

RULES OF THE NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT
CHAPTER 40A-44, FLORIDA ADMINISTRATIVE CODE

REGULATION OF AGRICULTURAL AND FORESTRY SURFACE WATER MANAGEMENT PROJECTS



Effective July 1, 1998
Regulatory Guidelines #98-5

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SURFACE WATER MANAGEMENT PROJECTS**

(Effective July 1, 1998)

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

(Effective July 1, 1998)

40A-44.011 Policy and Purpose.

- (1) The purpose of these rules is to implement the expressed policy of the Northwest Florida Water Management District and the State of Florida to assure that agricultural and forestry projects relating to the management, storage, and drainage of surface waters will not be harmful to the water resources, and will provide for the safety of life and property. The following constitutes an expression of the objectives of the District with regard to its permitting powers.
- (a) It shall be the objective of the District to encourage sound agricultural and forestry water management practices in a manner which provides for the conservation of the District's water resources.
- (b) It shall be the objective of the District to provide that the discharge to waters of the State from agricultural and forestry surface water management projects meet the water quality provisions of Chapters 17-302 and 17-4, Florida Administrative Code Rule.
- (c) It shall be the objective of the District to ensure that any dam, impoundment, reservoir, appurtenant work, or works under permit does not create a hazardous condition which might threaten lives or property.

(d) It shall be the objective of the District to ensure that the waters within the District are not depleted, restricted, or otherwise impaired by artificial means unless permitted by the District.

(e) It shall be the objective of the District to ensure the protection and preservation of wetlands and other water-dependent natural systems.

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

40A-44.021 Definitions.

- (1) ***“Best Management Practices for Agriculture”*** means conservation practices established by the U.S. Department of Agriculture's Soil Conservation Service for the purpose of reducing pollution from agricultural activities as applied to local conditions as set forth in “A Manual of Reference Management Practices for Agricultural Activities,” Florida Department of Environmental Regulation, November 1978.
- (2) ***“Best Management Practices for Forestry”*** means conservation practices established for the purpose of reducing pollution from silvicultural activities as applied to local conditions as set forth in “Silviculture Best Management Practices Manual,” Florida Department of Agriculture and Consumer Services, Division of Forestry, Revised May 1993.
- (3) ***“Class I Waters”*** means those surface waters listed pursuant to Section 17-302.600, Florida Administrative Code.

- (4) **“Endangered Species”** means those plants, fish and wildlife listed pursuant to Rule 39-27.003, Florida Administrative Code, Section 581.185(5)(a), Florida Statutes, and 50 CFR 17.11.
- (5) **“Existing Facility”** means a dam, impoundment, reservoir, appurtenant work, or works that were constructed under authorization by the District, or constructed before October 1, 1984, and that has been used and maintained within the 3 years prior to application for a permit under Section 40A-44.301(4), Florida Administrative Code.
- (6) **“Farm Pond”** means a pond located on a farm and used for farm purposes.
- (7) **“Farm Purposes”** means and includes farm water supply, erosion control, fish and wildlife enhancement or flood control.
- (8) **“Farm Water Supply”** means water used for irrigation, livestock watering, fire protection or general on-farm use.
- (9) **“Outstanding Florida Waters”** means those surface waters listed pursuant to Section 17-302.700, Florida Administrative Code.
- (10) **“Projects”** means one or more agricultural or forestry activities resulting in the construction, operation and maintenance, alteration, modification or abandonment of structures or works for the sole or predominant purpose or effect of impounding, draining, or obstructing surface waters.
- (11) **“Species Of Special Concern”** means those fish and wildlife listed pursuant to

Rule 39-27.005, Florida Administrative Code.

- (12) **“Steephead Ravines”** means those highly distinctive stream valleys as described in “A Ecological Characterization of the Florida Panhandle”, U.S. Fish and Wildlife Service Biological Report 88(12), U.S. Fish and Wildlife Service, 1988.
- (13) **“Threatened Species”** means those plants, fish and wildlife listed pursuant to Rule 39-27.004, Florida Administrative Code, and 50 CFR 17.12.
- (14) **“Wetlands”** means those areas that are inundated or saturated by surface or ground water with a frequency sufficient to support, and under normal circumstances do or would support, a prevalence of vegetation or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction, such as swamps, marshes, bayheads, cypress ponds, sloughs, wet prairies, wet meadows, river overflows, mud flats and natural ponds.

