



**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

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SECRETARY

May 14, 2014

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

Permit Modification No. 0129277-016-BN
Permit No. 0129277-007-BI, Duval County
Jacksonville Harbor Berth Deepening and Maintenance Dredging

Dear Mr. Summa:

Your request to modify Permit No. 0129277-007-BI was received on April 2, 2014, and has been reviewed by Department of Environmental Protection (Department) staff. The proposed permit modification is to extend the permit expiration date from April 28, 2014, to April 28, 2019.

Background

On April 28, 2009, the Department issued Environmental Resource Permit (ERP) No. **0129277-007-BI** to the U.S. Army Corps of Engineers (Corps), to deepen and maintain two (2) berthing areas (NuStar Energy and U.S. Navy Fuel Depot berths) to a depth of -40 feet mean low water (MLW), with an allowable overdredge of -2 feet MLW, for a maximum dredge depth of -42 feet MLW, in order to match the authorized depth of the adjacent federal navigation channel. Approximately 66,000 cubic yards of material was removed using a hydraulic or mechanical clamshell dredge, with the dredged material being deposited in Cell A of Disposal Area 1 (D/A-1) 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 following website:

[http://bcs.dep.state.fl.us/env-prmt/duval/issued/0129277 Jacksonville Harbor Maintenance Dredging/007 BI/Intent/007-BI/](http://bcs.dep.state.fl.us/env-prmt/duval/issued/0129277%20Jacksonville%20Harbor%20Maintenance%20Dredging/007%20BI/Intent/007-BI/)

On March 6, 2009, the Department issued Permit Modification No. **0129277-008-BN** to extend the expiration date of Permit No. 0129277-004-EI for the Jacksonville Harbor Channel Dredging

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Project. The modification extended the expiration date for six (6) additional months, from March 21, 2010 to September 21, 2010. That permit has expired.

On December 7, 2009, the Department issued Permit Modification No. **0129277-009-BN** to revise the Jacksonville Harbor Berth Deepening Project (Permit No. 0129277-007-BI), to authorize the deepening and maintenance of Berth 8 and the Chevron Oil Terminal berth to a depth of -40 feet mean low water (MLW), with an allowable overdredge of -2 feet MLW, for a maximum dredge depth of -42 feet MLW. The two berths had been excluded from Permit No. 0129277-007-BI due to concerns regarding potential impacts to manatees. The concerns were resolved because the Permittee agreed to only use a hydraulic dredge to deepen and maintain the two berths. However, Specific Condition 14(a)(i) and the modified Activity Description inadvertently required that only hydraulic dredging be used for all berths, which was not the intent of the Department.

On November 20, 2009, the Department issued a statutory maintenance dredging exemption, File No. **0129277-010-BE**, for Jacksonville Harbor Bar Cut 3 through Cut 48. The dredged material was placed into a self-contained, upland disposal site for a single maintenance dredge event. Beach-quality material from Bar Cut 3 was earmarked at the Buck Island upland disposal site for future beach placement. Direct beach placement was determined to be unnecessary for that event.

On May 12, 2010, the Department issued Permit Modification No. **0129277-011-BN** to revise Permit No. 0129277-004-EI for the Jacksonville Harbor Channel Dredging Project. The modification authorized the disposal of approximately 300,000 cubic yards of dredged material into Cell B of the Buck Island Disposal Area. This disposal site replaced the offshore disposal option, which was removed from Permit No. 0129277-007-BI.

On June 3, 2011, the Department issued another statutory maintenance dredging exemption, File No. **0129277-012-BE**, for Jacksonville Harbor Bar Cut 3 through Cut 48. The dredged material was again placed into a self-contained, upland disposal site for a single maintenance dredge event. Beach-quality material from Bar Cut 3 was earmarked at the Buck Island upland disposal site for future beach placement. Direct beach placement was determined to be unnecessary for that event.

On July 7, 2011, the Department issued a de minimis exemption, File No. **0129277-013-BE**, to maintenance dredge portions of Jacksonville Harbor, from Bar Cut 3 to Cut 41. The material was placed in the Jacksonville Ocean Dredged Material Disposal Site (ODMDS). At that time, the offshore placement of dredged material was not covered under the maintenance dredging exemption.

On June 22, 2012, the Department issued Permit Modification No. **0129277-014-BN** to revise the Jacksonville Harbor Berth Deepening Project (Permit No. 0129277-007-BI), to include an

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additional dredged material disposal site in the East Bartram Island for material dredged from the Navy Fuel Depot berth. The new dredged material disposal area was named Cell F.

On July 3, 2012, the Department issued Permit Modification No. **0129277-015-BN** to revise the Jacksonville Harbor Berth Deepening Project (Permit No. 0129277-007-BI). The modification was an administrative action to correct language in the Activity Description and Specific Condition 14(a)(i).

Project Justification

Dredging of the U.S. Navy Fuel Depot berth cannot be completed by the current expiration date. Extension of the permit will allow for the Corps to complete this dredging.

Staff Assessment

The request for a time extension is consistent with Section 62-330.320(2), Florida Administrative Code (F.A.C.), because the Permittee has provided reasonable assurance that the project cannot be completed by the current expiration date, and the location and amount of impacts have not changed since the permit was issued on April 28, 2009. The request is also consistent with Section 62-330.320(6), F.A.C., because the time extension request was timely received and the project is consistent with the Department's current rules.

There are no changes to the project description, the specific conditions of the permit or the permit drawings.

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 extends the expiration date of Permit No. 0129277-007-BI from April 28, 2014, to **April 28, 2019**. 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

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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), 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 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.

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

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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.

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

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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 Charles Grisafi by email at Charles.Grisafi@dep.state.fl.us or by telephone at (850) 245-7594.

Sincerely,



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

MKS/cg

cc: Geoff Klug, Corps
Jim McAdams, Corps
Kristina May, DWRM
Martin Seeling, DWRM
Roxane Dow, DWRM
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Melissa Long, DEP Northeast District

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.

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05/14/14

Deputy Clerk

Date