

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**EMERGENCY AUTHORIZATION FOR
PROACTIVE MEASURES, RESTORATION,
AND CERTAIN OTHER MEASURES MADE
NECESSARY BY THE DEEPWATER HORIZON
OIL SPILL**

OGC NO. 10-1610

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 and 10-100 and the following findings of fact, the State of Florida Department of Environmental Protection ("Department") enters this Emergency Final Order ("Order"), including Findings of Fact and Conclusions of Law, 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"). British Petroleum ("BP") has been determined to be a responsible party for the Spill.

SPECIAL CONSIDERATIONS

Governmental entities seeking reimbursement of any activities authorized in this order must do so consistent with, and as specified in, Florida's Financial Plan for Response to the Deepwater Horizon Oil Spill.

Governmental entities performing any activities authorized in this order shall conduct those activities in a manner consistent with the National Contingency Plan and/or the Area Contingency Plan under the National Response System.

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. All efforts to contain the discharge have failed and may not succeed for an extended period of time. The resulting oil slick in the Gulf of Mexico is at least 600 miles in circumference and expanding, generally moving in a northerly direction. 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 and Sarasota. These counties shall constitute the specific area covered by this Emergency Final Order. This area shall herein be referred to as the "Emergency Area."

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

3. The Department finds that the Spill has created a state of emergency threatening the public health, safety, welfare, and property throughout the Emergency Area. As a result of the emergency, immediate action by Florida's citizens and government is

necessary to prevent, contain or reduce damage to natural resources and property that may occur as a result of the Spill.

4. 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 would not result in timely action to address the emergency.

5. The Department finds that immediate, strict compliance with the provisions of the statutes, rules, or orders noted within this Order would prevent, hinder, or delay necessary action in coping with the emergency, and 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 an immediate danger to the public health, safety, or welfare and requires an immediate order of the Department.

2. Under State of Florida Executive Order Nos. 10-99 and 10-100, and Sections 120.569(2)(n) and 252.36, F.S., the Secretary of the Department is authorized to issue this Emergency Final Order.

3. 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, WITHIN THE EMERGENCY AREA, IT IS ORDERED:

A. SOLID WASTE MANAGEMENT

Field authorizations may be issued prior to or following a site inspection by Department personnel for staging areas to be used for temporary storage or processing of Spill-generated debris. Field authorizations may be requested by providing a notice to the local office of the Department containing a description of the staging area design and operation, the location of the staging area, and the name, address, and telephone number of the site manager. Field authorizations also may be issued by Department staff prior to receiving written notice. Written or electronic records of all field authorizations shall be created and maintained by Department staff. Field authorizations may include specific conditions for the operation and closure of the staging area, and may include a required closure date that extends beyond the expiration date of this Order. Staging areas shall be sited to avoid wetlands, beach and dune habitat, and other surface waters to the greatest extent possible; such areas that are used or affected must be fully restored upon cessation of use of the area. Persons wishing to locate staging areas on or near the beach and dune system shall utilize existing disturbed areas to the maximum extent practicable and shall first consult with the Florida Fish and Wildlife Conservation Commission ("FWC") and the Department's Bureau of Beaches and Coastal Systems. Staging areas must cease operation, and all Spill-generated debris must be removed from the site, by the expiration date of this Order, unless a different closing date or closure conditions are specified in the field authorization. Failure to comply with the conditions of the field authorization, or failure to adequately close the site by the required closure date, may

result in enforcement actions by the Department. Field authorizations issued prior to the effective date of this Order remain in effect but may be modified by the Department to include conditions and closure dates as specified herein.

B. WATERS, WETLANDS, BEACHES & COASTAL SYSTEMS, & SUBMERGED LANDS

1. No Notice Required

The following activities are authorized to be undertaken pursuant to Chapters 161, 253, 258, and Part IV of Chapter 373, F.S., and the applicable rules adopted thereunder, by BP and its contractors and by governmental entities to contain and prevent the spread of oil and oil contaminants, and to facilitate future clean-up of oil and oil contaminants. All booms, materials, and devices authorized below must be removed in their entirety once the threat of contamination has been abated, and must be disposed of in accordance with a Department approved waste disposal plan:

(a) Placement of temporary containment booms and sorbent materials. To the maximum extent practicable, all booms and sorbent materials shall be deployed and maintained so as to minimize lying on or shading wetlands and submerged aquatic vegetation, so as to not create a navigational hazard, and so as to minimize entanglement risk or other adverse impacts to aquatic and wetland dependant fish and wildlife.

