

Wetlands resource permit, review when no fee attached

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Subject:

Wetlands resource permit, review when no fee attached

Ms. Virginia B. Wetherell
Secretary
Department of Environmental Protection
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

RE: ENVIRONMENTAL PROTECTION, DEPARTMENT OF--STATE AGENCIES--
ADMINISTRATIVE PROCEDURES--time for reviewing permits begins once completed
application and fee has been received. ss. 120.60 and 373.4175, Fla. Stat.

Dear Secretary Wetherell:

You ask the following question:

When does the time frame begin under section 120.60, Florida Statutes, for taking final agency action on an application for a wetlands resource permit in the geographic jurisdiction of the Northwest Florida Water Management District?

In sum:

The administrative rules adopted by the Department of Environmental Protection contemplate that when an application for a wetlands resource permit in the Northwest Florida Water Management District has been received without the requisite fee, the applicant will be promptly notified that the required fee was not received. The permit processing time requirements begin once the required fee has been received.

Section 120.60, Florida Statutes, provides that upon receipt of a license application, an agency must examine the application and notify the applicant of any apparent errors or omissions and request additional information within 30 days. The application is considered complete upon receipt of all requested information and the correction of apparent errors and omissions for which the applicant was timely notified, or when the time for such notification has expired. Action on a completed application must be taken within 90 days or a shorter period of time, within 15 days after the conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever is later. The agency must approve any application for a license if it has not approved or denied the application within the time periods prescribed by the section.[1]

Section 373.4145, Florida Statutes, provides in part:

"(1) Within the geographical jurisdiction of the Northwest Florida Water Management District, the permitting of the department under Part IV of Chapter 373 shall consist solely of the following:

* * *

(b) Rules adopted pursuant to the authority of ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, in effect prior to July 1, 1994, shall remain in full force and effect, and shall be implemented by the department."

You state that the wetlands resource permitting "rules adopted pursuant to the authority of ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, in effect prior to July 1, 1994," are contained in Chapter 62-312, Florida Administrative Code.

Rule 62-312.060(2), Florida Administrative Code, requires in part that an "[a]pplication for a permit . . . shall be accompanied by the appropriate processing fee as listed in section 17-4.050 [now section 62-4.050], F.A.C." [2] In addition, Rule 62-312.060(16), Florida Administrative Code, states that "[e]ach application for a permit shall be accompanied by a processing fee . . . as set forth in section 62-4.050, F.A.C." Rule 62-312.060 has not been substantively amended since 1989.

Rule 62-4.050(4), Florida Administrative Code, sets forth the fees for permits. Subsection (5) of the rule provides:

"(a) To be considered by the Department, each application must be accompanied by the proper processing fee[.]

(b) When an application is received without the required fee, the Department shall acknowledge receipt of the application and shall immediately notify the applicant by certified mail that the required fee was not received and advise the applicant of the correct fee. The Department shall take no further action until the correct fee is received. If a fee was received by the Department which is less than the amount required, the Department shall return the fee along with the written notification.

(c) Upon receipt of the proper application fee, the permit processing time requirements of Sections 120.60(2) and 403.0876, F.S., shall begin.

(d) If the applicant does not submit the required fee within ten days of receipt of written notification, the Department shall either return the unprocessed application or arrange with the applicant for the pick up of the application.

* * *

The above language has not been substantively amended since July 1, 1994.

Section 120.60, Florida Statutes, requires an agency to notify an applicant of any omissions or errors in the application within 30 days of receipt. Similarly, Rule 62-4.050(5)(b), Florida Administrative Code, directs the department to immediately notify an applicant that the application fee has not been received and to advise the applicant of the correct fee. Such

notification places the burden on the applicant to correct the deficiency. The rule further provides that the department shall take no further action on the application until the correct fee is received. Pursuant to Rule 62-4.050(5)(c), Florida Administrative Code, the time requirements in section 120.60, Florida Statutes, begin upon receipt of the application fee.

Thus, the rule clearly contemplates that applicants will be given timely notice of any failure to remit the proper application fee and that the department will take no further action on the application until receipt of the proper application fee. Generally, fees and service charges are due and payable in advance of or upon the rendition of those services a public officer is required or authorized by law to perform.[3] Moreover, this office must presume the validity of duly adopted rules carried forward in effect by statute.

Accordingly, I am of the opinion that both the administrative rules and the statutes contemplate that when an application for a wetlands resource permit in the Northwest Florida Water Management District has been received without the requisite fee, the applicant will be notified that the required fee was not received and the time frame prescribed in section 120.60, Florida Statutes, begins once the required fee has been received.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

[1] Section 120.60, Fla. Stat. *Cf.* Rule 62-312.060(13), Fla. Admin. Code, providing that "[a]ny application for a permit that is not approved or denied within the time prescribed by Sections 120.60 and 403.815, and 403.0876, F.S., shall be deemed approved in accordance with Subsection 120.60(2), F.S."

[2] Rule 17-4.050, Fla. Admin. Code, was renumbered as Rule 62-4.050, Fla. Admin. Code, following the merger of the Department of Environmental Regulation and the Department of Natural Resources.

[3] See Ops. Att'y Gen. Fla. 77-120 (1977) and 75-10 (1975).