

MEMORANDUM

TO: Governing Board Members

FROM: Terrie Bates, Assistant Deputy Executive Director, Water Resources

DATE: July 21, 2009

SUBJECT: Increase in the District's environmental resource permit application processing fees in accordance with Section 373.109 Florida Statutes (F.S.).

Recommendation

Adopt amendments to Rule 40E-1.607, F.A.C., in accordance with Section 373.109, F.S., and Rule 62-113, F.A.C., to adjust the District's environmental resource permit application processing fees to: 1) reflect the upward adjustments to fees based on the Consumer Price Index (CPI) compiled by the United States Department of Labor since the fees were last adopted or adjusted; 2) reflect new categories of fees authorized pursuant to Section 373.109(b), (c) and (d), F.S.; and 3) adjust fees of certain permit types to recover a higher percentage of the costs of processing, monitoring and inspecting for compliance.

Background

Pursuant to Section 373.109, F.S., the schedule of fees for filing a permit application may include the cost for processing, monitoring, and inspecting for compliance with the permit. In 2008, this section of the law was amended to require a review of all environmental resources permit application fees charged by the Florida Department of Environmental Protection (FDEP); the establishment of an inflation adjustment index; and adjustments to those permit application fees to reflect changes in the rate of inflation since those fees were adopted or last adjusted. Additionally, the amendment provides for re-assessment of fees at least every five years. Under Sections 373.103 and 403.805, F.S., the Secretary of FDEP has delegated to the water management district's the authority to adjust their environmental resource permit application fees based on an upward adjustment in the Consumer Price Index (CPI) compiled by the United States Department of Labor. The FDEP amended Chapters 62-4, 62-113, and 62-346, F.A.C., in April 2009, to revise the above-referenced fees and to further delegate to the water management district's the authority to similarly amend their fees based on an inflation adjustment factor.

Rule Amendment to Increase District Environmental Resource Permit Fees

Amendments to the District's permit fee rule (Rule 40E-1.607, F.A.C.) are proposed to increase Environmental Resource Permit fees consistent with the 2008 legislative mandate. Since the District permit fees were last adjusted, the CPI increase is approximately 32.1%.

Fee increases for agricultural-type permits are based solely on using the inflation adjustment index established by FDEP. For larger, more complex projects and administrative actions which require considerable staff time, the CPI and additional fee increases are proposed in order to recover a higher percentage of the costs of permit processing, monitoring and compliance

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inspections. The largest fee increases are for applications for projects greater than 640 acres, including mitigation banks.

Public Workshops were conducted in March-April 2009, a Statement of Estimated Regulatory Costs was prepared, and at the June 2009 Governing Board meeting, authorization was granted to publish a Notice of Rulemaking in the Florida Administrative Weekly. A copy of the proposed rule text is attached. If adopted, the effective date of the rule will be November 1, 2009.

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(561) 682-6251

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-1.607 Permit Application Processing Fees.

A permit application processing fee is required and shall be paid to the District when certain applications are filed pursuant to District rules. An application shall not be considered complete until the appropriate application fee is submitted. These fees are assessed in order to defray the cost of evaluating, processing, monitoring, and inspecting for compliance required in connection with consideration of such applications. Fees are non-refundable in whole or part unless the activity for which an application is filed is determined by the District to be exempt or the fee submitted is determined by the District to be incorrect. Failure of any person to pay the applicable fees established herein will result in denial of an application. Activities that do not require a permit and are exempt pursuant to Rule 40E-2.051 or 40E-3.051, F.A.C., are not subject to the following permit application fees. The District's permit application processing fees are as follows:

- (1) No Change.
- (2) No Change.
- (3)(a) Environmental Resource Permit Application processing fees are in the following table:

TABLE 40E-1.607(3)(a)
 PERMIT APPLICATION PROCESSING FEES FOR
 ENVIRONMENTAL RESOURCE PERMIT APPLICATIONS
 REVIEWED PURSUANT TO CHAPTERS 40E-4, 40E-40, AND 40E-400, F.A.C.

Fee amounts shall apply to applications for conceptual and construction, or conceptual, or construction, except as noted.

