

62-45.001 Authority, Intent and Policy.

(1) This chapter is promulgated under the authority of Sections 403.061(26) and 403.816(1), F.S.

(2) It is the intent of this chapter to establish a permitting system for maintenance dredging in deep water commercial navigation areas of the ports listed in Rule 62-45.020, F.A.C. This chapter incorporates standards and criteria which recognize the present most beneficial use of these waters for deep water commercial navigation. Since the implementation of a comprehensive maintenance dredging management plan is a major factor in determining the adequacy of a long-term maintenance dredging program, it is the further intent of this chapter to give a position of prominence to such a plan within this permit system.

(3) It is the policy of the Department to provide a regulatory process which will enable the ports to conduct maintenance dredging in an environmentally sound, expeditious and efficient manner.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Formerly 17-45.01, 17-45.001.

62-45.020 Scope.

(1) The permit system established by this chapter applies only to the ports of Ft. Pierce, Jacksonville, Miami, Palm Beach, Panama City, Pensacola, Port Canaveral, Port Everglades, Port Manatee, Port St. Joe, St. Petersburg, and Tampa.

(2) The activities which may be included within a permit issued under this chapter are limited to maintenance dredging and disposal of the maintenance dredged material.

(3) Applicants for permits under this chapter are limited to the port authorities or private interests using the port for deep water commercial shipping and the U.S. Army Corps of Engineers. The Department shall not issue separate permits to the port authority or private interests and the U. S. Army Corps of Engineers when the responsibility of maintenance dredging or the disposal of the maintenance dredged material from the port is shared by any of the parties. The permit, if issued, shall clearly specify the duties and responsibilities of each party.

(4) A permit may be issued for any length of time up to 25 years. There shall be no more than one such permit for each of the ports listed in subsection (1).

(5) The area within which work under this permit system may take place is limited to the federally maintained, port authority maintained, or private interest maintained navigation channels, turning basins, or harbor berths associated with deep water commercial navigation and associated dredged material disposal sites. Eligible port maintenance dredging areas are depicted on NOS Charts Nos. 11491 (Port of Jacksonville), 11478 (Port Canaveral), 11475 (Fort Pierce Harbor), 11466 (Port of Palm Beach), 11468 (Port of Miami), 11470 (Port Everglades), 11413 (Tampa Bay, Northern Part), 11414 (Tampa Bay, Southern Part), 11393 (Port St. Joe), 11391 (Panama City), and 11383 (Port of Pensacola) on file with the Department and adopted here by reference. Copies are available at cost upon request from the Office of Beaches and Coastal Systems, 3900 Commonwealth Boulevard, MS 300, Tallahassee, Florida 32399-3000.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Amended 10-16-84, Formerly 17-45.02, 17-45.020.

62-45.030 Prohibitions.

(1) Any stationary installation which will reasonably be expected to be a source of pollution shall not be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the Department, unless the source of pollution is exempted by statute or rule. The Department may issue such permit only after it is assured that the installation will not cause pollution in violation of any of the provisions of Chapter 403, F.S., or the rules promulgated thereunder.

(2) No person, without written authorization of the Department, shall discharge into waters of the State any waste which, by itself or in combination with the wastes of other sources, reduces the quality of the receiving waters below the classification established for them.

(3) No dredging of new channels, basins or berths, or deepening of existing channels, basins or berths beyond previously permitted and dredged depths shall be authorized under this chapter, except for advance maintenance dredging when it is clearly demonstrated that such maintenance dredging is necessary and the conditions for such dredging are set forth in the permit.

(4) Maintenance dredging by a port, by the contractor to a port, by a lessee to a port, or by a private interest of any area not identified in Rule 62-45.020, F.A.C., shall not be permitted pursuant to this chapter. Such permitting shall follow the provisions of Chapter 62-4, F.A.C.

(5) No material shall be deposited in a dredged material disposal site permitted under this chapter unless specifically authorized by a long-term permit. Further, no disposal site(s) authorized to be used in a long-term permit shall be sold, leased, or otherwise conveyed so as to prevent its use as a disposal site under the long-term permit without prior written authorization of the Department in accordance with Rule 62-45.110, F.A.C.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.088, 403.816 FS. History—New 3-28-84, Formerly 17-45.03, 17-45.030.

62-45.040 Definitions.

For the purposes of this chapter the following definitions shall apply. However, definitions contained in other chapters of department rules may be used to clarify the meaning of any other terms used in this chapter unless transfer of the definitions would defeat the purpose or alter the intended effect of the provisions of this chapter.

(1) “Advanced maintenance dredging” means dredging in anticipation of localized shoaling to prolong intervals between maintenance dredging events.

(2) “Long-term permit” means a permit issued pursuant to this chapter for any period of time up to but not exceeding 25 years.

(3) “Maintenance dredging” means the removal of shoaling or sedimentation in existing navigation channels, turning basins, and harbor berths associated with deep water, commercial shipping in the ports listed in subsection 62-45.020(1), F.A.C. For the purposes of this chapter, maintenance dredging shall include advance maintenance as set forth in subsection 62-45.030(3), F.A.C.

(4) “Modification of a specific permit condition” means the alteration of a specific permit condition which changes its effect or meaning, or the addition or deletion of a specific permit condition.

