Failure to file a notice of protest and a formal protest shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

(3) — Upon the timely filing of a notice of protest, the bid solicitation or contract award process shall be stopped until the subject of the protest is resolved by final agency action, unless the Board sets forth in writing the facts and circumstances which require that the process be continued without delay to avoid an immediate and serious danger to the public health, safety or welfare.

(4) — Within 7 days, excluding Saturdays, Sundays, and legal holidays, of the filing of a formal written protest, at the request of a protestor or a member of the Board there shall be a meeting between the protestor and the Executive Director to resolve the protest by mutual agreement.

(5) — If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and legal holidays, of the filing of a formal written protest, the following shall occur:

(a) — If there is a disputed issue of material fact, the District shall refer the protest to the Division of Administrative Hearings for proceedings under Section 120.57(1), Florida Statutes.

(b) — If there is no disputed issue of material fact, an informal proceeding pursuant to Section 120.57(2), Florida Statutes, and the District’s rules shall be conducted before a person eligible under the Florida Administrative Code or Chapter 120, Florida Statutes.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.083 FS. History—New 10-1-84, Amended 6-8-86.

40A-1.205 Suspension, Revocation and Modification of District Permits.

(1)– (4) No Change.

(5) A petition for a formal hearing pursuant to Section 120.57(1), Florida Statutes, must comply with Rule 40A-1.521, F.A.C. When a formal hearing pursuant to Section 120.57(1), Florida Statutes is requested, the permittee or other affected persons shall admit or deny each finding of fact contained in the Notice of Intention, or state that the permittee is without knowledge as to the same, which shall be deemed to be a denial. The District may decline to hold a formal hearing when there are no disputed issues of material fact.

(6)–(9) No change.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.243, 373.246, 373.429 FS. History—New 10-1-84.

40A-1.1020 General Procedures for Permit Applications.

(1) — A permit application where required by District rule shall be:

(a) — filed with the District on the appropriate form provided by the Board; and

(b) — accompanied by the appropriate fee in accordance with the schedule of fees established by the Board. The failure of any person to pay the required fee shall result in the denial or revocation of the permit.

(2) — No later than 30 days after receipt of an application for a surface water management permit pursuant to subsection 40A-4.041(2), F.A.C., an agricultural or forestry surface water management permit pursuant to paragraph 40A-44.041(2)(b) or (c), F.A.C., or an individual water use permit pursuant to Rule 40A-2.031, F.A.C., the District shall publish a notice thereof in a newspaper having general circulation as defined in Chapter

50, Florida Statutes. In addition, the District shall provide a copy of the notice to any person who has filed a written request for notification of any pending applications affecting the particular designated area. Interested persons may object to or comment upon the proposed permit in writing by the date specified in the notice. The District may request persons submitting objections or comments to furnish additional information. The District will provide the applicant with a copy of all objections and comments received.

(3) — Publication of the notice of application pursuant to subsection (2) shall constitute constructive notice of the permit application to all substantially affected persons. Persons who wish to receive a Notice of Proposed Agency Action and the staff report regarding a permit application must file a written request with the District by the date specified in the notice. Notices of Proposed Agency Action will be mailed only to persons who have filed such requests. Failure to timely request an administrative hearing pursuant to the directions contained in the Notice of Proposed Agency Action constitutes a waiver of the right to an administrative hearing on the application.

(4) — Within 30 days after receipt of an application, the District shall notify the applicant if the application is incomplete and request the additional information required to make the application complete. The applicant shall have 90 days after the District mails a timely request for additional information to submit that information to the District. If an applicant requires more than 90 days in which to complete an application, the applicant may notify the District in writing of the circumstances and for good cause shown, the application shall be held in active status for one additional period of up to 90 days. Unless both the applicant and the District agree to further extensions, any application which has not been completed by the applicant within the given time period following a request for additional information by the District shall be recommended for denial at the next regularly scheduled Board meeting. For the purpose of this paragraph, good cause shall mean unforeseen circumstances outside the control of the applicant. Denial of an application for lack of completeness is without prejudice to the applicant's right to file a new application on the same subject matter within 180 days without payment of an additional application fee.

(5) — If additional information submitted to the District incorporates or results in material changes in the proposed activity for which the applicant seeks a permit, the application will be considered to have been amended and the proposal contained in the original application will be deemed withdrawn. The District shall have 90 days from the date of receipt of the additional information in which to approve or deny the amended application and such application shall be subject to review for completeness under subsection (4) above.

(6) — The District shall notify the applicant of the date on which the application is declared complete. The District shall prepare a staff report, which shall contain its recommendations regarding the subject application. A Notice of Proposed Agency Action and the staff report shall be furnished to the applicant and to those persons who have filed written requests pursuant to subsection (3). The Notice shall state the District's intention to recommend that the Board approve, approve with conditions, or deny the permit application and shall specify a date for filing a petition for administrative hearing which shall be not less than 21 days after the date of mailing of the Notice of Proposed Agency Action. Substantially affected persons shall have the right to request an administrative hearing under Section 120.569, Florida Statutes, and Part V of these rules by filing a petition for administrative hearing with the Agency Clerk by the date specified in the Notice of Proposed Agency Action.

(7) — A petition for administrative hearing shall be deemed filed with the District on the date of receipt by the Agency Clerk and must be in substantial compliance with the provisions of the Uniform Rules of Procedure. Failure to timely request an administrative hearing shall constitute a waiver of the right to an administrative hearing pursuant to Section 120.569, Florida Statutes.

(8) — The Board shall consider the permit application on the date indicated in the Notice of Proposed Agency Action. The permit applicant and other interested parties may appear before the Board to present informal argument in favor of or against the proposed agency action. Applicants and other interested parties not objecting

to the Notice of Proposed Agency Action should nevertheless be prepared to defend their positions regarding the permit application when it is considered by the Board for final agency action. Appearance before the Board pursuant to this subsection shall not provide a basis for appealing the decision of the Board pursuant to Chapter 120, Florida Statutes.

(9) — The Board may approve, reject or modify the proposed agency action, which shall constitute final agency action, except in those instances when a valid petition for administrative hearing has been timely filed. In such instances, if the dispute is not resolved at the Board meeting to the satisfaction of the petitioner, the Board shall defer final consideration of the matter pending the completion of the administrative hearing and the submission of a recommended order and exceptions to that order.

(10) — In the event no petition for an administrative hearing was timely filed and the Board takes final agency action which differs materially from the proposed agency action, the District shall mail a Notice of Final Agency Action to all persons who received a Notice of Proposed Agency Action.

(11) — Applicants entitled to a hearing pursuant to Section 120.569, Florida Statutes, may waive their right to such a hearing and request an informal hearing before the Board pursuant to Section 120.569, Florida Statutes, which may be granted at the option of the District.

(12) — This rule provides general guidance regarding the District's processing of permit and license applications. Information specific to the processing of applications for a particular program of the District is contained in the rule chapter that implements the particular program.

Specific Authority 120.54(5), 373.044, 373.113, 373.118, 373.4136 FS. Law Implemented 120.54(5), 120.60, 373.084, 373.085, 373.171, 373.216, 373.219, 373.229, 373.308, 373.309, 373.118, 373.2295, 373.323, 373.413, 373.416, 373.418, 373.426 FS. History—New 7-1-98, Amended 3-2-00.

40A-1.1030 Contract Bidding - Resolution of Protest.

