

## Notice of Proposed Rule

**WATER MANAGEMENT DISTRICTS**  
**Southwest Florida Water Management District**

RULE NO: RULE TITLE

[40D-1.1021](#): Emergency Authorization of Permits for Activities Regulated Under Part IV of Chapter 373, F.S[40D-1.659](#): Forms and Instructions

PURPOSE AND EFFECT: The purpose and effect of this rulemaking is to revise the requirements for obtaining emergency authorizations to conduct activities regulated under Part IV, Chapter 373, Florida Statutes (F.S.), and to adopt an emergency field authorization form in conjunction with concurrent amendment to Rule 40D-1.1021, F.A.C. The form is adopted by reference in Rule 40D-1.1021, F.A.C., and listed with the other forms the District has adopted by rule in 40D-1.659, F.A.C. These amendments are proposed to provide a more effective and efficient process for obtaining emergency authorizations.

SUMMARY: Current rule language requires that in order to receive emergency authorization, the District must receive in writing a request to commence construction for a pending permit application. In many cases a pending ERP application has not been submitted, making current rule language awkward to effectively use in an emergency scenario. The proposed rule changes more clearly define an emergency and introduces a new form to the District's list of forms entitled "Emergency Field Authorization." The new form will enable District staff to authorize emergency actions associated with ERP related activities in the field on-site. Use of the new form neither requires an ERP application to be pending or a written request. If a requestor for emergency action wishes to use an emergency field authorization, the proposed rule requires them to either apply for an ERP or restore back to pre-emergency conditions upon termination of the emergency.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: [120.54\(5\)](#), [373.044](#), [373.113](#), [373.149](#), [373.171](#), [373.337 FS](#).

LAW IMPLEMENTED: [120.54\(5\)](#), [120.569\(2\)\(n\)](#), [373.0831\(3\)](#), [373.116](#), [373.119](#), [373.196\(1\)](#), [373.196\(3\)](#), [373.206](#), [373.207](#), [373.209](#), [373.216](#), [373.219](#), [373.229](#), [373.239](#), [373.306](#), [373.308](#), [373.309](#), [373.313](#), [373.323](#), [373.324](#), [373.413](#), [373.414](#), [373.416](#), [373.419](#), [373.421](#), [373.426](#), [373.439](#), [668.50 FS](#).

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Barbara Martinez, Sr.

Administrative Assistant, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4660 (OGC #2009056)

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-1.659 Forms and Instructions.

The following forms and instructions have been approved by the Governing Board and are incorporated by reference into this chapter or into a specific District rule as indicated. Copies of these forms may be obtained from the District offices or the District's website at [www.watermatters.org](http://www.watermatters.org).

(1) GROUND WATER

(a) through (hh) No change.

(2) SURFACE WATER

(a) through (m) No change.

(n) EMERGENCY AUTHORIZATION FORM, FORM NO. LEG-R.049.00 (11/09), incorporated by reference in paragraph 40D-1.1021(2), F.A.C.

(3) OTHER

(a) through (d) No change.

Rulemaking Authority [373.044](#), [373.113](#), [373.149](#), [373.171](#), [373.337 FS](#). Law Implemented [373.0831\(3\)](#), [373.116](#), [373.196\(1\)](#),

373.1961(3), 373.206, 373.207, 373.209, 373.216, 373.219, 373.229, 373.239, 373.306, 373.308, 373.309, 373.313, 373.323, 373.324, 373.413, 373.414, 373.416, 373.419, 373.421, 668.50 FS. History– New 12-31-74, Amended 10-24-76, Formerly 16J-0.40, 40D-1.901, 40D-1.1.901, Amended 12-22-94, 5-10-95, 10-19-95, 5-26-96, 7-23-96, 2-16-99, 7-12-99, 7-15-99, 12-2-99, 5-31-00, 9-3-00, 10-26-00, 6-26-01, 11-4-01, 6-12-02, 8-25-02, 2-26-03, 9-14-03, 9-30-04, 2-1-05, 6-5-05, 10-19-05, 2-6-07, 2-26-07, 9-27-07, 11-11-07, 11-25-07, 1-8-08, 4-7-08, 5-12-08, 5-20-08, 8-19-08, 12-30-08, 3-26-09, 7-1-09, 8-30-09, 9-1-09, 10-26-09, \_\_\_\_\_.

40D-1.1021 Emergency ~~Authorizations~~ ~~Authorization of Permits~~ for Activities Regulated Under Part IV of Chapter 373, F.S.

The District shall authorize activities regulated under Part IV of Chapter 373, F.S. when emergency conditions exist. Emergency conditions are defined as those conditions which pose a present or imminent danger and require immediate action to protect the public health, safety or welfare; the health of animals, birds, fish or aquatic life; a public water supply; or recreational, commercial, industrial, agricultural or other reasonable uses. Mere carelessness or the lack of planning on the part of an applicant for an emergency authorization shall not be sufficient grounds to warrant the granting of an emergency authorization.

(1) ~~Authorization~~ ~~Permission~~ to begin construction ~~that which~~ requires a permit under Chapters 40D-4, 40D-40 and 40D-400, F.A.C., prior to the issuance of a permit currently under consideration by the District may be applied for in writing, when emergency conditions exist. The Executive Director or his or her designee is authorized to issue emergency authorizations pursuant to this paragraph ~~threaten the safety of life or property, or passing or imminent floods threaten the safety of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works. However, no such permission shall be granted unless the construction is already under consideration for a permit under Part IV of Chapter 373, F.S.~~

(2) Emergency field authorizations may be requested when emergency conditions exist and no environmental resource permit application is currently under consideration by the District. The entity requesting the emergency field authorization shall complete District Form No. LEG-R.049.00 (11/09), incorporated herein by reference. The activity authorized by the emergency field authorization may commence upon approval by the District's field representative. The recipient of an emergency field authorization is responsible for compliance with all the terms and conditions of the authorization. Within ninety (90) days of issuance of an emergency field authorization the recipient shall either restore the site to the conditions existing before the emergency or apply for an environmental resource permit. ~~The Executive Director may grant the emergency authorization. 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.~~

Rulemaking Specific Authority 120.54(5), 373.044, 373.113, 373.149 FS. Law Implemented 120.54(5), 120.569(2)(n), 373.119, 373.413, 373.416, 373.426, 373.439 FS. History–Readopted 10-5-74, Amended 10-24-76, Formerly 16J-4.16, Amended 10-1-84, Formerly 40D-4.451, Amended 7-2-98, 6-17-99, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Paul O'Neil., Strategic Program Office Director, Southwest Florida Water Management District, 2379 Broad Street, Brooksville, Florida 34604-6899, (352)796-7211 or 1(800)423-1476. Email paul.o'neil@swfwmd.state.fl.us

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Southwest Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 17, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 11, 2009