

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**EMERGENCY AUTHORIZATION TO REIMBURSE
MONEY EXPENDED FOR CONDUCTING NATURAL
RESOURCE DAMAGE ASSESSMENT ACTIVITIES
MADE NECESSARY BY THE DEEPWATER HORIZON
OIL SPILL**

OGC NO. 10-1959

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”) 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”). 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; refinements of this estimate are ongoing. 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. This area shall herein be referred to as the "Emergency Area."

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 exists 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. 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 is necessary to conduct pre-assessment and assessment of the damages to natural resources as part of the Natural Resource Damage Assessment ("NRDA") process for establishing a damage claim against the parties responsible for the Spill.

4. 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.

5. 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.

6. Oil associated with the Deepwater Horizon incident has 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. Now that the oil from the Spill has reached Florida's salt waters and beaches, assessment of the injury to Florida's natural resources is underway.

7. 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 of Florida's natural resource damages.

8. 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 an immediate danger to the public health, safety, or welfare and requires an immediate order of the Department to ensure timely assessment of the damage to Florida's natural resources caused by the Spill.

2. Under State of Florida Executive Order Nos. 10-99, 10-100, 10-106, and 10-132 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, 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. 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.

C. 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.

D. 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.

E. 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 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 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 1st day of JULY, 2010, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



MICHAEL W. SOLE

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.


CLERK
DATE

Exhibit A

**NRDA Deepwater Horizon
Reimbursement Application**

1. Complete the following information specific to this project. Call 850-245-2094 for assistance.

Print or Type			
Agency/Entity Name		Telephone Number	website address
Address	City	County	Zip Code
Mailing Address (if different)	City	County	Zip Code
Contact Person	Telephone Number	E-mail Address	
Alternate Contact Person	Telephone Number	E-mail Address	

2. Amount of Reimbursement Request _____

3. Project Title/Description _____

4. State the period of time over which the expenses you are seeking reimbursement for were incurred.

5. Provide a map indicating the assessment area (provide GPS data if available)

- Map is included with the application ___ Yes ___ No
- GPS coordinates of sampling locations if available (provide in a separate table)

6. Reimbursement Request

Category	Cost	Brief description of expenditures
Salaries		
Expenses		
Equipment Purchase & Installation		
Equipment Use		
Maintenance & Repair		
Contracted Services		
Other (Please list)		
TOTAL PROJECT COST		

Please identify/list all other expenditures which may be warranted in order to receive funding approval. Explain below (optional)

7. **By signing this Application, the applicant certifies that no portion of this reimbursement request has been paid by any other entity. There will be no double recovery for NRDA damage assessment costs incurred by any applicant. Has the applicant applied for reimbursement to any other entity for the NRDA costs the applicant is seeking to have reimbursed by the Department? _____**
If the answer is yes, state the name(s) and address(es) of the entity(ies) to which the applicant applied for reimbursement and the date(s) the application(s) for reimbursement was(were) made.

8. **Attach Sampling Plans or describe in detail the following aspects of the Project:** Please visit the nrdata.org website for more information about NRDA sampling protocols, sampling plans, and locations of samples already taken before proceeding.

- a. Explain why this sampling is being done or was done, how it will be utilized in natural resource damage assessment, and all entities involved in the sampling.
- b. Specify what parameters were or will be sampled and analyzed, sample locations, and field protocols utilized (NRDA or other).
- c. Provide chain of custody forms, field forms, and lab forms related to the sample collections.
- d. Specify which laboratory analyzed or will analyze the data and what protocols and analytical methods (including sample preservation, minimum detectable limits and holding time information) were or will be utilized in the analysis (NRDA or other). Is the lab NELAP certified?
- e. Was this sampling requested by any state or federal agency involved in the NRDA process? Provide contact information.
- f. Will or has the data been through any QA/QC process for validation? Explain.
- g. Is this sampling part of baseline collection, pre-assessment, or injury assessment sampling for NRDA? Explain.
- h. Provide maps of the sampling locations along with GPS coordinates, etc for all data collected.
- i. Provide the data collected or the location of samples and when the data can be expected to be delivered to the Department.
- j. Provide any other pertinent information concerning the damage assessment activity conducted or proposed.

9. **If the applicant is applying for reimbursement of expenses incurred prior to July1, 2010, attach 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.**

Note: Registration in the MyFloridaMarketPlace Vendor system is required before payment can be processed.

APPLICANT SIGNATURE

DATE

PRINT NAME

If there are questions please call the Coastal and Aquatic Managed Areas Office at 850-245- 2094

Please mail or email the Reimbursement application to:

Lee Edmiston, Director

Coastal and Aquatic Managed Areas Office

Florida Department of Environmental Protection

3900 Commonwealth Boulevard, Mail Station 235

Tallahassee, Florida 32399-3000

Email: Lee.edmiston@dep.state.fl.us