(1) — The District shall give notice of its decision or intended decision concerning a bid solicitation by United States mail or by hand delivery to all bidders. Notice of other decisions or intended decisions concerning a contract award shall be given by posting the bid tabulation at the location of the bid opening or by certified United States mail, return receipt requested. All notices pursuant to this rule shall include the following statement: "Failure to file a protest within the time prescribed in Section 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. The formal written protest shall state with particularity the facts and law upon which the protest is based."

(2) — Within 72 hours after a bid tabulation has been posted or after receipt of a notice of decision or intended decision, a person adversely affected by the District's decision or intended decision shall file with the agency clerk a written notice of protest and shall also file a formal written protest within ten (10) days of filing the notice of protest. Failure to file a notice of protest and a formal protest shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

(3) — Upon the timely filing of a notice of protest, the bid solicitation or contract award process shall be stopped until the subject of the protest is resolved by final agency action, unless the Board sets forth in writing the facts and circumstances which require that the process be continued without delay to avoid an immediate and serious danger to the public health, safety or welfare.

(4) — Within 7 days, excluding Saturdays, Sundays, and legal holidays, of the filing of a formal written protest, at the request of a protestor or a member of the Board there shall be a meeting between the protestor and the Executive Director to resolve the protest by mutual agreement.

(5) — If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and legal holidays, of the filing of a formal written protest, the following shall occur:

(a) ~~If there is a disputed issue of material fact, the District shall refer the protest to the Division of Administrative Hearings for proceedings under Section 120.57(1), Florida Statutes~~

(b) ~~If there is no disputed issue of material fact, an informal proceeding pursuant to Section 120.57(2), Florida Statutes, and the District's rules shall be conducted before a person eligible under the Florida Administrative Code or Chapter 120, Florida Statutes.~~

~~Specific Authority 120.54(5), 373.044 FS. Law Implemented 120.57(3), 373.083 FS. History–New 7-1-98.~~

40A-1.1040 General Permits.

~~General Water Use Permits are granted as a matter of law under the provisions of paragraph 40A-2.041(3)(a), F.A.C. No personal or mail notification to the applicant of the grant of such permits is given.~~

~~Specific Authority 120.54(5), 373.044, 373.118 FS. Law Implemented 373.118 FS. History–New 7-1-98.~~

**Chapter 40A-2, F.A.C.
Consumptive Uses of Water**

Existing Rules = 23
 Recommended for Repeal = 1
 Additional Potential Rule Revision = 1

SECTION	Action	Comment
40A-2.101, F.A.C. Content of Application	Revise	Reduces cost and effort to public by requiring only one copy of the application be submitted.
40A-2.311, F.A.C. Competing Applications	Repeal	Duplicates statute.

CONSUMPTIVE USES OF WATER

40A-2.101 Content Of Application.

(1) All Individual Water Use Permit applications shall include one original ~~and one copy~~ of the following:

(a)-(g) No change.

(2) No change.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.109, 373.223, 373.229, 403.0877 FS. History—New 10-1-82; Amended 1-5-86, 5-31-92, 11-2-92, 11-1-93, 10-1-95, 7-1-98, 1-4-2010.

40A-2.311 Competing Applications.

~~(1) If two (2) or more permit applications which comply with these rules are pending for a quantity of water that is inadequate for both or are in conflict for any other reason, the Board shall approve, modify, or deny each application in a manner which best meets the provisions of Rule 40A-2.301, F.A.C., and Section 373.233, Florida Statutes.~~

~~(2) In the event that two (2) or more competing applications qualify equally under the provisions of subsection (1) above, the Board shall give preference to a renewal application over an initial application.~~

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.233 FS. History—New 10-1-82; Amended 10-1-95.

**Chapter 40A-3, F.A.C.
Regulation of Wells**

Existing Rules
Recommended for Repeal
Additional Potential Rule Revision

= 29 + 3 Appendices
= 1+2 Appendices
= 6

SECTION	Action	Comment
40A-3.038, F.A.C. Violations of Licensing Requirements	Repeal	Duplicates statute and 62-531, F.A.C.
40A-3.041, F.A.C. Permits Required	Revise	Updates form title.
40A-3.301, F.A.C. Conditions for Issuance of Permits	Revise	Updates form title.
40A-3.411, F.A.C. Completion Reports	Revise	Updates form title.
40A-3.492, F.A.C. Violations of Permits	Revise	<ul style="list-style-type: none"> • Clarifies language. • Partially redundant; covered more comprehensively in 62-531, F.A.C.
40A-3.512, F.A.C. Standard Well Construction Methods	Revise	Recites that current forms are adopted by reference; update AWWA A100 reference to current version
40A-3.901, F.A.C. Forms and Instructions	Revise	Move adoption of forms 88 and 122 to appropriate rule
Appendix II	Repeal	Adopt DEP Permit Application Form
Appendix III	Repeal	Adopt DEP Completion Report Form

REGULATION OF WELLS

40A-3.038 Violations of Licensing Requirements.

- (1) ~~Actions, omissions, or conduct by any contractor licensed by this District which may be considered as violations for the purposes of Chapter 62-531, F.A.C., shall include the following:~~
- (a) ~~Practicing with a revoked, suspended, or inactive license.~~
 - (b) ~~Attempting to obtain, obtaining, or renewing a license under this part by bribery or fraudulent misrepresentation.~~
 - (c) ~~Being convicted or found guilty, regardless of adjudication, of fraud or deceit or of gross negligence, incompetency, or misconduct in the performance of work, or of a crime in any jurisdiction which directly relates to the practice of water well contracting or the ability to practice water well contracting.~~
 - (d) ~~Failure to display the contractor license number in a conspicuous place on both sides of each piece of drilling equipment owned, leased, or operated by the contractor.~~
 - (e) ~~Failure to notify the District in writing within 15 days of any change in official address.~~
 - (f) ~~Having had administrative or disciplinary action relating to water well construction, repair, or abandonment taken by any municipality or county or any state agency. These actions shall be reviewed by the District before it takes any disciplinary action of its own.~~
 - (g) ~~Constructing, repairing, or abandoning a water well without first obtaining all applicable permits.~~
 - (h) ~~Allowing any other person to use the license.~~
 - (i) ~~Violating or refusing to comply with any provision of Chapter 373, Florida Statutes, or rule adopted by the District, or any order of the District previously entered in a disciplinary hearing.~~
 - (j) ~~A licensed water well contractor shall not allow an unlicensed individual to construct, repair or abandon wells under the licensed well contractor's license unless: (a) the unlicensed individual is employed and supervised by the licensed contractor or (b) the licensed well contractor has a contractual agreement with the unlicensed subcontractor in which the licensed contractor obtains all well permits, supervises all well work and accepts full responsibility for the subcontractors well drilling activity.~~
- (2) ~~Actions which may be taken by the District upon determination that a violation has occurred are outlined in Chapter 62-531, F.A.C., adopted by reference and made a part of this rule.~~

Specific Authority: 373.044, 373.113, 373.171, 373.323, 373.337, FS. Law Implemented: 373.323, 373.333, 373.336, FS. History—New 1-9-86; Amended 8-1-89, 12-1-90, 11-1-92.

40A-3.041 Permits Required.