Specific Authority 373.113, 373.418 FS.
 Law Implemented 373.413, 373.416, 373.418, 373.426 FS.
 History--New 10-1-84, Amended 7-1-92, 3-30-94.

40A-44.031 Implementation.

Specific Authority 373.044, 373.171 FS.
 Law Implemented 373.409, 373.413, 373.416, 373.426 FS.
 History--New 10-1-84. Repealed 7-1-98.

40A-44.041 Permits Required.

- (1) Unless expressly exempted by law or District rule, a surface water management permit must be obtained, pursuant to this Chapter, from the District to construct, alter, operate, maintain, or abandon any dam, impoundment, reservoir,

appurtenant work or works associated with agricultural or forestry projects.

(2) The District issues four types of agricultural and forestry surface water management permits: general surface water management permits, letters of conceptual approval, individual surface water construction permits, and individual operation and maintenance permits.

(a) General Surface Water Management Permits. This permit provides for the construction, maintenance, and operation of a facility. A general permit is applicable for projects:

1. within a watershed which contains less than 640 acres above (upstream of) the project's point of discharge, or
2. which could impound water by a dam which is less than ten feet in height from the natural bed of the water course at the downstream toe of the barrier, as determined by the District, or which has an impounding capacity of less than fifty (50) acre-feet.

(b) Letters of Conceptual Approval. A letter of conceptual approval may be issued for surface water management projects associated with agricultural or forestry projects that are to be developed in phases. A letter of conceptual approval does not authorize any construction and requires the submittal of applications for each development phase of the project.

(c) Individual Surface Water Construction Permits. A permit is

applicable for all projects which are not exempt, which are not eligible for a general permit, or which are not otherwise authorized activities pursuant to this Chapter.

(d) Individual Operation and Maintenance Permits. A permit for operation and maintenance of any dam, impoundment, reservoir, appurtenant work or works is required for permitted projects under Section 40A-44.041(c), Florida Administrative Code.

Specific Authority 373.044, 373.113, 373.418, 380.06(9)(b) FS.
Law Implemented 373.118, 373.406, 373.413, 373.416, 373.418, 373.426, 380.06(9) FS.
History--New 10-1-84, Amended 8-1-89, 7-1-92, 7-1-98.

40A-44.051 Exemptions.

- (1) Activities specified in Section 373.406, Florida Statutes, are exempt from this Chapter.
- (2) Projects permitted pursuant to this Chapter are exempted from the provisions of Chapter 40A-4, Florida Administrative Code, as long as the land served by the project continues to be used for agriculture or forestry.

Specific Authority 373.044, 373.113, 373.171, 373.418, 373.813 FS.
Law Implemented 373.416, 373.406, 373.413, 373.418, 373.426, 403.813 FS.
History--New 10-1-84.

40A-44.052 Authorization for Certain Forestry Projects.

- (1) Authorization is hereby granted, subject to the general and specific conditions of this Section, to any person who is engaged in forestry operations to conduct the minor works described below:

- (a) Culvert placement, replacement and maintenance, in streams of less than 10 cubic feet per second average discharge at the culvert location or streams draining less than 10 square miles, except for culverts associated with low water crossings, provided that construction does not cause scour in the downstream waters or increase the velocity of the water downstream.
 - (b) Bridge construction, replacement and maintenance for structures up to 400 feet in length and two lanes or less in width supported by pilings or trestles where the effects of pollutants discharged into open waters can be minimized.
 - (c) Construction and maintenance of low water crossings (hard surface crossings over which water flows during storm events or immediately thereafter) provided construction does not scour in the downstream waters or increase the velocity of the water downstream.
 - (d) Temporary stream channel diversions necessary to complete projects detailed in paragraphs (a), (b), and (c) above, provided the area used for the temporary diversion is restored to its previous contours and elevations.
 - (e) Channel clearing and shaping to facilitate maximum hydraulic efficiency of designed structure detailed in paragraphs (a), (b), and (c) above.
 - (f) Site preparation and access roads on existing forestry lands including any ditch constructed or maintained with a total cross-sectional area at the outfall of less than 35 square feet when a berm or buffer zone of vegetation separates the site being prepared and the open water. Where an access road crosses open water, the crossing construction shall be in accordance with paragraphs (a), (b), (c), (d), or (e) above.
- (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, No. A44-F, 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.
 - (b) Emergency notification will be allowed under this section provided the District receives a completed Forestry Authorization Notification Form or is notified by telephone prior to the commencement of work. Telephone notification shall be followed by submittal of a completed Forestry Authorization Notification Form no less than two (2) working days after such telephone notification. A serious set of unforeseen or unforeseeable circumstances must exist to create an emergency. Mere carelessness or lack of planning on the part of the applicant shall not be sufficient grounds to warrant the granting of emergency authorizations.
 - (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) The person seeking an authorization, in lieu of an individual project notification, may submit a yearly work plan authorization request. The required plan shall be filed with the District Headquarters Office and shall identify the type, location and implementation timetable for each proposed minor work authorized under the provisions of this section. Yearly work plans shall be submitted thirty (30) days prior to the commencement of the implementation of the identified works and may be modified under individual project authorizations.

