

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**EMERGENCY AUTHORIZATION TO USE FUNDS
TO SUPPORT NATURAL RESOURCE DAMAGE
ASSESSMENT AND RESTORATION ACTIVITIES
MADE NECESSARY BY THE DEEPWATER HORIZON
OIL SPILL**

OGC NO. 10-1959

AMENDED EMERGENCY FINAL ORDER

Under Sections 120.569(2)(n) and 252.36 of the Florida Statutes ("F.S."), and upon consideration of the State of Florida Executive Order Nos. 10-99, 10-100 10-106, and the following findings of fact, the State of Florida Department of Environmental Protection ("Department") entered this Emergency Final Order ("Order") in response to the imminent or immediate danger to the public health, safety, and welfare of the citizens of the State of Florida resulting from the Deepwater Horizon Oil Spill that commenced on April 20, 2010 ("the Spill"). BP Exploration and Production, Inc. ("BP") has been determined to be a responsible party for the Spill.

FINDINGS OF FACT

1. On the 20th day of April 2010, an explosion on the mobile drilling platform Deepwater Horizon occurred in the Gulf of Mexico, approximately 130 miles southeast of New Orleans, Louisiana. The rig ultimately sank on April 22, 2010; on April 24, 2010, the United States Coast Guard ("USCG") estimated that the damaged well was releasing approximately 42,000 gallons of crude oil per day. On April 28, 2010, the USCG increased this estimate to approximately 200,000 gallons per day. It is now estimated that between that time and July, 2010, when the well was finally capped, over 200 million gallons of crude oil was released into the Gulf of Mexico. All efforts to contain the discharge have failed and may not succeed for an extended period of time. The Spill has the potential to cause widespread damage along Florida's shoreline and coastal estuaries within the following counties: Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf,

Franklin, Wakulla, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee, Collier, Monroe, Miami-Dade, Broward and Palm Beach.

2. By State of Florida Executive Order Nos. 10-99, 10-100, 10-106, and 10-132, the Governor declared that a state of emergency existed throughout Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, Wakulla, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee, Collier, Monroe, Miami-Dade, Broward and Palm Beach counties, based upon the serious threat to the public health, safety and welfare posed by the Spill.

3. On August 26, 2010 the Governor amended the above described Executive Orders to eliminate the following counties from the state of emergency: Wakulla, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee, Collier, and Monroe, Miami-Dade, Broward, and Palm Beach counties.

4. The Department finds that the Spill created a state of emergency that threatened the public health, safety, welfare, and property throughout many of Florida's coastal counties. As a result of the emergency, immediate action was and is necessary to conduct pre-assessment, assessment of the damages to natural resources and restoration planning as part of the Natural Resource Damage Assessment ("NRDA") process for establishing a damage claim against the parties responsible for the Spill.

5. As part of the NRDA process, state agencies, local governments and others began conducting baseline sampling of Florida's natural resources shortly after the Spill occurred.

6. On June 9, 2010 BP paid \$8,000,000 to the Florida Department of Environmental Protection for the purpose of funding or reimbursing any reasonable costs related to NRDA activities for the Spill.

7. Oil associated with the Deepwater Horizon incident reached the salt waters and beaches of the State of Florida. This oil is detrimental to marine and other state resources and endangers the health, safety, and welfare of the people of the State of Florida. Once the oil from

the Spill reached Florida's salt waters and beaches, assessment of the injury to Florida's natural resources and restoration planning is underway. There is a continuing immediate need to complete the damage assessment and restoration planning.

8. The Department finds that an emergency order is required to address the need for immediate action because the normal procedures for obtaining the necessary authorizations and contracts would not result in the timely assessment and restoration of Florida's natural resource damages.

9. The Department finds that the actions authorized under this order are narrowly tailored to address the immediate need for action and are procedurally fair under the circumstances.

CONCLUSIONS OF LAW

1. Based on the findings recited above, it is hereby concluded that the emergency caused by the Spill continues to pose a threat to the public welfare and requires an immediate order of the Department to ensure timely assessment and restoration of the damage to Florida's natural resources caused by the Spill.

2. Suspension of statutes and rules as noted within this Order is required so as not to prevent, hinder, or delay necessary action in coping with the emergency.

THEREFORE, IT IS ORDERED:

A. ELIGIBILITY FOR NRDA COST REIMBURSEMENT

Any Florida state or local government agency, university or water management district is eligible for reimbursement of reasonable costs incurred as part of the NRDA pre-assessment or assessment activities related to the Spill, if the following criteria are met:

- 1) For expenses incurred prior to the date of this Order:
 - a) The expenses were incurred as part of a scientifically defensible effort to obtain information.
 - b) The expenses were incurred in obtaining information that the Department determines to be useful in making a legal claim for natural resource damages.

- c) The applicant provides sufficient documentation of the expenses incurred to establish "Reasonableness of Cost" as described below.
- 2) For expenses incurred after the date of this Order:
 - a) The applicant has received written approval from the Department prior to incurring the expenses for which reimbursement will be sought.
 - b) The approval determination will be based upon criteria stated in A. 1) above.