- (1) – (2) No change.
- (3) Permit applications shall be filed with the District on DEP NWPWMD Form No. 62-532.900(1)10, revised 10-7-2010 11/1/95, hereby incorporated by reference. The required fee shall be submitted with the permit application. Applications to construct an artificial recharge facility shall be accompanied by a completed copy of the appropriate artificial recharge application required pursuant to 62-528, Florida Administrative Code.

(4) – (14) No change.

Specific Authority: 373.044, 373.113, 373.171, 373.337, FS. Law Implemented: 373.106, 373.109, 373.306, 373.308, 373.309, 373.313, 373.314, 373.316, 373.342, FS. History–New 4-14-80; Amended 4-13-81, 2-1-82, 10-7-82, 3-29-84, 1-9-86, 8-1-89, 12-1-90, 2-14-91, 11-1-95, 7-1-98; Formerly 16G-3.04, 16G-3.11.

40A-3.301 Conditions for Issuance of Permits.

(1) No change.

(2) The issuance of a permit is dependent upon:

(a) The application being accompanied by the required fee, and containing the information required on DEP NFWFWD Form No. 62-532.900(1)14, revised 10-7-2010, hereby adopted by reference. An application will be deemed incomplete if any portion of the application form is left blank or if the required sketch is illegible, does not provide the means to locate the proposed well, or is not consistent with the land coordinates provided in the application.

(b) – (f) No change.

(3) – (4) No change.

Specific Authority: 373.044, 373.113, 373.171, 373.309, 373.337, FS. Law Implemented: 373.109, 373.306, 373.308, 373.309, 373.313, 373.323, FS. History–New 4-14-80; Amended 2-1-82, 10-7-82, 5-17-83, 3-29-84, 1-9-86, 8-1-89, 2-14-91, 11-1-92, 11-1-95, 7-1-98; Formerly 16G-3.30, 16G-3.14.

40A-3.411 Completion Reports.

(1) – (2) No change.

(3) DEP NFWFWD Form 62-532.900(2) 114, revised 10-7-2010, hereby adopted by reference, shall be used to report the completion of construction, repair, or abandonment of any well within District jurisdiction.

(4) – (5) No change.

Specific Authority: 373.044, 373.113, 373.171, 373.309, 373.337, FS. Law Implemented: 373.308, 373.309, 373.313, FS. History–New 4-14-80; Amended 5-17-83, 1-9-86, 8-1-89, 11-1-95; Formerly 16G-3.41, 16G-3.15.

40A-3.492 Violations of Permits.

(1) Actions, omissions, or conduct which shall be considered as violations for the purposes of Part I, Permitting, shall include the following:

(a) Failure to obtain a permit where required under Section 40A-3.041.

(b) Failure to provide accurate and true information in the application for a permit.

(c) Failure to fulfill the requirements of Section 40A-3.451, F. A. C., guidelines for obtaining an emergency permit.

(d) Failure to comply with any or all permit conditions.

(e) Failure to submit an accurate and true a completion report within the time period specified in Section 40A-3.411, F. A. C.

~~(f) Failure to file an accurate completion report.~~

~~(g)~~ — Failure to report to the District within thirty (30) days of expiration of the permit when no work is performed or the well is not completed.

~~(f)(h)~~ Failure to notify the District 24 hours prior to the grouting of the annular space of any public supply well.

~~(g)(i)~~ Failure to fulfill any other applicable requirements of Chapter 373, Part III, Florida Statutes, or Chapter 40A-3, Florida Administrative Code.

(2) No change.

Specific Authority: 373.044, 373.113, 373.171, 373.309, 373.337, FS. Law Implemented: 373.306, 373.308, 373.309, 373.319, FS. History—New 1-9-86; Amended 11-1-92, 11-1-95; Formerly 40A-3.953, FAC.

40A-3.512 Standard Well Construction Methods.

(1) – (5) No change.

(6) All water wells intended to provide potable water shall be thoroughly cleaned of all foreign substances and obstructing material after the well has been constructed. The well shall be developed by pumping, surging, bailing, or other means which effectively remove sediment, well cuttings, and foreign material from in and around the well. Such wells shall be properly disinfected after construction in accordance with Section 4.911, Well Disinfection, American Water Works Association Standard for Water Wells, AWWA A100-0684, dated August 1, 2006 ~~June 10, 1984~~, which is hereby incorporated by reference.

(7) No change.

(8) The well casing shall extend a minimum of twelve (12) inches above ground level and shall not be cut off below ground level unless prior approval is obtained from the District. Circumstances for which such approval shall be considered include the practice of installing the well top, pump and pump control apparatus in a water tight below grade box specifically designed and installed for such purpose for a well whose location is not subject to flooding or inundation. Persons wishing to apply for approval shall submit their request to the District on NFWFMD Form No. 122, Request For Below Grade Well Casing Approval, (effective date 6-22-1989), hereby adopted by reference. The request will be reviewed in the same manner as exemption requests specified in Section 40A-3.051, F.A.C.

Specific Authority: 373.044, 373.113, 373.171, 373.309, 373.337, FS. Law Implemented: 373.306, 373.308, 373.309, FS. History—New 1-9-86; Amended 8-10-87, 4-5-88, 8-1-89, 12-1-90, 11-1-92. Formerly 40A-3.701(2), FAC.

40A-3.901 Forms and Instructions.

The following District forms are used in the implementation of this Chapter and are hereby incorporated by reference into this rule.

(1) ~~DEP NFWFMD Form 62-532.900(1)10~~; Application to Construct, Repair, Modify, or Abandon a Well (Effective: 10-7-2010 ~~11-1-95~~).

(2) ~~DEP NFWFMD Form 62-532.900(2) 114~~; Well Completion Report (Effective: 10-7-2010 ~~11/1/95~~).

(3) – (4) No change.

Specific Authority: 373.044, 373.113, 373.171, 373.309, 373.337 FS, 62-532, FAC. Law Implemented: 373.306, 373.308, 373.309, FS. History—New 4-14-80; Amended 10-27-80, 2-1-82, 1-9-86, 8-1-89, 12-1-90, 2-14-91, 11-1-92, 11-1-93, 11-1-95. Formerly 16G-3.90.

Appendix II – Repeal (Copy of Discontinued District Permit Application Form)

Appendix III – Repeal (Copy of Discontinued District Well Completion Report Form)

**Chapter 40A-4, F.A.C.
Management and Storage of Surface Waters**

Existing Rules = 18
Recommended for Repeal = 5
Potential Rule Revisions = 8

SECTION	Action	Comment
40A-4.011, F.A.C. Policy and Purpose	Revise	Updates text to reflect that the referenced rule chapter has been adopted (deletes "to be published").
40A-4.041, F.A.C. Permit Required	Revise	Clarifies by adding "for project of minimal adverse impact" disclaimer for general permits.
40A-4.061, F.A.C. Mitigation Banks	Repeal	<ul style="list-style-type: none"> • Rule section inappropriate for Chapter 40A-4, F.A.C. NFWFMD does not issue mitigation bank permits. • Repeal will not impact historical operation of program. Repeal also addresses concerns expressed by the JAPC.
40A-4.091, F.A.C. Processing of Permits	Revise	<ul style="list-style-type: none"> • Simplifies permit submittal time, effort and costs for the applicant. • Relocates the "adopted by reference" text for forms from elsewhere in the rule (JAPC required).
40A-4.101, F.A.C. Content of Application	Revise	Clarification requested by JAPC.
40A-4.142, F.A.C. Headgates, Valves, and Measuring Devices	Repeal	Duplicates statute.
40A-4.143, F.A.C. Abandonment	Repeal	Duplicates statute.
40A-4.301, F.A.C. Conditions for Issuance of Permits	Revise	Repeal 40A-4.301(3) as it is redundant of Statute.
40A-4.331, F.A.C. Revocation and Modification of Permits	Revise	<ul style="list-style-type: none"> • Revise (1) per 373.429 for greater specificity. • Repeal (3) & (4) - Language is in statute or otherwise not necessary.
40A-4.461, F.A.C. Inspection	Repeal	Substantially duplicates statute.
40A-4.471, F.A.C. Abatement	Repeal	Substantially duplicates statute.
40A-4.481, F.A.C. Remedial and Emergency Measures	Revise	<ul style="list-style-type: none"> • Rephrase to eliminate the use of "may." • Clarifies Executive Director's authority as provided for in Statute.
40A-4.901, F.A.C. Forms and Instructions	Revise	<ul style="list-style-type: none"> • Delete (1) because it is redundant. • Revise (2) to add new district office and internet address.