(b) Placement and use of temporary floating devices designed exclusively to contain or collect oil contaminants at the mouths of water control structures, intake structures, canals, coastal inlets and passes, rivers, and streams, provided such devices are deployed and maintained so as to not create a navigational hazard or to

cause upstream flooding or other adverse impacts to water resources to the maximum extent practicable.

(c) Placement and use of temporary devices not listed above, including air bubbler curtains, designed and used exclusively to contain, collect and prevent oil contaminants from entering coastal inlets and passes, water control structures, intake structures, canals, rivers and streams, provided such devices are deployed so as to not create a navigational hazard or to cause upstream flooding or other adverse impacts to water resources to the greatest extent practicable.

(d) **Along shorelines other than sandy beaches**, installation and maintenance of hay bales, temporary sandbags or other similar materials to prevent contamination, provided such installation can be conducted, and such materials can be maintained and removed, in a manner that does not result in permanent dredging, filling or loss of wetland or submerged aquatic resources. To the maximum extent practicable, all hay bales, sandbags or other similar materials shall be deployed so as to minimize lying on or shading wetland and submerged aquatic vegetation and to minimize adverse affects to aquatic and wetland dependant fish and wildlife. Such structures and materials shall be removed once the threat of contamination has abated. This does not authorize the construction of seawalls, bulkheads, rock revetments or other forms of retaining walls.

(e) Installation and maintenance of in-water signage or buoys warning boaters of such hazards as areas where booms and skimmers have been deployed and where heavy contamination exists. Such signage shall, to the extent practicable, be

consistent with FWC standards and must adequately warn mariners of the existing hazards. Buoys shall be consistent with USCG marking for navigational hazards.

2. Activities Requiring Field Authorizations or Emergency Permits

(a) Wetlands and Other Surface Waters, Excluding Sandy Beaches.

Field authorizations under Part IV of Chapter 373, F.S., and applicable rules adopted thereunder, may be issued to BP, their contractors, and governmental entities following notice to the Department and a field inspection by the Department as needed for the following activities in, on or over wetlands or other surface waters, but excluding activities on sandy beaches:

(1) Construction, use, and removal of temporary emergency response access roads and staging areas. Such roads and staging areas shall be sited in uplands and shall use existing improved or previously cleared access points to the maximum extent practicable. If this cannot be done, construction and alteration must minimize work in wetlands or other surface waters and adverse impacts to aquatic and wetland dependant fish and wildlife to the maximum extent practicable. Wetlands and other surface waters shall not be dredged to obtain any fill material to construct any access roads or staging areas. Once the contamination has been abated, all areas disturbed to construct and use these areas shall be restored to former contours and shall be stabilized to prevent erosion, sedimentation, and turbid runoff. Fill material used to create these areas shall be removed to an upland location where it will not adversely affect surface water flows and in a manner that does not cause flooding of adjacent lands. Any wetlands or other surface waters that were disturbed to establish these

areas shall be re-vegetated in a manner that will facilitate restoration to preexisting conditions.

(2) Oil spill response plans developed by governmental entities for activities to take place in wetlands or other surface waters. These plans will be reviewed and approved by the Department on a case-by-case basis through issuance of a field authorization. Such plans may include both activities detailed in this Order and other appropriate response actions to protect or remediate impacts to wetlands or other surface waters that may be or that become affected by the oil spill.