- (3) This authorization shall be subject to the general conditions of Section 40A-44.301(2), Florida Administrative Code, and the following specific conditions:

- (a) Notice has been filed with the District as provided for in Section 40A-44.052(2), Florida Administrative Code.

- (b) The person shall use Best Management Practices for Forestry pursuant to Section 208 of Public Law 95-217 as defined in Section 40A-44.021(2), Florida Administrative Code.

- (c) The person shall stabilize fill areas and stream banks disturbed by the activity by revegetation or riprap as appropriate.

- (d) The person shall limit stream channel relocation to streams which have an average annual discharge of 10 cubic feet per second or less. The length of relocated channels or those significantly altered shall be limited to 200 feet per stream. A stream channel shall be altered only when such a measure will reduce the long term adverse water quality impacts and will maintain or restore the stream's natural hydraulic capacity.

- (e) The person shall limit bridge construction to those bridges spanning bank-to-bank with no causeway approaches in the floodplain unless there are sufficient culverts in the causeway to prevent downstream scour or increase in the velocity of the water downstream. This limitation does not apply to maintenance of existing bridges or to

the construction of temporary log and pole bridges.

- (f) The person shall limit crossings of any particular stream to an average of one every 1/2 mile.
- (4) This authorization does not apply to activities which convert waters in the state to uplands by draining the land, site preparation or other practices designed to bring an area not used for forestry into such use or forest land into other uses. However, it shall apply to activities on areas lying fallow as part of a conventional rotation cycle of an established forestry operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle more than 5 years.
- (5) If at any time the District discovers that an Authorization has been used to conduct minor forestry works which do not qualify for an authorization under this Section, or an authorized activity is not being conducted in accordance with the conditions described in this Section, the District shall either require application for a permit pursuant to Chapters 40A-4, 40A-6, or 40A-44, Florida Administrative Code, or shall take administrative or judicial enforcement action, or any combination thereof, as it deems appropriate.

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) General surface water management permits for projects other than impoundments constructed in waters in the State shall be processed in accordance with all applicable provisions of Chapter 40A-1, Florida Administrative Code, and may be issued by the Executive Director after the submitted application is determined to be complete and meets the requirements of this Chapter. However, upon a determination that the District and its resources would be better served, the Executive Director may require any application for general permit to be referred to the Governing Board for approval.
- (3) Permit application notices shall be processed in accordance with the provisions of Chapter 40A-1, Florida Administrative Code, and Sections 373.116 and 373.413(3), Florida Statutes.

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;
 - (b) The information required in subsection 373.413(2), Florida Statutes;
 - (c) Drawings, calculations, and engineering details sufficient to define the nature, scope, intent and

functioning of the proposed project. This information shall include the following:

1. the area of inundation depicted on a topographic map;
2. hydraulic calculations; and,
3. flow characteristics;

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

1. a Soil and Water Conservation District approved conservation plan;
2. a copy of the receipt of application for agricultural classification of the property (Green Card); and,
3. an Agricultural Stabilization and Conservation Service (ASCS) farm number.
4. an Affidavit of Agricultural Status, Form A44-E, 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) The name, address and zip code of all property owners adjacent to the affected water body that are immediately downstream of the property upon which the proposed project will take place;

(f) An inventory of the wetland impacts of the project which shall include: total wetlands on site, wetlands

permanently lost, wetlands temporarily disturbed, wetlands created, wetlands improved, and other site specific wetland information;

(g) An inventory of endangered or threatened species, and species of special concern known to occur on the site, as listed pursuant to Rule 39-27.003-005, Florida Administrative Code; Section 581.185(5)(a), Florida Statutes; and 50 CFR 17.11-12; and,

(h) Other site specific information as necessary to support the reasonable assurances determination pursuant to Section 40A-44.301(2), Florida Administrative Code.

