

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

IN RE:

**EMERGENCY FINAL ORDER DECLARING
AN EMERGENCY RELATING
TO PERMITTING OF ACTIVITIES UNDER
CHAPTERS 373, 403, AND 120, FLORIDA STATUTES
AND FOR PROACTIVE MEASURES
IN RESPONSE TO THE DEEPWATER HORIZON OIL SPILL**

EXECUTIVE DIRECTOR FINAL ORDER NO. 10-01

Under sections 373.119, 120.569(2)(n) and 252.36 of the Florida Statutes ("F.S."), and upon consideration of the State of Florida Executive Orders Nos. 10-99 and 10-100, issued for the Deepwater Horizons Oil Spill, and the following findings of fact, David A. Still, Executive Director of the Suwannee River Water Management District ("District"), at 9225 County Road 49, Live Oak, Florida, enters this Emergency Final Order ("Order") in response to the imminent or immediate danger to the public health, safety, and welfare of residents within the District to remove impediments posed by statutory and rule permitting requirements to delivery of emergency assistance to private persons and governmental entities affected by the Deepwater Horizon Oil Spill ("Spill").

FINDINGS OF FACT

1. On April 30, 2010, Governor Charlie Crist issued Executive Order No. 10-99 declaring a state of emergency for specific coastal counties in northeast Florida based on serious threat to the public health, safety, and welfare posed by the Spill.
2. On May 3, 2010, Governor Charlie Crist issued Executive Order No. 10-100 amending Executive Order No. 10-99 to include Jefferson, Taylor, Dixie, Levy, and other coastal counties.
3. The Governor's Executive Order No. 10-99 authorizes deviations, waivers, suspension pertaining to statutory requirements in order to respond in a timely manner to protect natural resources, beaches and other coastal ecosystems, communities and the general welfare of the State.
4. The Florida Department of Environmental Protection issued a Final Emergency Order that contained provisions to suspend specific statutes and expedite specific authorizations, including Chapters 373 and 403, F.S. and rules adopted thereunder.

CONCLUSION OF LAW

5. Based on the findings recited above, it is hereby concluded that an emergency has been caused by the Spill continues to pose an immediate danger to the public health, safety, or welfare and requiring immediate action.
6. The Executive Director of the District is duly authorized by Section 373.119(2), F.S. to declare that an emergency exists requiring immediate action to protect health, safety, and welfare and authorizing such action as the executive Director deems necessary to meet the emergency.
7. Under State of Florida Executive Order Nos. 10-99 and 10-100, and Sections 120.569(2)(n) and 252.36, F.S., the Executive Director is authorized to issued this Emergency Final Order.
8. 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.

ORDER

9. The staff and equipment of the Suwannee River Water Management District are placed on emergency standby to assist any federal, state, county, municipal or local government in managing any emergency resulting from the Spill.
10. An emergency is declared for the counties of Jefferson, Taylor, Dixie, and Levy. Within the Emergency Areas, for those entities requiring emergency action due to the adverse effects of the Spill, permitting activities pursuant to Chapters 40B-2, 40B-4, and 40B-400, Florida Administrative Code ("F.A.C.") shall be undertaken in accordance with the procedures set forth herein to facilitate and expedite the Spill prevention, containment, and recovery activities.

A. ENVIRONMENTAL RESOURCE AND SURFACE WATER MANAGEMENT ACTIVITIES

Definitions

11. For purposes of paragraph 12 of this Order, the term "drainage system" includes ditches, canals, ponds, swales, and other surface water conveyances; dams, weirs, dikes, and levees; and underdrains, outfalls, and associated water control structures.

Authorizations

The District 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 District 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. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

The following activities may be undertaken for prevention, containment, and recovery activities associated with the Spill. This Order does not authorize the construction of structures that did not exist prior to the emergency, unless specifically authorized below.

12. No Notice Required Landward of the Coastal Construction Control Line

The following activities may be conducted without notification to the District:

The following activities are authorized to be undertaken pursuant to Part IV of Chapter 373, F.S., and the applicable rules adopted thereunder, by BP and its contractors and by governmental entities and their contractors to contain, prevent, and recover 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 methods approved by the Department of Environmental Protection.