Field authorizations for the above activities must be requested by providing a notice to the appropriate Department District Office containing a description of the work requested, the location of the work, and the name, address, and telephone number of the applicant who may be contacted concerning the work. Field authorizations may not be issued unless requested on or before the expiration date of this Order. Field authorizations may include specific conditions for the construction, operation, and maintenance of the authorized activities. Field authorizations issued under this Order remain in effect for the duration specified in the authorization, but may be extended through written modification by the Department. Failure to comply with the conditions of a field authorization permit may result in enforcement actions by the Department.

These procedures also are supplemental to, and do not replace, the ability to perform temporary emergency measures within the geographic limits of the Northwest Florida Water Management District using the Class A and Class B Emergency Provisions of Rule 62-312.090, F.A.C.

(b) Activities on and Adjacent to the Sandy Beach Shoreline

This section applies to activities conducted pursuant to Chapter 161, F.S., and the applicable rules adopted thereunder, seaward of the Coastal Construction Control Line ("CCCL") as established by Rule 62B-26, F.A.C. Certain activities may additionally take place seaward of the Mean High Water shoreline. Emergency Permits for such activities shall be issued by the Department's Bureau of Beaches and Coastal Systems ("Bureau").

The Bureau may issue emergency permits to governmental entities and BP and their contractors for the activities listed below:

(1) Protection of Coastal Dune Lakes. Upon threat of contamination, lowering the water levels of coastal fresh water dune lakes that have a prior, documented connection between the lake and the Gulf of Mexico to manageable levels, and closing the coastal dune lake outlets to prevent contamination may be authorized. Beach-quality sand, defined in Paragraph 62B-41.007(2)(j), F.A.C., or other temporary measures (such as absorbent booms) shall be used to close such outlets until the threat of contamination has been abated. Applicants are encouraged to use the sand excavated to lower lake levels in order to close the outlets. However, beach quality sand obtained from upland sources may be used upon approval by the Department. All such construction shall be limited to daylight hours after completion of a marine turtle nesting survey.

(2) Construction of Emergency Sand Dikes. To limit the lateral extent of oil contamination, the use of beach-quality sand from upland sand sources to construct a sand dike on the existing beach berm may be authorized. Such berms shall be at an

appropriate contour elevation to limit the landward extent of oil incursion. Such efforts shall not result in damage to existing dunes or dune vegetation. All such construction shall be limited to daylight hours after completion of a marine turtle nesting survey. This does not authorize the construction of seawalls, bulkheads, rock revetments or other forms of retaining walls.

(3) Beach Scraping/Blading. Manipulation of existing non-vegetated sand that resides on the existing beach face landward of mean high water in order to protect sand resources may be authorized. All such construction shall be limited to daylight hours after completion of a marine turtle nesting survey.

(4) Emergency Beach Access and Staging Areas. Creation of emergency beach access and staging areas in order to place emergency response equipment on the beach may be authorized. Applicants are encouraged to use existing beach access points and to avoid designated critical habitat for beach mice. Response/Construction equipment and supplies shall be stored landward of the beach/dune system during the night. Once the contamination has been abated, access and staging areas shall be restored to preexisting conditions. All such construction shall be limited to daylight hours after completion of a marine turtle nesting survey.

(5) Oil spill response plans developed by governmental entities for activities to take place along Florida's sandy beaches may be reviewed and approved by the Department on a case-by-case basis through issuance of an emergency permit. Such plans may include both activities detailed in this order and other appropriate response actions to protect or remediate impacts to the beach/dune system that may be or that become affected by the oil spill.

3. Authorization to Use State-Owned Submerged Lands

The activities authorized above that are located in, on, or over state-owned submerged lands are hereby granted a Letter of Consent under subparagraph 18-21.005(1)(c)14., F.A.C., provided:

(a) The activities are conducted in accordance with the terms, conditions, and limitations of this Order;

(b) Activities authorized under this Order must be conducted in conformance with the general conditions of subsection 18-21.004(7), F.A.C.

4. General Conditions

(a) Applicable environmental resource, surface water management, dredge and fill, stormwater, and CCCL or joint coastal permits under Chapters 161 and Part IV of Chapter 373, F.S., and applicable state-owned submerged lands authorizations shall be required for other activities not authorized in this Order that do not otherwise qualify as an exempt activity under statute or rule.