(2) The application must be signed by the owner or his authorized agent, if applicable.

(3) The District may require the applicant to submit other pertinent information deemed necessary for evaluating the application.

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 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 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-44.201 Permit Processing Fee.

A non-refundable permit processing fee shall be filed with the District, at the time of application submittal, according to the following fee schedule:

Type of Permit	Fee
1. Letter of Conceptual Approval	250.00
2. General Surface Water Management Permit	25.00
3. Individual Surface Water Construction Permit	
Watershed less than 4 square miles	150.00
Watershed 4 square miles or larger	500.00
4. Individual Operation and Maintenance Permit	No Fee

Specific Authority 373.044, 373.113, 373.418 FS.
 Law Implemented 373.109 FS.
 History--New 10-1-84, Amended 1-1-90, 7-1-98.

40A-44.301 Conditions for Issuance of Permits.

- (1) The District shall not issue a permit for a new agricultural water management system impoundment or a farm pond impoundment within:
 - (a) an Outstanding Florida Water;

- (b) a Class I water or a direct tributary to a Class I water up to the point on the tributary where the base flow drops below 5 cubic feet per second; or,
 - (c) a stream which has as its headwaters:
 - 1. a steephead ravine, or
 - 2. tributary streams which are discharging from steephead ravines.
- (2) The District, in deciding whether to grant, conditionally grant, or deny a permit under this Chapter, will determine whether information submitted by the applicant, or otherwise available to the District, provides reasonable assurance that the surface water project:
- (a) provides adequate flood protection and drainage;
 - (b) will not cause unacceptable water quality and quantity impacts on waters and adjacent lands regulated pursuant to Chapter 373, Florida Statutes;
 - (c) will not cause discharges which result in any violation, in waters of the State, of the standards and criteria of Chapters 17-302 and 17-4, Florida Administrative Code;
 - (d) will not cause unacceptable adverse impacts on surface and ground-water levels and flows;
 - (e) will not cause unacceptable adverse environmental impacts to natural resources, fish, and wildlife;
 - (f) can be effectively operated and maintained;
 - (g) will not endanger life, health, or safety, or adversely affect property;
 - (h) is consistent with generally accepted engineering standards, design and safety practices and Best Management Practices for local conditions as defined in this Chapter.
 - (i) is consistent with the overall objectives of the District and State Water Policy as established in Section 373.016, Florida Statutes, Section 40A-44.011, Florida Administrative Code, and Chapter 17-40, Florida Administrative Code.
- (3) For new projects, the District will assume that the applicant has demonstrated the reasonable assurances required in Section 40A-44.301(2), Florida Administrative Code, if the project design, construction, operation and maintenance plans are determined to meet or incorporate the following applicable standards, and if the permit can be conditioned, as provided by Section 40A-44.381, Florida Administrative Code, to provide for specific project characteristics and permit administration consideration:
- (a) the project has not been sited within Outstanding Florida Waters, Class I waters, or steephead ravines;
 - (b) the project has been sited, sized and designed to avoid impacts to endangered or threatened species;
 - (c) the project has been sited, sized and designed to minimize impacts to species of special concern, existing natural resources, fish, and wildlife;

- (d) erosion control projects have been sited in uplands;
- (e) the project utilizes appropriate Best Management Practices and implements a Soil and Water Conservation District approved conservation plan, which provides the water quality assurances required in Section 40A-44.301(2)(b) and (c), Florida Administrative Code;
- (f) outfalls are designed to minimize erosion and, when necessary, to provide energy dissipation and aeration of discharged water;
- (g) stream management and protection zones are provided above and below authorized structures within the property owned by the permittee;
- (h) adequate erosion and sediment control devices are utilized during construction to prevent downstream violations of water quality;
- (i) the project incorporates site specific and applicable engineering standards, design, operation and maintenance measures to provide for the physical safety and stability of the facility;
- (j) the project incorporates site specific and applicable design, operation and maintenance measures to provide for the protection and conservation of natural resources;
- (k) impoundment design, construction, operation and maintenance incorporates the following criteria and standards:
 1. design of principle and emergency spillways to pass flood events in a manner that will not threaten life

or property. At a minimum, principle and emergency spillways must be designed to pass the appropriate 2- and 25-year, 24 hour storm event. Impoundments with a hazard classification greater than low may have to be designed to pass greater storm events;

