



Florida Department of Environmental Protection

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Tallahassee, Florida 32399-3000

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Jennifer Carroll
Lt. Governor

Herschel T. Vinyard, Jr.
Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

July 3, 2012

U.S. Army Corps of Engineers
Attn: Eric Summa, Chief
Environmental Branch
Jacksonville District
P.O. Box 4970
Jacksonville, Florida 32232-0019

Permit Modification No. 0129277-015-BN
Permit No. 0129277-007-BI, Duval County
Jacksonville Harbor Berth Deepening and Maintenance Dredging

Dear Mr. Summa:

After an administrative review of Permit No. 0129277-007-BI, as modified, Department staff determined that the Activity Description and Specific Condition 14.i. in Permit Modification No. 0129277-009-BN contain language that does not reflect the intent of the Department. The errors were retained in recently-issued Permit Modification No. 0129277-014-BN. This modification will correct these errors.

Permit History

On April 28, 2009, the Department issued Environmental Resource Permit No. **0129277-007-BI** to the U.S. Army Corps of Engineers (Corps), to deepen and maintenance dredge two (2) berthing areas in Jacksonville Harbor to a maximum depth of -42 feet Mean Low Water (MLW). The permit authorized a design depth of -40 feet MLW, plus two (2) feet of allowable overdredge, in order to match the authorized depth of the adjacent federal navigation channel. The areas to be dredged were the NuStar Energy and U.S. Navy Fuel Depot berths. The work was to be performed using a hydraulic or mechanical clamshell dredge. Approximately 66,000 cubic yards of material was to be removed, with the dredged material deposited in D/A-1 Cell A of the upland Bartram Island Dredged Material Management Area.

For additional background on this permit and previously issued related authorizations, please see the *Notice of Intent to Issue Environmental Resource Permit* for Permit No. 0129277-007-BI, dated January 28, 2009, available at the Bureau website:

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http://bcs.dep.state.fl.us/env-prmt/duval/issued/0129277_Jacksonville_Harbor_Maintenance_Dredging/007_BI/Intent/007-BI/.

Permit Modification No. **0129277-008-BN** was to extend the expiration date of Permit No. 0129277-004-EI.

On December 7, 2009, the Department issued Permit Modification No. **0129277-009-BN** to include authorization to dredge the Port of Jacksonville Berth 8 and the Chevron Oil Terminal berth. Those areas had been excluded from Permit No. 0129277-007-BI due to concerns about potential impacts to manatees. The concerns were resolved prior to issuance of that modification when the Permittee agreed to restrict dredge type to hydraulic for these two berths. However, Specific Condition 14.i. and the modified Activity Description inadvertently required that only hydraulic dredging be used for the two berths that had been previously authorized by Permit No. 0129277-007-BI, which was not the intent of the Department.

File No. **0129277-010-BE** was for a maintenance dredging exemption.

Permit Modification No. **0129277-011-BN** authorized the disposal of approximately 300,000 cubic yards of dredged material into Cell B of the Buck Island Disposal Area.

File No. **0129277-012-BE** was for another maintenance dredging exemption.

File No. **0129277-013-BE** was for a de minimis exemption to conduct maintenance dredging and place the dredged material in the Jacksonville Ocean Dredged Material Disposal Site (ODMDS).

On June 22, 2012, the Department issued Permit Modification No. **0129277-014-BN** to include an additional dredged material disposal site (Cell F of East Bartram Island) for material dredged from the Navy Fuel Depot. The errors described above were retained in that modification because they had not yet been detected.

Project Justification and Staff Assessment

On June 25, 2012, Corps staff requested that the Department review the Activity Description in recently-issued Permit Modification No. 0129277-014-BN because it appeared to restrict all dredging conducted under this permit, as modified, to hydraulic dredging. The Department concurred, and confirmed with the Florida Fish & Wildlife Conservation Commission (FWC) that the intent of Permit Modification No. 0129277-009-BN was to require hydraulic dredging only in the two berths authorized by that modification. Staff also noted that the error was restated in the Activity Description of Permit Modification No. 0129277-014-BN. After coordination with the FWC, the subject modification is being issued to correct the error so that either mechanical clamshell or hydraulic dredging may be conducted in the NuStar Energy and Navy Fuel Pier berths, as was originally authorized in Permit No. 0129277-007-BI. This will accommodate the Permittee's competitive bidding requirements. However, due to the potential

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for manatee impacts from mechanical dredging at JaxPort Berth 8 and the Chevron Oil Terminal berth, the use of a clamshell dredge is still prohibited at those two sites. Because clamshell dredging may be conducted in the NuStar Energy berth and the Navy Fuel Pier berth, the requirement in Permit No. 0129277-007-BI for gravity-release of the clamshell bucket only at the water surface, and only after confirmation that there are no manatees within 50 feet of the dredging activity, will be reinstated.

The specific conditions shall be revised as follows (~~striketroughs~~ are deletions, underlines are additions):

SPECIFIC CONDITIONS:

14. During all construction authorized by this permit, the Permittee shall comply with the following conditions intended to protect manatees and sea turtles from direct project effects:
 - a. All personnel associated with the project shall be instructed about the presence of sea turtles, manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees and sea turtles. The Permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
 - b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
 - c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
 - d. All on-site project personnel are responsible for observing water-related activities for the presence of manatees and sea turtles. **All in-water activities, including vessel operation, must be shut down if a manatee or sea turtle comes within 50 feet of the active construction site.** Activities will not resume until the manatee or sea turtle has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee or sea turtle has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.