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. Any restored shorelines susceptible to erosion, other than areas seaward of a coastal construction control line, shall be stabilized with vegetation or rock riprap to prevent erosion.

e. Oil spill response plans developed by governmental entities for activities to take place in surface water systems, wetlands, and drainage systems may be reviewed and approved by the District 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 natural systems that may be or that become affected by the Spill.

13. General Conditions

a. All activities conducted under paragraph 12 shall be performed using appropriate best management practices. For activities conducted in or discharging to wetlands or other surface waters, best management practices include properly installed and maintained erosion and turbidity control devices to prevent erosion and shoaling, to control turbidity, and to prevent violations of state water quality standards.

b. This shall not constitute authorization to fill submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund.

c. Environmental resource, surface water management, dredge and fill, stormwater, and coastal construction control line permits shall be required following provisions of statute and rule for other activities not authorized above that do not otherwise qualify as an exempt activity under statute or rule.

d. The removal or deepening of plugs formerly separating canals from other waters is specifically not authorized by this Order. All activities shall be accomplished so as not to disturb marked marine turtle nests or known nest locations or damage existing native salt-tolerant or submerged vegetation, threatened and endangered species and historical and archeological resources.

e. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

f. Other activities not described above shall be regulated in accordance with Parts II and IV of Chapter 373 of the Florida Statutes, and the rules adopted thereunder.

g. Activities authorized under this Order must be commenced before the expiration of this Order or at such time as directed by an Authorized Representative listed in paragraph 16 below. Activities authorized under this Order must be commenced before the expiration of this Order unless otherwise provided in a field authorization. The deadline for commencement under any field authorization issued under this Order may be extended on a showing that contractors or supplies are not available to commence the work, or if additional time is needed to obtain any required authorization from the U.S. Army Corps of Engineers.

h. This Order only serves as an alternative emergency process under the statutes and rules implemented by the District for the duration of the Order and does not have any effect upon the requirements of other federal, state, water management districts, and local agencies. This Order therefore does not negate the need for the property owner to obtain any other required permits or authorizations of any other local, state or federal agency, or the need to comply with all the requirements of those agencies.

B. WATER USE PERMITTING

14. Existing Permits –

a. Compliance – The Authorized Representatives set for in paragraph 16 below may defer compliance with any of the terms and conditions of a water use permit for such time as is necessary to address the emergency. By way of example, the Authorized Representatives may defer annual average, maximum daily, and peak month quantities, and source and use designations. The deferment may be conditioned as appropriate to protect public health, safety and welfare both during the emergency and for a period once normal operations under the permit resume.

b. Modifications – The Authorized Representatives may issue authorizations modifying any of the terms and conditions of a water use permit as necessary to address the emergency. By way of example, the Authorized Representatives may allow replacement wells, or sources to be used permanently under the permit. The modification may be conditioned as appropriate to protect public health, safety and welfare both during the emergency and once normal operations under the permit resume.

c. Field Approvals – For the authorizations and deferments set forth in this paragraph 14, temporary field authorizations may be issued by District personnel following a site inspection that will then be transmitted for approval to an Authorized Representative. Temporary field authorizations, if approved may be modified or conditioned by the Authorized Representative. All approvals shall be created and maintained by District staff, with a copy to the permittee.

15. Activities Requiring Permits –

a. The Authorized Representatives may allow activities that require a permit to be undertaken on an emergency basis as necessary to address the emergency. By way of example, commencing withdrawals that have not been previously authorized to provide necessary water for public or private use. The emergency authorization may be conditioned as appropriate to protect public health, safety and welfare both during the emergency and once normal conditions return.

b. Field Approvals – for the authorizations set forth in this paragraph 15, temporary field authorizations may be issued by District personnel following a site inspection that will then be transmitted for approval to an Authorized Representative. Temporary field authorizations, if approved may be modified or conditioned by the Authorized Representative. All approvals shall be created and maintained by District staff, with a copy to the entity authorized to undertake the activity.

C. GENERAL PROVISIONS

16. Authorized Representatives – The persons authorized to represent the Executive Director and issue authorizations and permits under this Order in addition to the

Executive Director are the Assistant Executive Director, Water Supply and Resource Management Director, and Senior Professional Engineers.