MANAGEMENT AND STORAGE OF SURFACE WATERS

40A-4.011 Policy And Purpose.

- (1) No change.
- (2) Provision is made for the correction of unsafe dams or other works, and the District has the authority to make repairs if the owner fails to do so in a reasonable time. Approval of an application to construct does not grant the right to use water or to deny water to downstream owners. Water use permitting will be handled through Chapter 40A-2, F.A.C., ~~to be published~~. The establishment of rigid construction criteria is not intended to be a part of these rules. Safety must be evaluated in the light of peculiarities and local conditions at a particular dam or other structure and in recognition of the many factors involved, some of which may not be precisely known.

Specific Authority 373.044, 373.113, 373.418 FS. Law Implemented 373.413, 373.416, 373.418, 373.426, 373.428 FS. History—New 4-14-80, Formerly 16G-4.01.

40A-4.041 Permit Required.

- (1) General Permit. This subsection provides thresholds for a general permit to construct, alter, abandon or remove any dam, impoundment, reservoir, appurtenant work, or works within the District boundaries. Projects under these thresholds are considered to have minimal individual or cumulative adverse impacts to the water resources of the District, if properly designed and constructed. Unless exempted by Statute or District rule, a general permit must be obtained prior to construction, alteration, abandonment, or removal of any dam, impoundment, reservoir, appurtenant work, or works which:

- (a) – (b) No change.
- (2) – (3) No change.

Specific Authority 373.044, 373.113, 373.118, 373.418, 380.06(9), 373.406 FS. Law Implemented 373.413, 373.416, 373.418, 373.426, 380.06(9) FS. History—New 4-14-80, Amended 2-1-82, 7-1-98; Formerly 16G-4.04.

40A-4.061 Mitigation Banks.

~~(1) Rules of the Department of Environmental Protection for the permitting of Mitigation Banks, as set forth in Chapter 17-342, Florida Administrative Code, “Mitigation Banking,” are hereby adopted by reference.~~

~~(2) Permit applications for Mitigation Banks shall be processed as set forth in that Operating Agreement between the Northwest Florida Water Management District and the Department of Environmental Protection dated 6-22-94.~~

Specific Authority 373.044, 373.113 FS. Law Implemented 373.046, 373.083, 373.4036, 373.4135, 373.4137 FS. History—New 6-22-94.

40A-4.091 Processing of Permits.

- (1) The application for a permit under these rules shall be submitted to the District on, “SAJ Form 983, “Joint Application Department of the Army/Florida Department of Environmental Protection for Activities in Waters of the State of Florida.” However, the applicant, at its discretion, may use Form No. 62-346.900(1), “Joint Application For Environmental Resource Permit / Authorization to Use State-Owned Submerged Lands / Federal Dredge & Fill Permit in Northwest Florida” (effective 11-01-10).

herein incorporated by reference. Forms may be obtained from the Department or from the District, or by accessing the District's internet site at <http://www.nwfwmd.state.fl.us/permits/permits-ERP.html>,

(2) The permit application for an Individual Permit shall be reviewed on behalf of the District by a professional engineer, registered in the State of Florida. The District shall request any additional information and notify the applicant of any errors or omissions required to complete the processing of any application within 30 days following receipt of the application. ~~A copy of all such requests will be provided to the Department.~~ The District shall take action upon any permit application within 90 days following receipt of all requested information from the applicant, or within 90 days following the applicant's request for the District to consider the application complete.

(3) No change.

(4) District action on an application shall result in one of the following:

(a)-(b) No change.

(c) Permit, after following the application review and timeframe requirements of Chapter 40A-1, F.A.C. and Section 120.60(1), FS, is disapproved due to:

1.-3. No change.

(d) No change.

Specific Authority 373.044, 373.113, 373.406, 373.418 FS. Law Implemented 373.118, 373.406, 373.417, 373.418, 373.4141, 373.416, 373.426 FS. History—New 4-14-80, Amended 2-1-82, 7-1-98; Formerly 16G-4.061.

40A-4.101 Content of Application.

(1) Permit applications under provisions of Section 40A-4.041(2) shall include:

(a)-(f) No change.

~~(2) Applications for General Permits under provisions of Section 40A-4.041(1) shall be filed with the Department on forms provided by the Department or District, and shall include, as a minimum:~~

~~(a) Name and address of applicant;~~

~~(b) Name and address of owner or owners of the land upon which the construction, alteration, or abandonment is to take place;~~

~~(c) Location and scope of work, including a location map, and any plans and specifications prepared for the project.~~

~~(2)(3)~~ In situations where unusual topographic or geologic conditions or safety hazards exist, the District shall require the applicant, ~~under subsections (1) and (2) above,~~ to submit other pertinent information deemed necessary for evaluating the application.

Specific Authority 373.044, 373.113, 373.406, 373.418 FS. Law Implemented 373.406, 373.413, 373.416, 373.426, 373.427 FS. History—New 4-14-80, Amended 2-1-82, 7-1-98; 3-1-00, Formerly 16G-4.10.

40A-4.142 Headgates, Valves, and Measuring Devices.

~~(1) The owner of any dam, impoundment, reservoir, appurtenant work, or works subject to this Chapter may be required, after notice and hearing by the Governing Board, to install and maintain a substantial and serviceable headgate or valve at the point where the water is discharged or diverted, and shall, if required by the Governing Board, install a measuring device which will adequately measure the water at a~~

point designated by the Governing Board for the purpose of investigating any hydrological effects of the structure.

~~(2) If any owner shall not have constructed or installed such headgate, valve, or such measuring device within 60 days after the Governing Board has ordered its construction, the Governing Board shall have constructed or installed such headgate, valve, or measuring device, and the costs of installing the headgate, valve, or measuring device shall be a lien against the owner's land upon which such installation takes place until the Governing Board is reimbursed, with reasonable interest and attorney's fees, for its costs.~~

~~(3) No person shall alter or tamper with a measuring device so as to cause it to register other than the actual amount of water diverted, discharged, or taken. Violation of this subsection shall be a misdemeanor in the second degree, punishable under Section 775.083 (5)(b), Florida Statutes.~~

~~(4) For the purpose of safety and maintenance, any new dams, impoundments, or appurtenant works meeting the requirements of Rules 40A-4.041 may be required to have installed and maintained a substantial and serviceable headgate or valve at the point where the water is diverted or discharged.~~

Specific Authority 373.044, 373.113 FS. Law Implemented 373.409, 373.413, 373.416, 373.436 FS. History—New 4-14-80, Amended 2-1-82, Formerly 16G-4.14.

