



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

MARJORY STONEMAN DOUGLAS BUILDING
3900 COMMONWEALTH BOULEVARD
TALLAHASSEE, FLORIDA 32399-3000

RICK SCOTT
GOVERNOR

HERSCHEL T. VINYARD JR.
SECRETARY

August 22, 2013

City of Delray Beach
Attn: Paul Dorling
100 N.W. First Avenue
Delray Beach, FL 33444

c/o

Richard Spadoni
Coastal Planning and Engineering, Inc.
2481 N.W. Boca Raton BLVD
Boca Raton, FL 33431

Modification Nos. 0303553-008-JN and 0303553-009-BV
Amending Permit No. 0303553-001-JC and Variance No. 0303553-002-BV
Delray Beach Nourishment
Palm Beach County

Dear Mr. Spadoni:

Your request to modify Permit No. 0303553-001-JC and Variance No. 0303553-002-BV was received on June 20, 2013, and has been reviewed by Department staff. The proposed modifications are to authorize a possible expansion of the turbidity mixing zone from 1,000 meters to 2,000 meters, and to provide additional guidance on the turbidity monitoring methodology.

Background

The restoration of Delray Beach was authorized under Department Permit **DBS-72-24**, with the placement of 1,634,500 cubic yards of sand in 1973. Delray Beach was subsequently nourished in 1978 and 1984, under Permit Nos. **DBS 75-10** and **DBS 75-10M1**. These projects involved the placement of 701,300, and 1,311,000 cubic yards of sand, respectively. The third nourishment of Delray Beach took place between November and December 1992, placing 1,188,000 cubic yards of sand over a distance of 1.7 miles, between Department range monuments R-180 and R-188A (under Coastal Construction Permit **DBS 890242** and Wetland Resource Permit No. **501662809**). The fourth nourishment event occurred in March of 2002, and placed 1,230,000 cubic yards of sand over 1.9 miles of beach, between R-179 and R-188A, under Joint Coastal Permit No. **0178582-001-JC**. In 2005, the U.S. Army Corps of Engineers

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(Corps) placed approximately 250,000 cubic yards of material on the beach to repair damages from the active 2004 hurricane season, under Permit Modification No. **0178582-003-EM**.

Current Permit

On January 27, 2012, the Department issued Permit No. **0303553-001-JC** to continue beach nourishments along 1.9 miles of beach fronting the City of Delray Beach, Florida, using two offshore borrow areas that run parallel to the beach and varying in width from 1,000 feet to 425 feet. The design template calls for an average construction berm width of approximately 100 feet. The Department also granted Variance No. **0303553-002-BV** to temporarily establish an expanded mixing zone that extends up to 1000 meters downcurrent from the point where water discharging from the dredge pipeline (at the beach placement site) reenters the Atlantic Ocean, but no more than 300 meters offshore.

For additional background on this permit and variance, please see the *Consolidated Notice of Intent to Issue Joint Coastal Permit, Variance and Authorization to Use Sovereign Submerged Lands* for Permit No. 0303553-001-JC and Variance No. 0303553-002-BV, dated December 16, 2011, available at the Department's website:

ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/palm_bch/issued/0303553_Delray_Beach_Nourishment/001-JC/Intent/Intent%20for%20Delray%2012-16-2011_.pdf

On June 11, 2012, the Department issued Permit Modification No. **0303553-003-JN** to correct an inadvertent error to Specific Condition 11, requiring sea turtle monitoring.

On March 4, 2013, the Department issued Permit Modification No. **0303553-005-JN** to authorize the Permittee to stockpile beach compatible sand from the approved offshore borrow area and truck the sand to an additional placement area, located between R-176 and R-177, for dune enhancement.

On May 9, 2013, the Permittee requested a modification (File No. **0303553-006-JN**) to revise the turbidity monitoring protocol. After a cursory review of the request, the Department notified the Permittee that a modification could not be authorized as requested. On June 21, 2013 the application was withdrawn.

On August 2, 2013, the Department issued Permit Modification No. **0303553-007-JN** to expand the authorized construction template for the placement of beach compatible material. The expanded area was a previously authorized placement area located between R-175+300 feet and R-179.

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Justification for Modification

After a comprehensive review of the turbidity monitoring data for the 2013 nourishment event, the Permittee revealed that the turbidity monitoring protocol was misinterpreted and/or found to be confusing. It is unknown whether the turbidity monitoring was sampled at the densest portion of the mixing zone polygon. By correcting the sampling location, it is possible that the levels of turbidity in the compliance samples will be higher than those measured during the 2013 event. Therefore, it is unclear that the 1,000-meter mixing zone will be sufficient to allow the Permittee to meet the water quality standard for turbidity.

