



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 MAIL - RETURN RECEIPT REQUESTED

June 22, 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. 0129277-014-BN
Permit No. 0129277-007-BI, Duval County
Jacksonville Harbor Berth Deepening and Maintenance Dredging – Add Disposal Area

Dear Mr. Summa:

Your request to modify Permit No. 0129277-007-BI was received on April 19, 2012, and has been reviewed by Department staff. The proposed permit modification is to include an additional dredged material disposal site (Cell F of East Bartram Island) for material dredged from the Navy Fuel Depot.

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), which included 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 are 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:

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

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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 the permit due to concerns about potential impacts to manatees. The concerns were resolved prior to issuance of that modification with an agreement to restrict dredge type to hydraulic.

Other permits and modifications have been issued to the Permittee for site location number 0129277. However, they have not been included in this summary because they authorize dredging activities that are not directly related to the subject permit.

Project Justification

The modification was requested because the authorized disposal site (West Bartram Island D/A-1 Cell A) is currently under contract to raise its external dikes. Aside from temporarily rendering the site unusable, this construction would not be in compliance with Specific Condition 7 of the permit, which prohibits alteration or reconfiguration of the dikes. Therefore, an alternate disposal site is required. The Port of Jacksonville is in the process of relocating material that is currently stored in the Cell F site, on East Bartram Island, to a different site (Cell G of East Bartram Island) in order to provide the capacity in Cell F that will be required for this dredging activity.

Staff Assessment

The Permittee has stated that Cell F was inspected on March 26, 2012. The inspection revealed that the dikes are in good condition, although the weirs and outfall pipes were determined to be unsuitable for use. However, the Permittee does not anticipate that dewatering will be necessary because sufficient capacity should exist without dewatering. Should dewatering be necessary, minor repair work may be undertaken to run slip lines through two of the existing outfall pipes to allow for the conveyance of return water, while the remaining weir outfalls would be grouted.

The permit included conditions that provided the Department with reasonable assurance that the structural integrity of the originally authorized disposal site would be maintained during dredging and disposal operations. These conditions included requirements for pre-construction and weekly inspections of the disposal site during dredging and dewatering activities, and contingency plans if the inspections reveal that structural problems may exist or if impending storms could be expected to cause the release of sediment from the disposal site to offsite areas or into any wetlands or surface waters. The permit also included a plan to protect shorebirds using the disposal site from direct project effects. The plan includes specific survey protocols and the establishment of a 300-foot wide buffer zone between construction activities and any location where shorebirds have been engaged in nesting behavior, including territory defense. Because these conditions will apply to the added disposal site as well, the Department does not expect the project to result in any adverse impacts to water quality or natural resources.

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The activity description shall be revised as follows (~~strike throughs~~ 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 work will be performed using a hydraulic 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.

The activity location shall be revised as follows (~~strike throughs~~ are deletions, underlines are additions):

ACTIVITY LOCATION:

The dredging activity is located within the Port of Jacksonville in Duval County. The NuStar berth is in Section 50, Township 1 South, Range 27 East; the Navy Fuel Depot is in Section 55, Township 1 South, Range 27 East; Jacksonville Harbor Berth 8 is in Section 8, Township 2 South, Range 27 East and the Chevron Oil Terminal Berth is in Section 47, Township 2 South, Range 27 East, in the St. John's River, Class III Waters. The Port is not adjacent to or in the vicinity of Outstanding Florida Waters. The disposal location of West Bartram Island is mid-river and adjacent to the northern cut near River Mile 14. The disposal location of East Bartram Island is near River Mile 11.

The set of approved permit drawings shall be revised as follows:

Sheet 1 of 4 of Permit No. 0129277-007-BI shall be replaced with Sheet 1/1 (attached).

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.

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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

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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 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.

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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. 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

Attachment: Permit Drawing 1/1 (1 page)

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cc (via electronic mail):

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

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