(b) Nothing in this Order authorizes the taking, attempted taking, killing, pursuing, harassing, harming, molesting, capturing, possessing, or transporting of any species (or the nest or eggs of any species) listed under Rule 68A-27, F.A.C or under the Federal Endangered Species Act, nor does this order relieve anyone from complying with any other statute, rule, or order of the FWC.

(c) Nothing herein shall be construed to infringe upon private property rights of owners of non-state owned submerged lands.

(d) Activities, materials and devices authorized under this Order must be removed and disposed of as soon as practicable after the structures, devices, or activities:

(1) Have lost their effectiveness in collecting and retaining oil, or otherwise are no longer functioning as intended;

(2) Are no longer needed to absorb, collect, or contain oil after the threat of contamination has subsided, or;

(3) Have fallen into disrepair, have become hazardous, or are adversely affecting, or have the potential to adversely affect, the environment, navigation, or the property of others; or otherwise have the potential to be a continuing source of pollution.

(e) The nature, timing, and sequence of preventative measures authorized under this Order shall be conducted in such a manner as to provide protection to, and so as to not disturb, native salt-tolerant vegetation and listed species and their habitat, including threatened or endangered marine turtles, endangered manatees, endangered beach mice, endangered plant communities, and migratory shorebirds to the greatest extent practicable. Such activities shall minimize to the greatest extent practicable entanglement hazards for marine turtles and must avoid dune habitat known to be occupied by beach mice, marked marine turtle nests, and nesting shorebirds.

C. GENERAL PROVISIONS

1. General Limitations

The Department issues this Emergency Final Order solely to address the emergency created by the Spill. This Order shall not be construed to authorize any activity within the jurisdiction of the Department except in accordance with the express terms of this Order. Under no circumstances shall anything contained in this Order be construed to authorize the repair, replacement, or reconstruction of any type of unauthorized or illegal

structure, habitable or otherwise. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

2. Suspension of Statutes and Rules

(a) Within the Emergency Area, the requirements and effects of statutes and rules which conflict with the provisions of this Order are suspended to the extent necessary to implement this Order.

(b) To the extent that any requirement to obtain a permit, consent of use, or other authorization is waived by this Order, it should also be construed that the procedural requirements for obtaining such permit, consent of use or other authorization, including requirements for fees and publication of notices, are suspended for the duration of this order.

(c) Field authorizations and emergency permits will be evaluated in accordance with the non-procedural requirements, standards, and criteria of the applicable rules of the Department and the Board of Trustees.

3. Interagency Coordination

The Department shall coordinate with the FWC on protected and imperiled species issues during the review of field authorizations and emergency permits.

4. Other Authorizations Required

This Order only provides relief from the specific regulatory and proprietary requirements addressed herein for the duration of the Order, and does not provide relief from the requirements of other federal, state, water management districts, and local agencies. This Order therefore does not negate the need to obtain any other required permits or authorizations, nor from the need to comply with all the

requirements of those agencies. This Order does not provide relief from any of the requirements of the Florida Statutes regarding registered professionals.

Activities subject to Federal consistency review that are emergency actions necessary for the repair of immediate, demonstrable threats to public health or safety are consistent with the Florida Coastal Management Program if conducted in strict conformance with this Order.

5. Expiration Date

This Emergency Final Order shall take effect immediately upon execution by the Secretary of the Department, and shall expire on June 29, 2010, unless modified or extended by further order.

6. Violation of Conditions of Emergency Final Order

Failure to comply with any condition set forth in this Order shall constitute a violation of a Department Final Order under Chapters 161, 253, 258, 373, 376, and 403, F.S., and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

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.

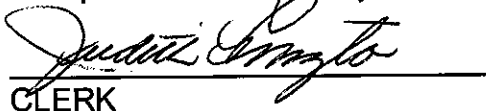
DONE AND ORDERED on this 12th day of May, 2010, in Tallahassee, Florida.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION



Michael W. Sole, Secretary
3900 Commonwealth Blvd
Tallahassee, FL 32399-3000

FILED on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.


CLERK

DATE: 05/12/2010