2. the project has been sited to minimize cumulative impacts caused by multiple impoundments within a stream by providing separation between impoundments for recovery of stream function and value;
3. the average depth of new impoundments does not exceed 6 feet;
4. installation of deep water or mid-level water release when the deepest part of an impoundment exceeds 10 feet. Design of these types of release must provide for the prevention of bottom scouring or sediment release;
5. new impoundment surface water area at normal pool is not greater than 6 acres;
6. impoundment design and operation provides for water level fluctuation and for full drawdown;
7. creation of wetland littoral zones to water depths of 3 feet. Organic or mucky soils excavated during construction of permitted structures shall be stockpiled and used in the creation of littoral zones;

8. location of borrow pits in uplands or in other locations which maximize littoral zone creation;
 9. cutting and removal of trees and shrubs from the area of inundation to minimize nutrient imbalance in the impoundment. Disturbance to soils and topography shall be minimized; and,
 10. upland buffer zones are utilized to provide runoff filtration, water quality enhancement, and to control erosion.
- (4) For projects involving the reconstruction, repair or alteration of existing facilities, as defined in Section 40A-44.021(5), Florida Administrative Code, the District will assume that the applicant has demonstrated the reasonable assurances required in Section 40A-44.301(2), Florida Administrative Code, if the project design, construction, operation and maintenance plans are determined to meet or incorporate the following standards and criteria, and if the permit can be conditioned, as provided by Section 40A-44.381, Florida Administrative Code, to provide for specific project characteristics and permit administration consideration:
- (a) the project has incorporated all applicable standards in Section 40A-44.301(3), Florida Administrative Code;
 - (b) any proposed expansion of the storage capacity of an existing impoundment will be for safety or primarily for irrigation or livestock watering. Expansion for irrigation or livestock watering shall be sized to provide the water needs of these uses;
 - (c) the proposed reconstruction, repair or alteration is designed to avoid impacts to endangered or threatened species, and species of special concern;
 - (d) the proposed reconstruction, repair or alteration is designed to minimize impacts to existing natural resources, fish, and wildlife;
 - (e) the project incorporates site specific and applicable engineering standards, design, operation and maintenance measures to provide for the physical safety and stability of the facility; and,
 - (f) the project incorporates site specific and applicable design, operation and maintenance measures to provide for the protection and conservation of natural resources.
- (5) For projects which do not meet or incorporate the standards and criteria in Section 40A-44.301(3) and (4), Florida Administrative Code, the District, in deciding if the reasonable assurances of Section 40A-44.301(2), Florida Administrative Code, can be met, will consider the following additional criteria:
- (a) whether the project will degrade Outstanding Florida Waters, Class I waters, or steephead ravines;
 - (b) whether the project, if a stream impoundment, will be primarily used for irrigation or livestock watering and has been sized to provide the water needs of these uses;

- (c) whether the project will result in violations of State water quality standards and criteria pursuant to Chapters 17-302 and 17-4, Florida Administrative Code;
- (d) whether the project will adversely affect natural resources, fish, and wildlife, including endangered or threatened species and species of special concern;
- (e) whether the project will adversely affect fishing or recreational values, or marine productivity in the vicinity and downstream of the project;
- (f) whether the project will result in, or contribute to, cumulative impacts which will degrade waters in the State. In determining whether unacceptable cumulative impacts may occur, the District will consider:
 - 1. the impact of the project for which the permit is sought; and
 - 2. the impact of projects which are existing or under construction or for which permits have been sought.
- (6) If a permit application does not provide the reasonable assurances or meet the design and evaluation criteria set forth in Sections 40A-44.301(2) through (5), Florida Administrative Code, the District will consider proposals or other measures that can be taken to mitigate the adverse impacts which may be caused by the project.
- (7) Project plans and specifications for permits required under:

