



Florida Department of Environmental Protection

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September 1, 2015

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

Permit Modification No. 0157891-019-BN
Permit No. 0157891-011-EM, Hillsborough and Pinellas Counties
Tampa Harbor Comprehensive Maintenance Dredging, Time Extension

Dear Mr. Summa:

Your request to modify Permit No. 0157891-011-EM was received on July 23, 2015, and has been reviewed by Florida Department of Environmental Protection (Department) staff. The proposed permit modification is to extend the permit expiration date from April 7, 2016, to April 7, 2021.

Permitting Background

On April 7, 2006, the Department issued Permit No. **0157891-009-EI** to the U.S. Army Corps of Engineers (Corps) for maintenance dredging of the federally-authorized channels within Tampa Harbor and the Port of Tampa berths. That project, known as the Tampa Harbor Comprehensive Maintenance Dredging Project, combined many individually-authorized channel dredging and disposal projects under one permit. The project included maintenance of approximately 67 miles of channels and berthing areas with several disposal options.

On June 16, 2005, the Department issued a minor modification of Permit No. 522363069 (Permit Modification No. **0157891-010-EM**) to the Corps for maintenance dredging of the Egmont Federal Navigation Channel. The original permit did not include maintenance dredging of the Egmont Channel, although it did include material placement options both onshore and in the nearshore of Egmont Key. The modification was to allow maintenance dredging of Egmont Channel as a source of beach-quality material for placement on Egmont Key.

On September 12, 2006, the Department issued a major modification of Permit No. 0157891-009-EI to the Corps. That major modification, thereafter referred to as Permit No. **0157891-011-EM** superseded Permit No. 0157891-009-EI. The modified project included the Ft. Desoto Park

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shoreline and nearshore disposal site, within the Boca Ciega Bay Aquatic Preserve, and Rock Disposal Area north of Egmont Key, as additional authorized dredged material disposal areas. On October 9, 2006, the Department issued Variance No. **0157891-013-EV** to the Corps. The variance was associated with Permit No. 0157891-011-EM and established an expanded mixing zone of 1,000 meters within the boundary of the Boca Ciega Bay Aquatic Preserve.

For additional background about the current permit and the associated variance, please see the *Consolidated Notice of Intent to Issue a Major Modification to an Environmental Resource Permit, Variance, and Authorization to Use Sovereign Submerged Lands* for Permit No. 0157891-011-EM located at the following link:

[ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/hillsbor/issued/0157891_Tampa_Bay_MD/011-EM/Intent/Notice%20of%20Intent%20\(8-23-06\).pdf](ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/hillsbor/issued/0157891_Tampa_Bay_MD/011-EM/Intent/Notice%20of%20Intent%20(8-23-06).pdf)

On July 21, 2006, the Department issued Permit Modification No. **0157891-012-EM** to the Corps for the replacement of two 300-foot-long geotextile tube groin structures on the northwest end of Egmont Key.

On October 16, 2006, the Department issued Permit Modification No. **0157891-014-EM** to the Corps for the rehabilitation of the existing groin located just north of the Gulf-side pier at the southern tip of Mullet Key.

On August 29, 2013, the Corps applied for a de minimis exemption (File No. **0157891-015-BE**) to raise the dike on Spoil Island 3D. The application was later withdrawn.

On May 15, 2014, the Department issued Permit Modification No. **0157891-016-EM** to the Corps for the placement of dredged fill containing greater than 10% fine material on the beach at Egmont Key, between Department reference monuments R-2 and R-10.

On November 7, 2014, the Department issued Permit Modification No. **0157891-018-BN** to the Corps to remove the requirement for nighttime turbidity monitoring if the monitoring could not be performed due to unsafe conditions, and to correct an error in Specific Condition 16.

On April 8, 2015, the Department issued Permit No. **0157891-017-BI** to the Corps to deepen and/or widen and then maintain the Big Bend portion of the Tampa Harbor Federal Navigation Project including the Big Bend entrance channel, turning basin, inner channel and east channel, and deepen two non-federal berths located in the inner channel and east channel. The entire project was to be deepened to -45 feet mean lower low water (MLLW) with a one-foot allowable overdepth for a maximum dredge depth of -46 feet MLLW. The bottom of the Big Bend entrance channel was to be widened 50 feet to the north, and the turning basin was to be widened to accommodate a turning circle with a radius of 1,200 feet. A widener was to be added between the inner channel and east channel. Approximately 4 million cubic yards of material was to be dredged and deposited at Spoil Island 3D.

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Justification

According to the Permittee, several dredging events authorized under Permit No. 0157891-011-EM are scheduled for next year, and will not be completed by the permit expiration date. In addition, extending the permit expiration date versus applying for a new permit will save the Permittee time and money.

Staff Assessment

The request for a time extension is consistent with Section 62-330.320(6), Florida Administrative Code (F.A.C.), because the request was timely received and the activity remains consistent with the plans, terms, and conditions of the permit and the rules in effect when the permit was issued. In addition, the Permittee has provided reasonable assurance that the scheduled maintenance events cannot be completed by the current expiration date.

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 Specific Conditions of the permit. **This letter of approval extends the expiration date of the permit from April 7, 2016, to April 7, 2021.** 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 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

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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 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 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

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- 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.

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If you have any questions regarding this matter, please contact Kristina May by email at kristina.may@dep.state.fl.us or by telephone at (850) 245-7545.

Sincerely,



Lainie Edwards, Ph.D.
Program Administrator
Beaches, Inlets and Ports Program

cc: Paul Karch, Corps
Mike Hollingsworth, Corps
Lainie Edwards, DEP DWRM
Marty Seeling, DEP DWRM
Youzhu Wang, DEP DWRM
JCP Compliance Officer, DEP DWRM
Mike Sommers, FWC
Lauren Greenfield, DEP SW District Office

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.



09/01/15

Deputy Clerk

Date