After consultation with the Department, the Permittee has requested to enlarge the mixing zone from 1,000 meters to 2,000 meters downdrift of the point of discharge. The permit and variance modifications will also provide additional turbidity monitoring methodology guidance, while allowing more flexibility for future nourishment projects. The permit and variance modifications will be conditioned in such a way as to allow the 2,000 meter mixing zone to be used only if forthcoming monitoring reports suggest the 1,000 meter mixing zone is not sufficient.

Variance No. 0303553-002-BV shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

This variance will temporarily establish an expanded mixing zone that extends up to 2000 ~~1000~~-meters downcurrent from the point where water discharged from the dredge pipeline (at the beach placement site) reenters the Atlantic Ocean, but no more than 150 ~~300~~ meters offshore. This temporary variance shall only be valid during the construction activities authorized in Permit No.0303553-001-JC and shall expire when the permit expires on January 27, 2022, unless the permit is modified to grant a time extension.

The specific conditions of Permit No. 0330553-001-JC shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

MONITORING REQUIRED:

28. Water Quality - Turbidity shall be monitored follows:

Units: Nephelometric Turbidity Units (NTUs).

Frequency: 2 times daily at least 4 hours apart during all dredging and sand placement, operations.

Location: Background: At mid-depth clearly outside the influence of any artificially generated turbidity plume.

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Dredge Site: approximately 300 meters in the opposite direction of the prevailing current flow.

Beach Site: approximately 300 meters upcurrent of the limits of this nourishment project, and the same distance offshore as the associated compliance sample.

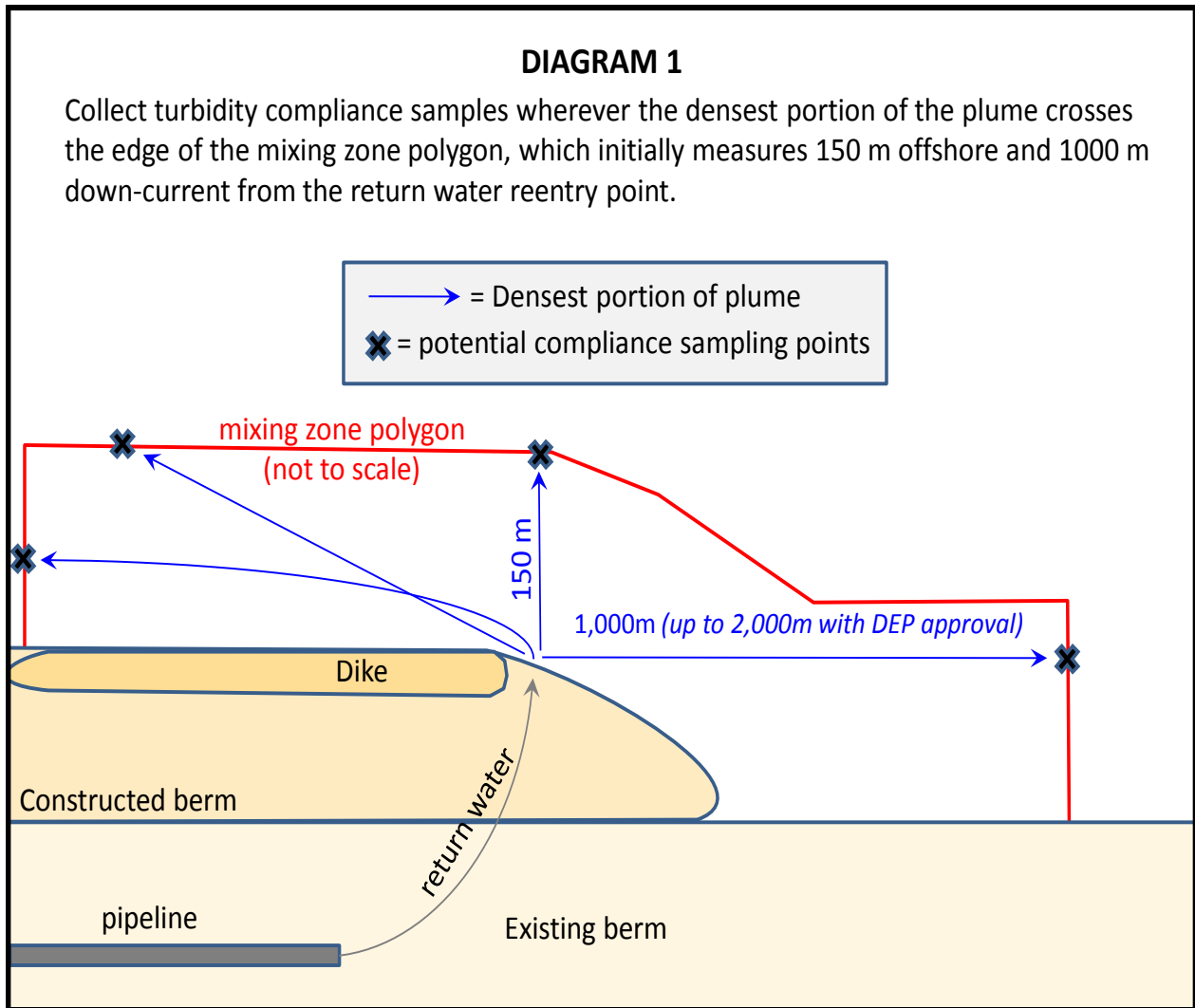
Compliance: At mid-depth, within the densest portion of any visible turbidity plume generated by this project.