- (a) Section 40A-44.041(2)(a) must be signed and sealed by a professional engineer registered in the State of Florida pursuant to Chapter 471, Florida Statutes or are in accordance with the United States Department of Agriculture Soil Conservation Service Standards and Specifications and have been approved by a Soil and Water Conservation District created pursuant to Chapter 582, Florida Statutes.
- (b) Section 40A-44.041(2)(c) must be signed and sealed by a professional engineer registered in the State of Florida, pursuant to Chapter 471, Florida Statutes, or are in accordance with the United States Department of Agriculture Soil Conservation Service Standards and Specifications and have been approved by a Soil and Water Conservation District created pursuant to Chapter 582, Florida Statutes. However, plans and specifications for any dam exceeding 25 feet in height or impounding more than 50 acre-feet of water must be signed and sealed by a professional engineer registered in the State of Florida, pursuant to Chapter 471, Florida Statutes.

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 7-1-92.

40A-44.321 Duration of Permit.

- (1) Unless revoked or otherwise modified, the duration of a permit pursuant to this Chapter is:
 - (a) two years from the date of issuance, for letters of conceptual approval, unless within that period an application for a construction permit

is filed for any portion of the project. If the application for a construction permit is filed, then the letters of conceptual approval are valid for the duration of the project;

(b) three years, for a construction permit;

(c) perpetual, for an operation and maintenance permit;

(2) Letters of conceptual approval and construction permits expire automatically unless the permittee requests an extension before the expiration date.

Specific Authority 373.044, 373.113, 373.418, 380.06(9) FS.
Law Implemented 373.118, 373.406(5), 373.413, 373.416, 373.426, 380.06(9) 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 be made and reviewed:

(a) for an alteration of the design of the project in accordance with the same criteria as new applications pursuant to Rules 40A-44.101 and 40A-44.301;

(b) for a construction or operation and maintenance permit of a project phase, in accordance with this Chapter if the project phase complies with the conceptual approval and otherwise satisfies the requirements of Rules 40A-44.101 and 40A-44.301; or

(c) for a construction or operation and maintenance permit of a project phase which does not satisfy the requirements of paragraph (b), in the same manner and using the same criteria applicable to the original request for conceptual approval.

(2) Applications to modify Individual Surface Water Construction or Individual Operation and Maintenance permits may 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, or

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

1. substantially alter the permit authorization,
2. increase the authorized discharge,
3. impact the environmental features of the project,
4. decrease the required retention/detention,
5. decrease any required flood control elevations for roads or buildings, and
6. exceed water quality standards at points of discharge as provided in 17-3 and 17-4, Florida Administrative Code.

(3) Applications to modify a General Surface Water Management Permit shall be made:

(a) in accordance with Rules 40A-44.041, 40A-44.101, and 40A-44.301, or

- (b) by letter providing the requested modification does not exceed the conditions of subsection 40A-44.331(2)(b).

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-44.341 Revocation of Permits.

- (1) Violation of this Chapter may result in the revocation of the permit authorization in whole or in part. A permit may also be revoked under any of the following circumstances:

- (a) the permittee or his agent has committed any of the acts enumerated in subsections 40A-1.205(1) or (2), Florida Administrative Code, or
- (b) the permittee has not proceeded in a timely fashion to construct the authorized facilities and the permit has automatically expired pursuant to Section 40A-44.321, Florida Administrative Code.

- (2) The conversion of a project to any use other than forestry or agriculture shall result in the revocation of the permit and be subject to the applicable provisions of Chapter 403, Florida Statutes, and Chapter 40A-4, Florida Administrative Code.

- (a) The revocation of a permit under this provision shall require the removal of the surface water management facility, restoration of topography, and the stabilization of the site to prevent water quality impacts and erosion. The removal of the facility shall not be required, if the permittee provides for the redesign of the

facility and is granted authorization by the District to alter the facility to meet construction, safety, and water quality standards suitable for the intended use.

- (b) The permittee shall be required to dewater the facility immediately and maintain the facility dewatered until the necessary permit and authorizations are obtained and the facility is altered or removed.
- (3) The partial conversion of a project's watershed upstream from the project's site, under the initial ownership or control of the permittee, to uses other than forestry or agriculture shall require the filing of a permit modification according to the provisions of Section 40A-44.331, Florida Administrative Code.
 - (a) The permit modification application shall address the new hydraulic characteristics of the facility and provide for its redesign and alteration to meet construction, safety and water quality standards suitable for the intended uses.
 - (b) The permittee shall be required to undertake any required alteration construction prior to the partial watershed conversion.