40A-4.143 Abandonment.

~~(1) Unless expressly exempted by law or District rule, no person shall abandon any works requiring a permit under Rule 40A-4.041 without having obtained a permit from the Governing Board.~~

~~(2) Applications for permits required by subsection (1) shall be filed with the District in lieu of the Department, in accordance with the procedures provided for in Section 40A-4.101 of this Chapter.~~

~~(3) The Governing Board may impose on any permit granted under subsection (1) such reasonable conditions as are necessary to assure that such abandonment will not be inconsistent with the provisions of Chapter 373, Florida Statutes.~~

Specific Authority 373.044, 373.113 FS. Law Implemented 373.426 FS. History—New 4-14-80, Amended 2-1-82, Formerly 16G-4.15.

40A-4.301 Conditions for Issuance of Permits.

~~(1)-(2) No change.~~

~~(3) The Governing Board may condition the granting of a permit so as to require;~~

~~(a) Dates that construction, alteration, removal, and operation are to be commenced or completed with notification of such commencement and completion to be given in writing postmarked no later than five days thereafter;~~

~~(b) Reports of operations and maintenance on forms to be provided which shall be submitted within the times prescribed;~~

~~(c) Installation of monitoring facilities;~~

~~(d) Prescribed operating procedures and schedules; and~~

~~(e) Other such reasonable conditions as are necessary to assure that the permitted construction, removal, alteration, or operation will not conflict with the provisions of Chapter 373, Florida Statutes.~~

Specific Authority 373.044, 373.113, 373.418 FS. Law Implemented 373.042, 373.0421, 373.413(1), 373.416, 373.418, 373.426 FS. History—New 4-14-80, Amended 2-1-82, Formerly 16G-4.30.

40A-4.331 Revocation and Modification of Permits.

(1) The Governing Board ~~shall~~ may revoke, or modify a permit, or employ any remedial means authorized by Section 373.429, FS, Emergency Measures ~~at any time~~ if it determines that a dam, impoundment, appurtenant work, or works has become a danger to the public health or safety ~~or if its operation is in violation of any regulation or order of the District, or the conditions of the permit.~~

(2) No change.

(3) ~~If the Executive Director determines that the danger to the public is imminent, he may order a temporary suspension of the construction, alteration, or operation of the facility until the hearing is concluded, or he may take such action as authorized under Rule 40A-4.481.~~

(4) ~~The Governing Board may revoke a permit permanently and in whole with written consent of the permittee and concurrence of the Department.~~

Specific Authority 373.044, 373.113, 373.418 FS. Law Implemented 373.429 FS. History—New 4-14-80, Amended 2-1-82, Formerly 16G-4.34.

40A-4.461 Inspection.

(1) ~~During construction or alteration, the Governing Board may cause to be made at its expense such periodic inspections as it deems necessary to insure conformity with the approved plans and specifications included in the permit.~~

(2) ~~If, during construction or alteration, the Governing Board finds that the work is not in accordance with the approved plans and specifications as directed in the permit, it shall give the permittee written notice, with a copy to the Department, in what way the construction is not in compliance, and shall order immediate compliance with such plans and specifications. Failure to act in accordance with the orders of the Governing Board within 7 days after receipt of written notice shall result in the initiation of revocation proceedings in accordance with the provisions of Rule 40A-4.331.~~

(3) ~~Upon completion of the work, the Executive Director shall have inspections made annually, or more frequently as deemed necessary, of the facility. No person shall refuse immediate entry or access to any authorized representative of the Governing Board who requests entry for purposes of such inspection and who presents appropriate credentials.~~

Specific Authority 373.044, 373.113 FS. Law Implemented 373.413, 373.416, 373.423, 373.426 FS. History—New 4-14-80, Formerly 16G-4.46.

40A-4.471 Abatement.

~~Any dam, impoundment, appurtenant work, or works which violate standards, regulations, or orders of the Governing Board, or the conditions of the permit shall be declared a public nuisance. The operation of such facility may be enjoined by suit by the Governing Board, or by private citizen. The Governing Board shall be a necessary party to any such suit.~~

Specific Authority 373.044, 373.113 FS. Law Implemented 373.433 FS. History—New 4-14-80, Formerly 16G-4.47.

40A-4.481 Remedial and Emergency Measures.

(1) Upon completion of any inspection provided for by Rule 40A-4.461, the Executive Director shall determine what alterations or repairs shall be made within a time certain, which shall be a reasonable time. The owner of such facility shall be served with the order to make such alterations or repairs. The holder of any lesser interest in such facility shall be notified by registered or certified mail of the order to make such alterations or repairs. The owner of such facility may file a written petition for a hearing before the Governing Board within 14 days after such order is served. If, after such order becomes final, the owner of such facility shall fail to make the specified alterations or repairs, the Governing Board shall ~~may in its discretion~~ cause such alterations or repairs to be made.

(2) - (3) No change.

(4) In applying the emergency measures provided for in this section, the Executive Director, shall ~~may~~, in an emergency, employ such steps as necessary to safeguard life and property such as ~~do any of the following:~~

(a) Lower the water level by releasing water from any lake or other impoundment, or;

(b) Completely empty the lake or other impoundment, ~~or~~

~~(c) Take such other steps as may be essential to safeguard life and property.~~

(5) No change.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.436, 373.439 FS. History—New 4-14-80, Amended 7-1-98, Formerly 16G-4.48.

40A-4.901 Forms and Instructions.

~~(1) The required permit application is the Joint Application, Department of the Army/Florida Department of Environmental Protection for Activities in Waters of the State of Florida, form number SAJ-983.~~

~~(1)~~ (2) Forms may be obtained by contacting:

(a)-(b) No change.

(c) The Northwest Florida Water Management District, 2252 Killlearn Center Blvd, Suite 2D, Tallahassee, Florida 32309

(2) The form is also available by accessing the District's internet site at [http://www.nwfwmd.state.fl.us/permits/forms/900\(1\).pdf](http://www.nwfwmd.state.fl.us/permits/forms/900(1).pdf)

Specific Authority 373.044, 373.113, 373.118, 373.418 FS. Law Implemented 373.116, 373.118, 373.413, 373.416, 373.418, 373.426 FS. History—New 4-14-80, Amended 2-1-82, Formerly 16G-4.90.

**Chapter 40A-6, F.A.C.
Works of the District**

Existing Rules	= 17
Repeals	= 2
Rule Revisions	= 9

SECTION	Action	Comment
40A-6.011, F.A.C. Policy and Purpose	Revise	Eliminate unnecessary language. No loss to program.
40A-6.101, F.A.C. Content of Application	Revise	Recites that current form is adopted by reference.
40A-6.301, F.A.C. Conditions for Issuance of Permits	Revise	Deletes unnecessary language.
40A-6.321, F.A.C. Duration of Permits	Revise	Rewording to clarify.
40A-6.331, F.A.C. Revocation and Modification of Permits	Revise	Revise per JAPC and to clarify actions.
40A-6.351, F.A.C. Transfer of Permits	Revise	<ul style="list-style-type: none"> • Reworded to conform to statute and clarify transfer process. • Notifies original permittee retains responsibility until transferred.
40A-6.381, F.A.C. Limiting Conditions	Revise	Revised to reflect statutory requirement. Notifies public staff must give notice before entering property.
40A-6.461, F.A.C. Inspections	Repeal	Duplicates statutes.
40A-6.481, F.A.C. Remedial and Emergency Measures	Revise	Revise to eliminate the use of the word "may."
40A-6.491, F.A.C. Unlawful Use	Repeal	Duplicates statutes.
40A-6.901, F.A.C. Forms and Instructions	Revise	Add information on office address and web address.