Dredge Site: Samples shall be collected 150 meters downcurrent from the dredge head, in the densest portion of any visible turbidity plume.

Beach Site: Samples shall be collected where the densest portion of the turbidity plume crosses the edge of the mixing zone polygon, which measures ~~300~~ up to 150 meters offshore and up to 1000 meters downcurrent from the point where the return water from the dredged discharge reenters the Atlantic Ocean. For each sampling event, compliance samples shall be collected within the area of highest turbidity at both the rip current location and the longshore drift location. *Note, if the plume runs parallel to the shore, it may cross the edge of the mixing zone polygon at a distance less than ~~150 meters offshore~~ the maximum offshore dimension of the mixing zone. In that case, it may be necessary to access the sampling location from the shore, in water that is too shallow for a boat. If the plume flows offshore, it may cross the mixing zone polygon at a distance less than the maximum alongshore dimension of the mixing zone, and the sample would be collected at that point. See Diagram 1.*

If the 1,000-meter alongshore dimension of the mixing zone is insufficient to adequately contain project-related turbidity levels, i.e., if turbidity levels require cessation of construction (as required in Specific Condition 29) more than twice a week, the Permittee may submit a request to the Department to increase the maximum alongshore dimension of the mixing zone to 2,000 meters. Upon confirmation that turbidity levels require cessation of construction more than twice a week, the Department will provide written confirmation that the maximum alongshore

dimension of the nourishment site mixing zone is increased to 2,000 meters for the remainder of that nourishment event.



Intermediate Monitoring: Mid-depth, at points where the densest portion of the turbidity plume crosses 3 polygons with the following dimensions:

- (1) 250 meters downcurrent from the discharge location and 150 meters offshore,
- (2) 500 meters downcurrent from the discharge location and 150 meters offshore, and
- (3) 750 meters downcurrent from the discharge location and 150 meters offshore.

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If the maximum alongshore dimension of the nourishment site mixing zone is increased to 2,000 meters for a given event, the remaining intermediate monitoring for that event shall also be conducted at points where the densest portion of the turbidity plume crosses 3 additional polygons with the following dimensions:

- (4) 1250 meters downcurrent from the discharge location and 150 meters offshore,
- (5) 1500 meters downcurrent from the discharge location and 150 meters offshore, and
- (6) 1750 meters downcurrent from the discharge location and 150 meters offshore.

These intermediate measurements will be used to calibrate the size of the mixing zone for future events, but will NOT be used to determine if this project is in compliance with the water quality standard for turbidity.

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 **January 27, 2022**, 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 (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

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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 (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

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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 Bobby Halbert by email at Robert.Halbert@dep.state.fl.us or by telephone at (850) 921-7752.

Sincerely,



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

MKS/bh

cc: Paul Dorling, City of Delray Beach
Matt Miller, USACE
Jason Andreotta, DEP, SE District
Rob Buda, DEP
Roxane Dow, DEP
Robbin Trindell, FWC

Bob Brantly, DEP
Bobby Halbert, DEP
MarineTurtle@MyFWC.com
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FDEP-SP@usace.army.mil

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.



8/22/13

Deputy Clerk

Date