



# Florida Department of Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Rick Scott  
Governor

Jennifer Carroll  
Lt. Governor

Herschel T. Vinyard Jr.  
Secretary

## **CERTIFIED - RETURN RECEIPT REQUESTED**

December 12, 2012

U.S. Army Corps of Engineers  
c/o Eric Summa  
P.O. Box 4970  
Jacksonville, Florida 32232-0018

Permit Modification No. 0307923-003-JN  
Permit No. 0307923-001-JC, Nassau County  
Atlantic Intracoastal Waterway Maintenance Dredging In the Vicinity of Sawpit Creek

Dear Mr. Summa:

Your request to modify Permit No.0307923-001-JC was received on September 13, 2012, and has been reviewed by Department staff. The proposed permit modification is to remove the requirement for the turbidity monitoring to be conducted by a sub-contractor.

### **Permit History**

The Atlantic Intracoastal Waterway (AIWW) Maintenance Dredging In the Vicinity of Sawpit Creek project is to perform maintenance dredging of the existing navigation channel. The construction and maintenance of the 21.9-mile long segment of the AIWW in this area was first authorized by the United States Congress on March 4, 1913. The original channel dimensions were 7 feet deep and 100 feet wide. Expansion of the channel to its current configuration of 12 feet deep and 90 to 150 feet wide was authorized by Congress on June 20, 1938. The Department has a permitting history regarding the AIWW in this area beginning in 1996. For additional background, please see the *Consolidated Notice of Intent to Issue Joint Coastal Permit, Variance and Authorization to Use Sovereign Submerged Lands* for Permit No. 0307923-001-JC at the following website:

[http://bcs.dep.state.fl.us/env-prmt/nassau/issued/0307923\\_Sawpit\\_Creek\\_AIWW/Application%20and%20Review%20Documents/Intent/](http://bcs.dep.state.fl.us/env-prmt/nassau/issued/0307923_Sawpit_Creek_AIWW/Application%20and%20Review%20Documents/Intent/)

### **Modification Justification**

The Permittee states that approximately 50 percent of the contractors that work on Corps projects conduct their own turbidity sampling, while the other 50 percent of contractors hire a sub-

## Notice of Permit Modification

Permit Modification No. 0307923-003-JN

Atlantic Intracoastal Waterway Maintenance Dredging In the Vicinity of Sawpit Creek

Page 2 of 6

contractor to perform the sampling. The Permittee notes that the permit stipulation to use a sub-contractor for turbidity sampling is an impediment to some contractors, and may deter them from bidding on the project.

### Staff Assessment

The intent of the subject specific condition requiring a sub-contractor to perform the turbidity monitoring on the project was to reduce the possibility of a conflict of interest. The Department has determined that requiring a sub-contractor, who is independent of the dredging contractor, to conduct the turbidity monitoring is generally necessary to provide reasonable assurance for water quality certification. In the case of this project, the Department has waived water quality certification because the Permittee is unable to meet the anti-degradation requirement for turbidity. However, given the allowance of 15 NTUs above background in OFW, the accuracy of the turbidity monitoring remains very important.

The proposed modification does not reduce the Permittee's responsibility to provide accurate turbidity monitoring and reporting. Therefore, in this case, the proposed modification is not anticipated to cause adverse environmental impacts or water quality degradation.

The specific conditions of the permit shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

6. **Pre-Construction Submittals.** At least fourteen (14) days prior to the date of the pre-construction conference (as required above), the Permittee shall submit the following items to the Department:
  - a. Final plans and specifications for this project, which must be consistent with the project description of this permit and the approved permit drawings. The Permittee shall point out any deviations from the project description or the approved permit drawings, and any significant changes would require a permit modification. Submittal shall include one (1) hardcopy (sized 11 inches by 17 inches or greater, with all text legible) and one (1) electronic copy of the final plans and specifications. The plans and specifications shall be accompanied by a letter indicating the project name, the permit number, the type of construction activity, the specific type of equipment to be used, the anticipated volume of material to be moved and the anticipated schedule. Further, the Permittee shall specify any anticipated staging, storage, stockpiling sites that will be used and appropriate contact information for those facilities. Any such sites in waters wetlands or dunes may require a permit modification. The final plans and specifications submitted under this condition must comply with all conditions set forth in this permit.
  - b. Turbidity Monitoring Qualifications. Dredging, any in-water transportation or rehandling of dredged material and the placement of dredged material on the beach shall be monitored closely by an experienced person, to assure that turbidity levels do

**Notice of Permit Modification**

**Permit Modification No. 0307923-003-JN**

**Atlantic Intracoastal Waterway Maintenance Dredging In the Vicinity of Sawpit Creek**

**Page 3 of 6**

not exceed the compliance standards. Also, an individual familiar with the dredging techniques being used for this project and with turbidity monitoring, shall be present during daylight hours. The people responsible for conducting or supervising the turbidity monitoring shall ~~be a sub-contractor,~~ and have professional experience in monitoring water quality without a record of permit violations. The names, qualifications and records of those individuals performing these functions, along with 24-hour contact information, shall be submitted to the Department.

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality or be contrary to the public interest. Staff has also determined that the proposed alteration does not increase the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line or nesting sea turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as stated above. By copy of this letter, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **July 3, 2022**, expiration date, other Specific or General Conditions, or the monitoring requirements of the permit. This letter must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes (F.S.), as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

**NOTICE OF RIGHTS**

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

**Notice of Permit Modification**

**Permit Modification No. 0307923-003-JN**

**Atlantic Intracoastal Waterway Maintenance Dredging In the Vicinity of Sawpit Creek**

**Page 4 of 6**

Under Rule 62-110.106(4), Florida Administrative Code (F.A.C.), a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

In accordance with Rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;

**Notice of Permit Modification**

**Permit Modification No. 0307923-003-JN**

**Atlantic Intracoastal Waterway Maintenance Dredging In the Vicinity of Sawpit Creek**

**Page 5 of 6**

- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in Rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

If you have any questions regarding this matter, please contact me at the letterhead address (add Mail Station 300) or by telephone at (850) 414-7728.

**Notice of Permit Modification**  
**Permit Modification No. 0307923-003-JN**  
**Atlantic Intracoastal Waterway Maintenance Dredging In the Vicinity of Sawpit Creek**  
**Page 6 of 6**

Sincerely,



Martin K. Seeling, Administrator  
Beaches, Inlets & Ports Program

MKS/tj

Copies furnished to:

Jim Maher DEP, Northeast District  
Tom Jacobs, DWRM  
Mike Shirley, DEP, CAMA  
Alex Reed, DWRM  
Parks Small, FPS  
Tom Heal, City of Jacksonville  
Jane Chabre, FWC  
Gene Chalecki, DWRM  
Robbin Trindell, FWC  
Martin Seeling, DWRM  
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Roxane Dow, DWRM  
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Vladimir Kosmynin, DWRM  
Trey Hatch, DWRM Field Inspector  
Ann Marie Lauritsen, USFWS  
Robert Brantly, DWRM  
Joey V. Duncan, City of Jacksonville  
Robert Joseph (Bob), So. Amelia Island State Park  
James McAdams, USACE  
Ted Selby, Nassau County Manager  
JCP Compliance Officer  
DWRM Permit File

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



Deputy Clerk



Date