WORKS OF THE DISTRICT

40A-6.011 Policy and Purpose.

(1)-(2) No changes.

~~(3) This Chapter should be read in conjunction with Chapter 373, Florida Statutes.~~

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.084, 373.085, 373.086, 373.087, 373.103, 373.139 FS. History—New 4-14-80, Amended 10-29-80, 3-1-00, Formerly 16G-6.01.

40A-6.101 Content of Application.

(1) All permit applications under this Chapter shall be filed with the District Governing Board on appropriate NFWMD forms No. 67 Works of the District, (Rev. 08/01/89), herein adopted by reference, provided by the District. A copy may be downloaded from the District's website @ <http://www.nfwmd.state.fl.us/permits/ruleform.htm>. All applications shall be signed by the owner, lessee, or their authorized agent, of the land included in or adjacent to that portion of the Works of the District involved in the proposal or by the owner, lessee, or their authorized agent, of the land served if the proposal is a drainage or withdrawal.

(2) - (3) No changes

Specific Authority 373.044, 373.113, 373.171, 373.418 FS. Law Implemented 373.084, 373.085(1), 373.413, 373.416, 373.426 FS. History—New 4-14-80, Amended 2-1-82.

40A-6.301 Conditions for Issuance of Permits.

(1) The issuance of a permit is dependent upon:

- (a) the application being in the proper form and containing the required information; and
- (b) the proposed construction, repair, abandonment, alteration, or removal being in accordance with applicable laws, rules, and orders.

(2) A permit shall not be granted for any use of Works of the District which will adversely affect such works or interfere with or impose hardships upon the District's operation, maintenance, or construction activities.

(3) The District has the right to change, regulate, limit, schedule, or suspend discharges into, or withdrawals from, Works of the District in accordance with generally accepted engineering practices.

(4) The project shall not damage lands not owned, leased, or otherwise controlled by the applicant.

~~(5) Favorable action upon a permit application by the Governing Board will result in granting of a permit to connect to, withdraw water from, discharge water into, place construction within or across or otherwise make use of a work of the District, or to remove or terminate such activity.~~

~~(6) Permit is not granted because:~~

~~(a) Design is not consistent with generally accepted engineering principles.~~

~~(b) The activity authorized by the permit is considered not to be consistent with the provisions of Chapter 373, Florida Statutes.~~

Specific Authority 373.044, 373.103(4), 373.113, 373.171, 373.418 FS. Law Implemented 373.084, 373.103(4), 373.085, 373.413, 373.416, 373.426 FS. History—New 4-14-80, Amended 2-1-82, Formerly 16G-6.30.

40A-6.321 Duration of Permits.

The permit becomes effective upon the date of delivery to the permittee and is valid for the period stated in ~~on~~ the permit document unless otherwise revoked or modified pursuant to 40A-6.331, F.A.C Revocation and Modification canceled by the District pursuant to Rule 40A-6.331(1).

Specific Authority 373.044, 373.113, 373.171, 373.418 FS. Law Implemented 373.084, 373.085(1), 373.413, 373.416, 373.426 FS. History—New 4-14-80.

40A-6.331 Revocation and Modification of Permits.

(1) The Board ~~shall~~ may revoke or modify a permit or employ any remedial means as authorized by Section 373.439, FS Emergency Measures at any time if it determines that the permitted work or works has become a danger to the public health or safety, ~~or violates the conditions of the permit, or upon request of the holder of the permit.~~ The Board shall also revoke or modify a permit if it determines that its construction or operation has become inconsistent with the District's objectives.

(2)-(3) No changes.

(4) If the Executive Director determines that the continued exercise of the permit might endanger lives or property, he ~~shall~~ may, with the concurrence of the Governing Board, order a temporary suspension of the construction, alteration, repair, or operation of the work or works until the hearing is concluded, or may take such action as authorized under Section 373.439, FS. Emergency Measures Chapter 40A-6.481.

Specific Authority 373.044, 373.113, 373.171, 373.418 FS. Law Implemented 373.084, 373.085(1), 373.119, 373.413, 373.416, 373.426, 373.429, 373.439 FS. History—New 4-14-80, Formerly 16G-6.33.

40A-6.351 Transfer of Permits.

A permittee shall notify the District within 30 days after the project or lands served by the project is sold or transferred to another owner. Upon notification by a permittee request, a valid permit shall may be transferred by the Governing Board from the permittee to a new owner or lessee. The notice request of District authorization for transfer shall be made in letter form by the permittee new owner, lessee, or authorized agent. If the permittee fails to properly transfer the permit as specified above, the permittee retains all responsibility for ensuring that the facility remain in compliance with the permit as conditioned. If not properly transferred, the permittee shall submit to the District a notification of the sale and the contact information for the new owner, lessee, or authorized agent. The permittee must submit documentation that the new owner certifies, wherein it is agreed that all terms and conditions attending the issuance of the original permit are understood and agreed to. Acceptable proof shall be provided to the District of ownership of the land adjacent to that portion of the project works involved in the permit, or the land served if the permit is a drainage or withdrawal connection. After submittal of the notification and documentation the permit will be transferred to the new owner, operator, agent or leasee.

Specific Authority 373.044, 373.113, 373.171, 373.418 FS. Law Implemented 373.084, 373.085(1), 373.413, 373.416(2), 373.426 FS. History—New 4-14-80, Formerly 16G-6.35.

40A-6.381 Limiting Conditions.

Each permittee under this Chapter shall be required:

(1) To abide by the conditions of the permit as issued to him;

- (2) To maintain any permitted use in a good and safe and operable condition;
- (3) To allow inspection at any time, after reasonable notice, by District personnel of any use established under the permit;
- (4)-(8) No changes.

Specific Authority 373.044, 373.113, 373.171, 373.418 FS. Law Implemented 373.084, 373.085(1), 373.413, 373.416, 373.423, 373.426 FS. History—New 4-14-80.

40A-6.461 Inspections.

~~(1) During such construction or alteration of any permitted work or works, the Governing Board shall may cause to be made, at its expense, such periodic inspections as it deems necessary to insure conformity with the approved plans and specifications included in the permit.~~

~~(2) If, during construction or alteration, the District finds that the work is not being accomplished in accordance with the approved plans and specifications as indicated in the permit, it shall give the permittee written notice stating how the construction is not in compliance and ordering immediate compliance with such plans and specifications. Failure to act in accordance with the orders of the District after receipt of written notice may result in the initiation of revocation proceedings in accordance with the provisions of Rule 40A-6.331.~~

~~(3) Upon completion of such construction or alteration, the Executive Director shall have inspections performed as frequently as deemed necessary. No person shall refuse immediate entry or access to any authorized representative of the Board who requests entry for the purpose of such inspection and who presents appropriate credentials.~~

Specific Authority 373.044, 373.113, 373.171, 373.418 FS. Law Implemented 373.423 FS.
History—New 4-14-80, Formerly 16G-6.46.