17. Notices and Deadlines – Notice of non-compliance with permits, consent orders and all other notices requiring action by a public or private entity under Chapter 40B, F.A.C. are deferred until June 30, 2010, for those entities in need of emergency relief from those requirements due to the effects on them from the Spill. All deadlines imposed by any statute or rule governing permitting are tolled for 30 days from the date of the Governor's Order.
18. General Limitations – This Order is issued solely to address the emergency created by the Spill within the Emergency Areas for those entities affected by the Spill. This Order shall not be construed to authorize any activity within the jurisdiction of the District 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.
19. Other Authorizations Required – Nothing in this Order shall eliminate the necessity for obtaining any other federal, state, or local permits or other authorizations that may be required.
20. Commencement and Completion of Authorized Activities – All activities authorized under this Order must be commenced before the expiration of this Order unless otherwise provided in a field authorization or permit. The deadline for commencement under any field authorization or permit issued under this Order may be extended on a showing that contractors or supplies are not available to commence the work or if additional time is needed to obtain any required authorization from the U.S. Army Corps of Engineers. Any permit issued pursuant to Chapters 18-21, 40B-2, 40B-4, and 40B-400 that require an Authorized Representative's Authorization must be completed by the expiration date as included in the approval of the Authorized Representative. Activities not completed by that expiration date are subject to the regulatory and proprietary authorizations required prior to the execution of this Order.
21. Expiration Date – This Order shall continue in effect in accordance with its terms until public health, safety and welfare are restored, unless modified or extended by further order.
22. Violation of Conditions of Emergency Final Order – Failure to comply with any condition set forth in this Order shall constitute a violation of a District final order under Chapters 120, 161, 253, 258, 373, 376, and 403, Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

DONE AND ORDERED in Suwannee County, Florida, as of June 1, 2010.

Suwannee River Water
Management District

By: 

David Still
Executive Director

Filed this date, pursuant to
Section 120.52 Florida Statutes,
with the Designated District Deputy
Clerk, receipt of which is hereby
acknowledged.



Clerk

DATE: 6.1.2010

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NOTICE OF RIGHTS

Persons to whom this Executive Director Order is directed, or whose substantial interests are affected, may request pursuant to Section 373.119(3), Florida Statutes, to petition for an administrative hearing in accordance with Sections 120.569 and 120.57, Florida Statutes, and Chapter 28-106, F.A.C. A request for a hearing must: (1) explain how the petitioner's or the other person's substantial interests will be affected by the District's action; (2) state all material facts disputed by the petitioner or other person, or state that there are no disputed facts; and (3) otherwise comply with Chapter 28-106, F.A.C.

A request for hearing must be filed with and received by the Agency Clerk of the District at the District's address within 21 days of receipt of this notice. Receipt is deemed to be the fifth day after the date on which this notice is deposited in the United States mail. Failure to file a request for hearing within this time period shall constitute a waiver of any right you or any other person may have to request a hearing under Sections 120.569 and 120.57, Florida Statutes.

Mediation pursuant to Section 120.573, Florida Statutes and Rule 28.106.111, F.A.C. to settle an administrative dispute regarding the District's action in this matter is not available prior to the filing of a request for hearing.

In accordance with Section 120.569(1), Florida Statutes, the following additional administrative or judicial review may be available.

A party who is adversely affected by final agency action may seek review of the action in the appropriate District Court of Appeal pursuant to Section 120.68, Florida Statutes, by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, within thirty (30) days after the rendering of the final action by the District.

PURSUANT TO SECTION 373.119(3), F.S., AND NOTWITHSTANDING ANY OTHER PROVISION UNDER CHAPTER 120, FLORIDA STATUTES, PERSONS TO WHOM THE ORDER IS DIRECTED SHALL COMPLY THEREWITH IMMEDIATELY, AND THE TIMELY FILING OF A PETITION SHALL NOT STAY SUCH PERSON'S OBLIGATION TO MAINTAIN SUCH COMPLIANCE DURING THE PENDENCY OF ANY ADMINISTRATIVE PROCEEDING.