



# Florida Department of Environmental Protection

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

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

## **CERTIFIED - RETURN RECEIPT REQUESTED**

February 4, 2009

Richard Bouchard  
St. Lucie County  
2300 Virginia Avenue  
Fort Pierce, Florida 34982

c/o

Michael Krecic  
Taylor Engineering, Inc.  
10151 Deerwood Park Blvd, Bldg 300, Suite 300  
Jacksonville, FL 32256

Permit Modification No. 0269646-005-JN  
Permit No. 0269646-001-JC, St. Lucie County  
Ft. Pierce Nourishment

Dear Mr. Bouchard:

Your request to modify Permit No. 0269646-001-JC has been received and reviewed by Department staff. The proposed permit modification is to remove the requirement for night-time monitoring from the turbidity monitoring condition.

The following information describes the project history from the time of original permit issuance, and the subjects directly related to the proposed modification. For additional background, please see the *Consolidated Notice of Intent to Issue* for Joint Coastal Permit (JCP) No. 0269646-001-JC, dated January 19, 2007, available at the Bureau website:  
[http://bcs.dep.state.fl.us/env-prmt/st\\_lucie/issued/0269646\\_Ft.%20Pierce\\_Nourishment/001-JC/](http://bcs.dep.state.fl.us/env-prmt/st_lucie/issued/0269646_Ft.%20Pierce_Nourishment/001-JC/)

### **Project Area History**

The Ft. Pierce Shore Protection project was first constructed in 1971 by the U.S. Army Corps of Engineers (USACE). The initial restoration event placed 718,000 cubic yards from a nearshore borrow area between FDEP reference monuments R-34 and R-41. The beach was nourished in 1980, 1999, 2003, 2004, and 2005.

Most recently, the beach was nourished in 2007 under Joint Coastal Permit No. 0269646-001-JC, which was issued by the Department on February 23, 2007. This project placed approximately 503,800 cubic yards of material from Capron Shoal, the same borrow area that was used in the previous four events. Variance No. 0269646-002-EV was issued in conjunction with this permit and authorized a temporary expanded mixing zone of 1,000 meters downcurrent and 150 meters offshore from the point of sand discharge on the beach.

Joint Coastal Permit No. 0269646-001-JC authorized sand placement to occur during the early portion of nesting season in order to facilitate construction in 2007. However, the permit clearly stated that this construction window extension applied to the 2007 nourishment event only. It also specified that the construction should begin at R-41 and be completed between R-41 and R-37 by May 15 and between R-37 and R-34 by May 30. Due to rough sea conditions during the month of May, the northern portion of the project was not completed by May 30. Permit Modification 0269646-003-EM authorized construction in the northern portion of the project through June 9 in 2007 only.

On November 19, 2008 the Department issued permit modification 0269646-004-JN reducing the mixing zone to 150 meters downcurrent at the beach placement site and allowing another extension of construction into the early portion of the sea-turtle nesting period for this nourishment only.

### **Proposed Modification**

In the current application, St. Lucie County's agent states: "As per the requirements of the Florida Department of Environmental Protection's (FDEP) permit for the Ft. Pierce Nourishment project, the FDEP requires the permittee to monitor turbidity at the borrow site and beach disposal area every six hours during dredging and pumping operations. As such, this requirement should generate four monitoring time points at each site during a 24-hour period. In previous nourishments, the contractor has encountered significant difficulties, including rough sea conditions that threaten personal safety, when trying to obtain nighttime monitoring points."

When the variance for an expanded mixing zone was issued, the Department was concerned that turbidity could have an adverse impact on the nearby hardbottom resources. This prompted the need for frequent turbidity monitoring. After the turbidity mixing zone was reduced from 1000 meters to 150 meters, the project was still able to meet the standard for turbidity. Evidence supporting the request to reduce the frequency of turbidity monitoring was submitted by the applicant's agent. It showed no turbidity readings in excess of 15 NTU's above background at the recently revised 150 meter mixing zone limit during the most recent nourishment event. The submittal also documented the contractor's frequent inability to conduct turbidity monitoring due to rough seas.

### Staff Assessment

Given the increased setback between the edge of the mixing zone and the hardbottom resources, and the record of compliance with the water quality standard for turbidity at the new mixing zone, the Department has assurances that the proposed reduction in frequency of turbidity monitoring is not expected to adversely affect the hardbottom resources. The Department does not wish to put anyone in danger while they collecting turbidity samples. Therefore, if the people doing the turbidity monitoring determine that weather conditions make it unsafe to conduct this activity, and can document that fact in the monitoring report, they will have the option of skipping any given sampling event.