40A-6.481 Remedial and Emergency Measures.

(1) Upon completion of any inspection provided for by Rule 40A-6.461, the Executive Director shall determine if any alterations or repairs are necessary in order to comply with the provisions of Chapter 373, Florida Statutes, or any regulations, permit, or order issued thereunder, and order that such alterations or repairs shall be made within a time certain, which shall be a reasonable time. The owner of such work or works shall be served with the order to make such alterations or repairs. The owner of such work or works may file a written petition within fourteen (14) days after such order is served for a hearing in accordance with Chapter 120, Florida Statutes. If, after such order becomes final, the owner of such work or works shall fail to make the specified alterations or repairs, the Board shall ~~may at its discretion,~~ cause such alterations or repairs to be made.

(2)-(3) No changes.

Specific Authority 373.044, 373.113, 373.171, 373.418 FS. Law Implemented 373.119, 373.436, 373.439 FS. History—New 4-14-80, Formerly 16G-6.48.

40A-6.491 Unlawful Use.

~~Damage from unlawful use of the Works of the District, or from violations of the conditions of a permit issued by the Governing Board shall, if made by other than a public agency, be subject to such penalty as is or may be prescribed by law and, in addition thereto, by a date and in a manner prescribed by the~~

~~Board, repair of said damage must be made to the satisfaction of the Board, or deposit made to the Board in a sum sufficient to repair the damage.~~

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.085 FS. History—New 4-14-80, Formerly 16G-6.49.

40A-6.901 Forms and Instructions.

(1) The form may be obtained by contacting

~~Application for a permit under provisions of this Chapter shall be submitted on NFWFMD form NFWFMD No. 67, which may be obtained from~~

~~(1) tThe Northwest Florida Water Management District, 152 Water Management Drive, Havana, FL 32333, (850) 539-5999.~~

(2) The form is also available by accessing the District's internet site at
[http://www.nfwfmd.state.fl.us/permits/forms/900\(1\).pdf](http://www.nfwfmd.state.fl.us/permits/forms/900(1).pdf)

Specific Authority 373.044, 373.113, 373.171, 373.418 FS. Law Implemented 373.084, 373.085, 373.413, 373.416, 373.426 FS. History—New 4-14-80, Amended 2-1-82.

Chapter 40A-44, F.A.C.
Regulation Of Agricultural And Forestry SurF.A.C.e Water Management Projects

Existing Rules = 19
 Recommended for Repeal = 2
 Recommended Rule Revision = 8

SECTION	Action	Comment
40A-44.052, F.A.C. Authorization for Certain Forestry Projects	Revise	<ul style="list-style-type: none"> • Relocates “adopted by reference” text for form from elsewhere in the rule (JAPC required). • Changes office information.
40A-44.091, F.A.C. Processing of Permits	Revise	Updates text to reflect historical delegation of permit issuance to Executive Director.
40A-44.101, F.A.C. Content of application	Revise	Relocates “adopted by reference” text for form from elsewhere in the rule (JAPC required).
40A-44.142, F.A.C. Headgates, Valves, and Measuring Devices	Repeal	Duplicates statute.
40A-44.143, F.A.C. Abandonment	Repeal	Redundant of Section 40A-44.041 Permits Required.
40A-44.331, F.A.C. Modification of Permits	Revise	Replace “may” with “shall” and addresses old citations.
40A-44.351, F.A.C. Transfer of Permits	Revise	Reworded to conform to statute.
40A-44.411, F.A.C. Completion Report	Revise	Recites that current forms are adopted by reference.
40A-44.451, F.A.C. Emergency Authorization	Revise	Replaces “may” with “shall.”
40A-44.901, F.A.C. Forms	Revise	Deletes forms that are adopted in earlier sections. Delete Pensacola, and adds Crestview and Delaney offices.

**REGULATION OF AGRICULTURAL AND
FORESTRY SURFACE WATER MANAGEMENT PROJECTS**

40A-44.052 Authorization for Certain Forestry Projects.

(1) No change.

(2) Prior to the construction, replacement, or maintenance of a minor forestry work authorized under this section, notice shall be given to the District as follows:

(a) A completed Forestry Authorization Notification Form, NFWFMD Form No. A44-F; (Effective 7-1-92), herein adopted by reference, shall be submitted to the District no less than two (2) working days prior to the commencement of work. For notification forms mailed to the District, the postmark date shall be the date of submittal. Copies of this form are available from the District office identified below or from the District's website at: <http://www.nwfwmd.state.fl.us/permits/ruleform.htm>

(b) No change.

(c) All forestry authorization notifications shall be made to ~~the appropriate District office identified below:~~

~~1. Escambia, Holmes, Okaloosa, Santa Rosa, Walton and Washington Counties:~~

~~NFWFMD Pensacola Field Office, 2261 W. Nine Mile Road, Pensacola, FL 32534-9416, (850) 484-5125~~

~~2. Bay, Calhoun, Gulf and Jackson Counties:~~

~~NFWFMD Marianna Field Office, 4765 Pelt Street, Marianna, FL 32446-0900, (850) 482-9522~~

~~3. Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla Counties:~~

~~Northwest Florida Water Management District Headquarters, 152 Water Management Drive, Havana, FL 32333-9700, (850) 539-5999~~

(d) No change.

(3) - (5) No change.

Specific Authority 373.044, 373.113, 373.418 FS. Law Implemented 373.118, 373.406(5), 373.413, 373.416, 373.426 FS. History--New 10-1-84, Amended 9-15-86, 8-1-89, 7-1-92.

40A-44.091 Processing of Permits.

(1) Letters of conceptual approval, individual surface water construction permits, and general surface water management permits for impoundments constructed in waters in the State shall be processed according to the provisions of Chapter 40A-1, Florida Administrative Code, ~~and require approval by the Governing Board.~~

(2)-(3) No change.

Specific Authority 373.044, 373.113, 373.418 FS. Law Implemented 373.116, 373.118, 373.406, 373.413, 373.4141, 373.416, 373.426, 380.06(9) FS. History--New 10-1-84, Amended 7-1-92, 7-1-98.

40A-44.101 Content of Application.

(1) Applications for permits required by this Chapter shall include:

(a) Form No. A44-A, Surface Water Management Permit Application (effective 7/1/92), herein adopted by reference;

(b)-(c) No change.

(d) Information supporting the agricultural status of the property which shall include:

1. – 3. No change.

4. An Affidavit of Agricultural Status, Form A44-E, (effective 7/1/92) herein adopted by reference, may be substituted for the ASCS farm number and verification of agricultural classification. In areas of changing land uses, from agricultural to other uses, an affidavit is required;

(e)-(h) No change.

(2)-(3) No change.

Specific Authority 373.044, 373.113, 373.418 FS. Law Implemented 373.116, 373.118, 373.406(5), 373.413, 373.416, 373.426 FS. History–New 10-1-84, Amended 7-1-92.

40A-44.142 Headgates, Valves, and Measuring Devices.