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- e. Any collision with and/or injury to a manatee or marine turtle shall be reported immediately to the FWC Hotline at 1-888-404-FWCC. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-232-2580).
- f. Temporary signs concerning manatees shall be posted prior to and during all inwater project activities. All signs are to be removed by the Permittee upon completion of the project. Awareness signs that have already been approved for this use by the Florida Fish and Wildlife Conservation Commission (FWC) must be used. **One sign** measuring at least 3 feet by 4 feet which reads “**Caution: Manatee Area**” must be posted in a location prominently visible to all personnel engaged in water-related activities. **A second sign** measuring at least 8 ½ inches by 11 inches explaining the requirements for “Idle Speed/No Wake” and the shut down of in-water operations must be posted on vessels associated with the construction, and should be placed visible to the vessel operator.
- g. Blasting shall be prohibited.
- h. During all nighttime dredging operations, vessel movement shall be minimized to the greatest extent practicable due to the difficulty in spotting animals. All vessels shall travel at speeds no greater than idle speed while inshore, and shallow draft vessels, preferably of the light-displacement type, shall be used whenever practicable for transporting personnel to and from the dredge.
- i. Dredging in JaxPort Berth 8 and the Chevron Oil Terminal shall only be conducted by hydraulic dredge. During all clamshell dredging activities at the NuStar Energy berth and the Navy Fuel Pier berth, the dredge operator shall gravity-release the clamshell bucket only at the water surface, and only after confirmation that there are no manatees within 50 feet of the dredging activity.
- j. At least one person shall be designated a manatee observer when in-water work is being performed. That person shall have experience in manatee observation, and be equipped with polarized sunglasses to aid in observation. The manatee observer must be on site during all in-water construction activities and will advise personnel to cease operation upon sighting a manatee within 50 feet of any in-water construction activity.
- k. Observers shall maintain a log detailing manatee sightings, work

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stoppages, and other protected species-related incidents. A report, summarizing all activities noted in the observer logs, the location and name of project, and the dates and times of work shall be submitted within 30 days following project completion, to the FWC's Imperiled Species Management Section at: 620 South Meridian Street, 6A, Tallahassee, Florida 32399-1600, or e-mailed to fcmpmail@myfwc.com.

The activity description shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

ACTIVITY DESCRIPTION:

The project is to deepen and maintenance dredge four (4) berthing areas in Jacksonville Harbor to a maximum depth of -42 feet Mean Low Water (MLW), which includes a design depth of -40 feet MLW plus two (2) feet of allowable over dredge, in order to match the authorized depth of the adjacent federal navigation channel. The berths are the JaxPort Berth 8, Chevron Oil Terminal, NuStar Energy Berth, and the U.S. Navy Fuel Depot. ~~The w~~Work will be performed in the JaxPort Berth 8 and Chevron Oil Terminal berth using a hydraulic dredge, while work in the NuStar Energy and Navy fuel Pier berths will be performed using either a hydraulic dredge or a mechanical clamshell dredge. Approximately 197,000 cubic yards of material will be removed, with dredged material deposited in D/A-1 Cell A of the upland Bartram Island Dredged Material Management Area. Material dredged from the Navy Fuel Depot may also be deposited in Cell F of East Bartram Island.

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. 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 **April 28, 2014**, expiration date, other Specific or General Conditions, or 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, 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.

Under Rule 62-110.106(4), Florida Administrative Code, 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 21 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 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first.

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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 21 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;
- (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.

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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. The Applicant, or any party within the meaning of Section 373.114(1)(a), F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1), F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the final order is filed with the Clerk of the Department.

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. 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.

If you have any questions regarding this matter, please contact Mike Carothers at the letterhead address (add Mail Station 300) or by telephone at (850) 413-7765.

Sincerely,



Martin K. Seeling
Environmental Administrator
Bureau of Beaches & Coastal Systems

MKS/jmc

cc (via electronic mail):

Geoff Klug, USACE, Jacksonville
Jim McAdams, USACE, Jacksonville
Mike Hollingsworth, USACE, Jacksonville
Terry Doonan, FWC, North Central Region

Alex Reed, DEP, BBCS
Roxanne Dow, DEP, BBCS
Richard Musgrove, DEP, SLER
Monique Borboen, Audubon of Florida

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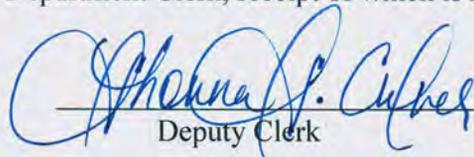
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Kelly Roberts, FWC, ISMS
John Milio, USFWS, Jacksonville
Jim Maher, DEP, Northeast District
Junhong Shi, DEP, Northeast District
Connie Webel, DEP, Northeast District
Lainie Edwards, DEP, BBCS
Robert Brantly, DEP, BBCS

Gene Chalecki, DEP, BBCS
Martin Seeling, DEP, BBCS
Danielle Fondren, DEP
Michael Carothers, DEP, BBCS
JCP Compliance Officer, DEP, BBCS
BBCS 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