Specific Authority 373.044, 373.113, 373.418 FS.
Law Implemented 373.423, 373.429, 403.927(3) FS.
History--New 10-1-84, Amended 8-1-89, 7-1-92, 7-1-98.

40A-44.351 Transfer of Permits.

- (1) A permittee must request from 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. The District will transfer the operation and

maintenance permit 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. The transferee shall execute an affidavit acknowledging his awareness of the conditions and restrictions associated with the permit issued by the District.
- (3) Requests for transfer of permit shall be made on Form No. A44-D.

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-44.381 Limiting Conditions.

- (1) The Board will impose on any permit granted under this Chapter such reasonable conditions as are necessary to assure that the permitted operation will be consistent with the overall objectives of the District and will not be harmful to the water resources of the District.
- (2) In addition to project specific special conditions, the following limiting conditions will be attached to any permit issued pursuant to this Chapter.
 - (a) The permittee shall prosecute the work authorized in a manner so as to minimize any adverse impact of the works on fish, wildlife, natural environmental values, and water quality. The permittee shall institute necessary measures during the construction period, including

required compaction of any fill material placed in or around newly installed structures, to reduce erosion, turbidity, nutrient loading and sedimentation in the receiving waters.

- (b) The authorized facility shall not be determined fully complete, and the Operation and Maintenance Permit shall not become effective, until the "As-Built Certification and Completion Report" required pursuant to Sections 40A-44.301(7) and 40A-44.411, Florida Administrative Code, is submitted to the District, and the District has determined the project to have been constructed in accordance with the approved design and any permit conditions stipulated in the construction authorization. The Permittee shall submit to the District a properly executed "As-Built Certification and Completion Report" within 30 days of the completion of the permitted project.
- (c) Discharges during construction shall be made only through the facilities authorized by this permit. Water discharged from the project shall be through structures having a mechanism suitable for regulating upstream water stages. Stages may be subject to operating schedules satisfactory to the District.
- (d) The permit does not convey to the permittee any property right nor any rights or privileges other than those specified in the permit and Chapter 40A-44, Florida Administrative Code.
- (e) The permittee, by acceptance of this permit, agrees to its terms and conditions, and agrees to hold and

save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, operation, maintenance or use of any facility authorized by the permit.

- (f) Prior to any dewatering, plans shall be submitted to the District for approval.
- (g) The approved facility and lands owned or controlled by the Permittee shall be used as described and identified in the application. If the facility or those lands become part of a subdivision, development, or are used for purposes other than those identified in the application, the facility shall be dewatered until the required permits are obtained and the facility is properly modified or reconstructed.
- (h) The District's staff, upon proper identification, shall be permitted to enter the land where the permitted facilities are located to inspect and observe the facilities in order to determine compliance with the approved plans, specifications and conditions of the permit.

- (3) Permits issued by the District shall be subject to other reasonable conditions as are necessary to assure that the project will not be inconsistent with the overall objectives of the District and will not be harmful to the water resources of the district.

Specific Authority 373.044, 373.113, 373.418 FS.
Law Implemented 373.413, 373.416, 373.418, 373.419, 373.423, 373.426, 403.927 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 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 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 may grant emergency authorization 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) For projects with pending applications, permission to begin construction of works prior to the issuance of a permit may be applied for to the Governing Board, in writing, when emergency conditions justify. A serious set of unforeseen or unforeseeable circumstances must exist to create an emergency.

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

40A-44.461 Inspections.

Specific Authority 373.044, 373.171 FS.
Law Implemented 373.423 FS.
History--New 10-1-84, Repealed 7-1-98.

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.

(2) These forms are available at the following District offices:

- (a) NFWFMD Headquarters
152 Water Management Drive
Havana, FL 32333-9700
(850) 539-5999;
- (b) Marianna Field Office
4765 Pelt Street
Marianna, FL 32446-0900
(850) 482-9522;
- (c) Crestview Field Office
800 Hospital Drive
Crestview, FL 32539-7385
(850) 683-5048.

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.



District Headquarters
(10 miles west of Tallahassee on U.S. Highway 90)
81 Water Management Drive
Havana, FL 32333-9700
(850) 539-5999

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

Crestview Field Office
800 Hospital Drive
Crestview, FL 32539-7385
(850) 683-5048

Visit Us on the Web at:
www.state.fl.us/nwfwmd