~~(1) The owner of any dam, impoundment, reservoir, appurtenant work, or works subject to this chapter may be required, after notice and hearing by the Governing Board, to install and maintain a substantial and serviceable headgate or valve at the point where the water is discharged or diverted, and shall, if required by the Governing Board, install a measuring device which will adequately measure the water at a point designated by the Governing Board for the purpose of investigating any effects of the structure.~~

~~(2) If any owner shall not have constructed or installed such headgate, valve, or such measuring device within 60 days after the Governing Board has ordered its construction, the Governing Board shall have constructed or installed such headgate, valve, or measuring device, and the costs of installing the headgate, valve, or measuring device shall be a lien against the owner's land upon which such installation takes place until the Governing Board is reimbursed, with reasonable interest and attorney's fees, for its costs.~~

~~(3) No person shall alter or tamper with a measuring device so as to cause it to register other than the actual amount of water diverted, discharged, or taken.~~

~~(4) For the purpose of safety and maintenance, any new dams, impoundments, or appurtenant works meeting the requirements of Rule 40A-44.041, F.A.C., may be required to have installed and maintained a substantial and serviceable headgate or valve at the point where the water is diverted or discharged.~~

Specific Authority 373.044, 373.113, 373.418, 373.436 FS. Law Implemented 373.409, 373.436 FS. History–New 10-1-84.

40A-44.143 Abandonment.

(1) ~~Unless expressly exempted by law or District rule, no person shall abandon any works requiring a permit under Section 40A-44.041 without having obtained a permit from the Governing Board.~~

(2) ~~Applications for permits required by subsection (1) shall be filed with the District in accordance with the procedures provided for in Section 40A-44.101 of this Chapter.~~

(3) ~~The Governing Board may impose on any permit granted under subsection (1) such reasonable conditions as are necessary to assure that such abandonment will not be inconsistent with the provisions of Chapter 373, Florida Statutes.~~

Specific Authority 373.044, 373.113, 373.418 FS. Law Implemented 373.426 FS. History--New 10-1-84.

40A-44.331 Modification of Permits.

An application for modification of a surface water management permit shall be processed in accordance with this rule, unless otherwise revoked, suspended or expired.

(1) Applications to modify letters of conceptual approval ~~may~~ shall be made and reviewed:

(a)-(c) No change.

(2) Applications to modify Individual Surface Water Construction or Individual Operation and Maintenance permits ~~may~~ shall be made:

(a) by formal application and reviewed using the same criteria as new applications, pursuant to Rules 40A-44.101 and 40A-44.301, F.A.C., or

(b) by letter, provided the requested modification does not:

1.-6. No change.

(3) No change.

Specific Authority 373.044, 373.113, 373.418, 380.06 FS. Law Implemented 373.118, 373.406(5), 373.413, 373.416, 373.426, 373.429, 380.06 FS. History--New 10-1-84, Amended 7-1-98.

40A-44.351 Transfer of Permits.

(1) A permittee must ~~request from~~ notify the District a ~~permit transfer~~ within 30 days after the sale or conveyance of a surface water management project or the land on which the project is located. Upon receipt of timely notification, the District will transfer a valid (non-expired / non-revoked) construction or the operation and maintenance permit, ~~as appropriate provided the use associated with the permitted facility remains the same. A surface water management permit to construct or alter a system will not be transferred if the permit is over three years old and the permitted project discharge structure or equivalent has not been constructed.~~

(2) The permittee shall inform the transferee of the use limitations associated with the permitted facility. If the permit was not properly transferred pursuant to 40A-44.351(1), F.A.C., ~~t~~The transferee shall execute an affidavit acknowledging his awareness of the conditions and restrictions associated with the

permit issued by the District. Until the permit is properly transferred, the permittee is responsible for ensuring the project is in compliance with the terms and conditions of the permit.

(3) Requests for transfer of permit shall be made on Form No. A44-D, Requests For Transfer of (effective 7-1-92), herein adopted by reference. Copies of this form can be obtained from the District's website or any District office.

Specific Authority 373.044, 373.113, 373.418 FS. Law Implemented 373.413, 373.416(2), 373.418, 373.426 FS. History--New 10-1-84, Amended 8-1-89, 7-1-92.

40A-44.411 Completion Report.

Within 30 days after the completion of construction or alteration of any project for which a permit was granted under this Chapter, the permittee shall file with the District a completion report prepared and certified in accordance with the certification requirements of Section 40A-44.301(7), Florida Administrative Code.

(1) The "As-Built Certification and Completion Report" shall identify the permit number and shall certify that the project was completed according to the specifications and standards identified in the application and all conditions stipulated by the District. Any minor deviations not subject to the requirements of Section 40A-44.331, Florida Administrative Code, for the permitted facility shall be identified in the report and shall be accompanied by supporting engineering documentation.

(2) The forms herein adopted by reference, are

(a) As-built Certification And Completion Report for projects designed and inspected by certified engineers, NFWFMD Form No. A44-B; Effective 7-1-92.

(b) As-built Certification And Completion Report for projects designed and inspected by the USDA Soil Conservation Service, NFWFMD Form No. A44-C; Effective 7-1-92.

Copies of these forms can be obtained from the District's website.

(3)(2) The project shall not be determined fully complete and shall not be used to impound or convey water until the required "As-Built Certification and Completion Report", Form Nos. A44-B or and A44-C, is submitted to, and verified by a final inspection by, the District.

Specific Authority 373.044, 373.113, 373.418, 403.0877 FS. Law Implemented 373.117, 373.419, 373.423, 403.0877(4) FS. History--New 10-1-84, Amended 8-1-89, 7-1-92.

40A-44.451 Emergency Authorization.

(1) The Executive Director shall ~~may~~ grant emergency authorization in accordance with Sections 373.439, F.S., at his discretion. The emergency authorization shall be presented to the Board for concurrence at its next meeting. The failure to receive the Board's concurrence shall invalidate the emergency authorization.

(2) No change.

Specific Authority 373.044, 373.113, 373.418 FS. Law Implemented 373.439 FS. History--New 10-1-84.

40A-44.901 Forms.

(1) The following forms are used in the implementation of this Chapter and are hereby incorporated by reference:

(a) ~~— Agricultural Water Management System Permit Application, NFWFMD Form No. A44-A; Amended 7-1-92.~~

(b) ~~— As-built Certification And Completion Report for projects designed and inspected by certified engineers, NFWFMD Form No. A44-B; Effective 7-1-92.~~

(c) ~~— As-built Certification And Completion Report for projects designed and inspected by the USDA Soil Conservation Service, NFWFMD Form No. A44-C; Effective 7-1-92.~~

(d) ~~— Requests For Transfer Of Permit, NFWFMD Form No. A44-D; Effective 7-1-92.~~

(e) ~~— Affidavit Of Agricultural Status, NFWFMD Form No. A44-E; Effective 7-1-92.~~

(f) ~~— Forestry Authorization Notification Form, NFWFMD Form No. A44-F; Effective 7-1-92.~~

(1)(2) ~~All applications~~ These forms are available at the following District offices and on the District's website at: <http://www.nwfwmd.state.fl.us/permits/ruleform.htm>.

(a) – (b) No change.

(c) Northwest Florida Water Management District, -800 Hospital Drive, Crestview, FL, 32539, (850) 682-5044.

(e) ~~— Pensacola Field Office 2261 W. Nine Mile Road Pensacola, FL, (850) 484-5125.~~

(d) Northwest Florida Water Management District, 2252 Killearn Center Blvd, Tallahassee, Florida

Specific Authority 373.044, 373.113, 373.118, 373.418, 373.4136 FS. Law Implemented 373.116, 373.413, 373.416, 373.426, 373.418 FS. History--New 10-1-84, Amended 7-1-92.