Category	Amount
New Individual Permit, except Mitigation Bank	
Project area less than 100 acres	
Agriculture	\$ 4,029 3050
All others, <u>including Mitigation Banks</u>	\$ 7,500 5000
Project area 100 acres to less than 640 acres	
Agriculture	\$ 5,284 4000
All others, <u>including Mitigation Banks</u>	\$ 13,125 7500
Project area 640 acres or more	
Agriculture	\$ 6,605 5000
All others, <u>including Mitigation Banks</u>	\$ 25,000 40,000
 New Individual Permit, Mitigation Bank	
Project area less than 100 acres	\$5000
Project area 100 acres to less than 640 acres	\$7500
Project area 640 acres or more	\$10,000

Individual Permit Modification, ~~except Mitigation Bank~~

Project area less than 100 acres	
Agriculture	\$ <u>2,708</u> 2050
All others, <u>including Mitigation Banks</u>	\$ <u>5,000</u> 3500
Project area 100 acres to less than 640 acres	
Agriculture	
All others, <u>including Mitigation Banks</u>	\$ <u>3,303</u> 2500
Project area 640 acres or more	\$ <u>10,000</u> 5000
Agriculture	
All others, <u>including Mitigation Bank</u>	\$ <u>4,624</u> 3500
	\$ <u>15,000</u> 7500

Individual Permit Modification, ~~Mitigation Bank~~

Project area less than 100 acres	\$3500
Project area 100 acres to less than 640 acres	\$5000
Project area 640 acres or more	\$7500

New Standard General Permit (excluding incidental site activities pursuant to Rule 40E-40.042, F.A.C.

Agriculture	\$ <u>859</u> 650
All others	\$ <u>3,500</u> 2000

Standard General Permit Modification including Application for phase construction under a Conceptual Approval Application for Individual Permit Modification for a system which does not exceed the criteria in Rule 40E-40.041, F.A.C., and which is not required to obtain an individual environmental resource permit for the reasons in subsection 40E-40.011(2), F.A.C.

Agriculture	\$ <u>661</u> 500
All others	\$ <u>1,500</u> 1000

Noticed General Permit pursuant to Chapter 40E-400, F.A.C., including aquaculture \$ 250 ~~100~~

Single family residential homesite consisting of 10 acres or less in total land area \$ 100

Standard General Permit for incidental site activities pursuant to Rule 40E-40.042, F.A.C. (Early Work) \$ 1,000 ~~500~~

Transfer of permit (including Mitigation Bank) to another entity pursuant to Rules 40E-1.6107 and 40E-4.351, F.A.C. \$ 675 ~~450~~

Variance associated with an environmental resource permit application

From paragraph 40E-4.301(1)(e), F.A.C	\$ <u>750</u> 100
From other permitting standards, permit conditions, or water quality standards	\$ <u>1,500</u> 500

New Individual Operation Permit \$ 5,250 ~~3500~~

Letter Modification	\$ 250 400
New Individual or Standard General Permits, or Individual or Standard General Permit Modifications, solely for environmental restoration or enhancement activities provided such activities are not associated with a mitigation bank and are not being implemented as mitigation for other activities that require a permit under Part IV of Chapter 373, F.S. Such activities may include incidental passive recreation and facilities to provide public access to the environmental restoration or enhancement site	\$ 250 400
<u>No Notice General Permits pursuant to Rules 40E-400.315 and 40E-400.316, F.A.C.</u>	<u>\$ 100</u>
<u>Verification that an activity is exempt from regulation under Part IV, Chapter 373 or 403.813, F.S.</u>	<u>\$ 100</u>
<u>Informal wetland boundary determinations under Part IV of Chapter 373, F.S. for property less than or equal to 1 acre</u>	<u>\$ 500</u>
<u>Permit Extensions</u>	<u>\$ 500</u>

1. through 4. No change.

5. The District shall use the Consumer Price Index (CPI) adopted by the United States Department of Labor since the most recently revised fee increase for revising fees under Part IV of Chapter 373, F.S., pursuant to Section 373.109, F.S. The inflation index used is the price paid by all urban consumers for a market basket of consumer goods and services; specifically, the CPI figures for the “CPI-U, U.S. City Average, All Items” established for the previous five years by the Bureau of Labor Statistics (BLS) (www.bls.gov/cpi/), computed as provided in the BLS publication “Handbook of Methods”, Chapter 17 (www.bls.gov/opub/hom/pdf/homch17.pdf).