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

### MONITORING REQUIRED:

17. Turbidity monitoring in the vicinity of the dredging area and disposal sites shall be conducted during construction. Turbidity shall be measured in NTUs at background and compliance stations as follows:

a. Borrow Site:

Frequency: ~~Every six hours during dredging.~~ Two times daily at least 4 hours apart during all dredging operations, and any time an excessive plume is observed to extend beyond the limits of the mixing zone (including the pipeline corridor) such that a water quality violation may exist. Monitoring will occur provided sea, wind, visibility, traffic and other conditions allow for the safe performance of the activity. Permittee or contracted designee shall document all instances where turbidity monitoring within the bounds of the above parameters could not be performed due to unsafe conditions.

Location: **Background:** One meter below the surface and one meter above the bottom, at least 300 meters upcurrent from the dredge site, clearly outside of any turbidity generated by the project.

**Compliance:** One meter below the surface and one meter above the bottom, no more than 150 meters down current from the dredge site, within the densest portion of any visible turbidity plume.

b. Beach disposal Area:

Frequency: ~~Every six hours during pumping operations.~~ Two times daily at least 4 hours apart during all nourishment operations, and any time

an excessive plume is observed to extend beyond the limits of the mixing zone (including the pipeline corridor) such that a water quality violation may exist. Monitoring will occur provided sea, wind, visibility, traffic and other conditions allow for the safe performance of the activity. Permittee or contracted designee shall document all instances where turbidity monitoring within the bounds of the above parameters could not be performed due to unsafe conditions.

Location: **Background:** Mid-depth, at a point approximately 150 meters offshore and at least 150 meters upcurrent from the discharge point, clearly outside of any turbidity generated by the project or coming from the inlet.

**Compliance:** Mid-depth, at a point no more than 150 meters offshore and 150 meters down current from the point where runoff from the discharge pipe re-entering waters of the state, within the densest portion of any visible turbidity plume.

- c. All monitoring data shall be submitted within one week of analysis with documents containing the following information: (1) "Permit Number 0269646-001-JC"; (2) "Ft. Pierce Nourishment Project"; (3) dates of sampling and analysis; (4) a statement describing the methods used in data collection, handling, storage and analysis of the samples; (5) a map indicating the sampling locations; (6) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data and calibration of the meter. Any time a regular sampling event is not conducted due to unsafe weather conditions, the time and date of the event shall be noted in the report, along with documentation of the unsafe conditions. Each exceedance of 29 NTUs above background shall be highlighted in the table and discussed in the report. Monitoring reports shall also include the following information for each sample that is taken:

- i. time of day samples taken;
- ii. depth of water body;
- iii. depth of sample;
- iv. antecedent weather conditions;
- v. tidal stage and direction of flow; and
- vi. wind direction and velocity.

The compliance locations given above shall be considered the limits of the mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the compliance site greater than or equal to 29 NTUs above background

turbidity levels, construction activities shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the BBCS's JCP Compliance Officer and DEP Southeast District Office, Submerged Lands and Environmental Resources, in West Palm Beach, Florida.

The regular monitoring reports shall be submitted to the BBCS's JCP Compliance Officer in Tallahassee and to the DEP Southeast District Office, Submerged Lands and Environmental Resources, in West Palm Beach, Florida. Failure to submit reports in a timely manner constitutes ground for revocation of the permit. When submitting this information to the DEP, please clearly include, at the top of each page or as a cover page to the submittal: "This information is provided in partial fulfillment of the monitoring requirements in Permit No. 0269646-001-JC for the Ft. Pierce Nourishment Project."

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 **February 22, 2017** 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 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;
- (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 Merrie Beth Neely at the letterhead address (add Mail Station 300) or by telephone at (850) 413-7785.

Sincerely,



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

MKS/mbn

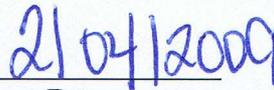
cc: Michael Barnett, BBCS, Chief	Bob Brantly, BBCS – CE
Vladimir Kosmynin, BBCS – JCP	Alex Whitworth, BBCS – BECP
Paden Woodruff, BBCS – BECP	Roxane Dow, BBCS – BECP
Steve MacLeod, BBCS	Mark Taynton, BBCS
Robbin Trindell, FWC	Jeff Howe, USFWS
JCP Compliance Officer	BBCS Permit File

#### 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