B. Eligibility for NRDA Contract Work

Any Florida state or local government agency, Florida university or water management district, consulting company or other qualified entity is eligible for NRDA contract work as part of the NRDA injury assessment and restoration planning activities related to the Spill.

C. REASONABLENESS OF COST

The Public Assistance Digest provides the following definition of reasonable cost: "A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In other words, a reasonable cost is a cost that is both fair and equitable for the type of work being performed. For example, charging \$50/hour for a backhoe is unreasonable when the going rate for a backhoe is \$25/hour."

Reasonable cost can be established by:

- 1) Historic documentation for similar work,
- 2) Average costs for similar work in the area,
- 3) Published unit costs from national cost estimating databases,
- 4) FEMA Schedule of Equipment Rates, or
- 5) Competitively bid specifications of work where the competitive marketplace establishes the local cost for a unit of work to be performed.

D. TYPES OF NRDA WORK AND COSTS THAT MAY BE ELIGIBLE FOR APPROVED ACTIVITIES

- 1) FTE and OPS regular base salaries, overtime and associated benefits. The labor rate reimbursable should include a calculation for all benefits. This is often called the loaded, or "full approval" rate; or cost of the employee. Eligible labor is only for that portion when the employee is actively engaged in approved assessment efforts. Standby pay is not considered eligible.
- 2) Expenses for sampling supplies and equipment, sample storage, preservation and shipping,
- 3) Training costs,
- 4) Travel costs,
- 5) Contracted services,
- 6) Costs associated with the operation of applicant owned equipment can be reimbursed for actual costs of the operation of the equipment. These costs can include fuel and lubricants, consumables and reasonable depreciation based upon lifecycle management. In lieu of actual costs, the FEMA Schedule of Equipment Rates can be used to calculate reimbursement,
- 7) Natural resource injury assessment,
- 8) Natural resource restoration planning.

E. REIMBURSEMENT PROCESS AND REQUIRED DOCUMENTATION

Any costs submitted to the Department for reimbursement must be supported by sufficient documentation proving that they meet the above criteria. No cost will be reimbursed unless it is approved by the Department. Reimbursement is on a first come, first served basis until the funding provided by BP is exhausted. Reimbursement requests received after depletion of the funding provided by BP will not be made unless BP provides additional NRDA funds.

- 1) Each applicant seeking reimbursement of expenses must submit a request for reimbursement of eligible expenses incurred using the application form attached to this Order as Exhibit A, along with the documentation necessary to establish that costs requested for reimbursement were reasonable and necessary to carry out the NRDA activities related to the Spill. The request must be supported by originals or copies of contracts, purchase orders, invoices, bills of lading, evidence of receipt and acceptance of goods or services, payroll records, and proof of payment. To be reimbursed for salaries, applicants must document the person or people performing the work (*Who*), the nature of the work (*What*), location of the work (*Where*), the need for the work (*Why*), time the work was performed (*When*), and the

duration of the work engaged upon (How Long). All of the necessary documentation must be submitted to:

Lee Edmiston MS 235
Florida Department of Environmental Protection
3900 Commonwealth Boulevard; Tallahassee, Florida 32399-3000

- 2) The Department will review the materials submitted by the applicants. If all necessary materials are present, and the invoices and back-up materials demonstrate that the payment request is for materials and/or services eligible for reimbursement, the Department will forward the reimbursement request and all necessary documentation to the Department's Finance and Accounting Office for processing and payment.

F. DOUBLE RECOVERY

There will be no double recovery for NRDA damage assessment costs incurred by any applicant. All applicants will be required to inform the Department of any requests submitted by the applicant to any other entity for the NRDA costs the applicant is seeking to have reimbursed by the Department.

F. EXPIRATION DATE

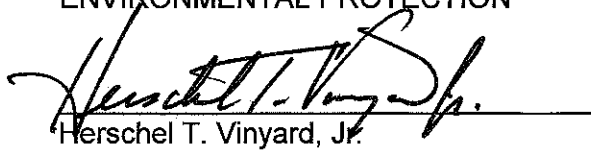
This Amended Emergency Final Order shall take effect immediately upon execution by the Secretary of the Department, and shall expire upon the entry of an order by the Department terminating this Amended Emergency Final Order.

NOTICE OF RIGHTS

Pursuant to Section 120.569(2)(n) of the Florida Statutes, any party adversely affected by this Order has the right to seek an injunction of this Order or any authorization issued hereunder in circuit court or judicial review of it under Section 120.68 of the Florida Statutes. Judicial review must be sought by filing 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, Mail Station 35, 3900 Commonwealth Boulevard, 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 thirty days after this Order is filed with the Clerk of the Department.

DONE AND ORDERED on this ^{20th} day of April, 2011, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION



Herschel T. Vinyard, Jr.
Secretary
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Lea Candall 4/20/11
CLERK DATE