(b) Permit application processing fees for projects grandfathered pursuant to Section 373.414, F.S., wetland resource (dredge and fill) are in the following table:

TABLE 40E-1.607(3)(b)
 PERMIT APPLICATION PROCESSING FEES FOR
 PROJECTS GRANDFATHERED PURSUANT TO SECTION 373.414, F.S.
 WETLAND RESOURCE (DREDGE AND FILL) PERMIT APPLICATIONS
 REVIEWED PURSUANT TO CHAPTERS 40E-4, 40E-40, AND 40E-400, F.A.C.

Category	Amount
Construction projects up to and including 5 years	
Standard form projects including dredge and fill activities that affect 10 or more acres of jurisdictional area, pursuant to subsection 62-312.070(2), F.A.C. (1993).	\$ 7,500 4000
Short form construction projects including dredging and filling activities that affect less than 10 acres of jurisdictional area, pursuant to subsection 62-312.070(2), F.A.C. (1993).	\$ 750 500
Short form construction projects involving the construction of new docking or boardwalk facilities, pursuant to subsection 62-312.070(2), F.A.C. (1993), that provide:	
0-2 new boat slips	\$ 300
3-9 new boat slips	\$ 500

Dredge and fill construction permits in excess of 5 years

~~Short form permits from 6 years up to and including 10 years~~ \$3000

~~Standard form permit application processing fee for a construction period of 6 years shall be \$6000 and shall increase by \$1000 for each year beyond 6 years, up through and including 25 years and a corresponding fee of \$25,000~~

Variance associated with a wetland resource permit application

From the prohibition of subsection 62-312.080(7), F.A.C. \$ 132 400

From other permitting standards, permit conditions, or water quality standards \$ 661 500

General Permits \$ 132 400

Minor modifications of permits that do not require substantial technical evaluation by the District, in conformance with subsections 62-4.050(6) and (7), F.A.C. (1993), do not require a new site inspection by the District, and will not lead to substantially different environmental impacts or will lessen the impacts of the original permit:

Transfer of permits or time extensions \$ 66 50

Minor technical changes

Existing permit fee is less than \$300, except for modification to permits issued pursuant to Section 403.816, F.S.

Existing permit fee is equal to or more than \$300 \$ 66 50
\$ 330 250

1. through 3. No Change

(4) No Change.

(5) Petition for Formal Determination of Wetlands and Other Surface Waters processing fees are in the following table:

TABLE 40E-1.607(5)
DETERMINATION PETITION PROCESSING FEES FOR
FORMAL DETERMINATION OF WETLANDS AND
OTHER SURFACE WATERS

For the validation of informal, non-binding wetland determinations pursuant to Section 373.421(6), F.S., the fees shall be the same as formal determinations listed in Table subsection 40E-1.607(5), F.A.C.

Category	Amount
<u>Property less than or equal to 10 acres</u>	<u>\$500</u>
<u>Property greater than 10 acres but less than or equal to 100 acres</u>	<u>\$1,500</u>
<u>Property greater than 100 acres but less than or equal to 320 acres</u>	<u>\$3,500</u>
<u>Property greater than 320 acres</u>	<u>\$5,000</u>
Property less than or equal to 1 acre	\$250
Property greater than 1 acre but less than or equal to 10 acres	\$550
Property greater than 10 acres but less than or equal to 40 acres	\$750
Property greater than 40 acres but less than or equal to 120 acres	\$1500
Property greater than 120 acres	\$1500
Each additional 100 acres or portion thereof	\$200

Renewal

\$350 250

(6) No Change.

(7) No Change.

Rulemaking Specific Authority 373.044, 373.109, 373.113, 373.421(2), 373.421(6)(b), FS. Law Implemented 218.075, 373.109, 373.421(2), 373.421(6)(b), 403.201 FS. History—New 1-8-89, Amended 1-2-91, 11-15-92, 6-1-93, 1-23-94, 10-3-95, 4-1-96, 11-8-99, 5-24-00, 6-26-02, 7-11-02, 8-10-03, 8-14-03, 11-18-07, _____.

The District proposes an effective date of November 1, 2009.

NAME OF PERSON ORIGINATING PROPOSED RULE: Maria Clemente, Division Director, Regulatory Program Support

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 11, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 13, 2009