(5) “Modification of the project” means the addition, enlargement, or deletion of maintenance dredge areas or dredged material disposal sites authorized by the permit.

(6) “Port authority” means the legislatively established port authority or other administrative body operating one of the ports listed in subsection 62-45.020(1), F.A.C.

(7) “Specific permit conditions” means any binding requirements which have been made conditions of a particular permit including, but not limited to, an operational practice, a zone of mixing, a management practice, the monitoring program, the recordkeeping and reporting program, a compliance schedule for the development of a Port-Wide Long-Term Maintenance Dredged Material Management Plan, or the Plan itself.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Formerly 17-45.04, 17-45.040.

62-45.050 Permit Requirement.

Unless exempt from the permit process under Rule 62-4.040, F.A.C., maintenance dredging within port waters as defined in subsection 62-45.020(5), F.A.C. shall not be undertaken without a permit issued under this chapter or Chapter 62-4, F.A.C.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Formerly 17-45.05, 17-45.050.

62-45.060 Procedure to Obtain Permit.

(1) Preapplication Meeting(s).

(a) A preapplication meeting(s) between an applicant who intends to apply for a permit under this chapter and the Department is strongly recommended to define data needs, clarify port-specific issues to be addressed in the application, narrow the parameters of concern and develop the scope of work necessary for a complete application.

(b) At the conclusion of the preapplication meeting(s) the parties should enter into a preapplication stipulation detailing the scope of information, sampling program, data requirements and interpretations, dredging and dredged material disposal methods and management, dredged material disposal site engineering design, and other information required for a complete application.

(c) If a stipulation is entered into, the applicant shall publish in accordance with the requirements of subsection 62-45.060(4), F.A.C., a notice advising the general public that he and the department intend to enter into a preapplication stipulation on a complete application and provide the public an opportunity to request a hearing to determine the adequacy of the stipulation. The notice shall read as follows:

“Notice of Stipulation Between the (applicant) and the Department of Environmental Protection”.

“The Department of Environmental Protection gives notice of its intent to enter into a stipulation setting forth the data and information required for a complete application for a long-term permit for maintenance dredging and disposal of the maintenance dredged material from (name of port).”

“The proposed stipulation is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).”

Persons whose substantial interests are affected by the above proposed agency action have a right, pursuant to Sections 120.569 and 120.57, F.S., to petition for an administrative determination (hearing) on the proposed action. The Petition must conform to the requirements of Rules 62-110.106, and 28-106.201 or 28-106.301, F.A.C., and must be filed (received) with the Department’s Office of General Counsel, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000, within fourteen (14) days of publication of this notice. Failure to file a petition within the fourteen (14) days constitutes a waiver of any right such person has to an administrative determination (hearing) pursuant to Sections 120.569 and 120.57, F.S.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department’s final action may be different from the proposed agency action. Persons whose substantial interests will be affected by any decision of the Department have the right to intervene in the proceeding. A petition for intervention must be filed pursuant to Uniform Rule 28-106.205, F.A.C., at least five (5) days before the final hearing and be filed with the Administrative Law Judge, if one has been assigned at the Division of Administrative Hearings, Department of Administration, 1230 Apalachee Parkway, Tallahassee, Florida 32301. If no Administrative Law Judge has been assigned, the petition is to be filed with the Department’s Office of General Counsel, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such person has to an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

(2) Application for Permit.

(a) Application for a permit under this chapter shall use DEP Form 62-312.900(4) (Formerly DEP Form 62-1.203(6)) and shall be supported by information and technical studies required by the Department. Such information and data may have been stipulated in accordance with subsection (1) in preapplication meeting(s).

(b) Four copies of the application and supporting documentation shall be submitted by the applicant to the Department.

(c) All technical studies and other data required to complete the application shall be undertaken by the applicant, at the applicant’s expense.

(d) An application fee shall be submitted with each application in accordance with the schedule contained in subsection 62-12.060(14), F.A.C.

(e) Application for a permit shall constitute application for water quality certification where necessary.

(3) Department Review.

(a) Within 30 days after receipt of an application, the Department shall examine the application, notify the applicant of any apparent errors or omissions, and request any additional information which is required for the application or has been specified in the preapplication stipulation. The Department may deny a permit if the applicant, after receiving timely notice, fails to correct errors or omissions or supply additional information within a reasonable period of time.

(b) Upon receipt of the original completed application or receipt of the timely requested additional information or correction of errors or omissions, the Department shall forward a copy of the application to the Florida Fish and Wildlife Conservation Commission, the Office of Entomology Department of Health, the governing body of the local government(s) in which the activity is located, and other governmental agencies which have an interest in the proposed project, for their review and comments. Submission of the application to the local government shall be within 10 days of receipt of the application for a permit regardless of its completeness.

(c) Pursuant to Section 253.77, F.S., the applicant shall not commence permitted activities prior to receipt from the Board of Trustees of the Internal Improvement Trust Fund or the Department of all required leases, easements, or other forms of consent of use.

(d) Every application for a permit shall be approved or denied within 90 days after receipt of the original completed application or receipt of the timely requested additional information or correction of errors or omissions. The 90 day period shall be tolled by the initiation of a proceeding under Sections 120.569 and 120.57, F.S., and shall resume 10 days after the recommended order is submitted to the Department and the parties. Any application for a permit not approved or denied within the 90 day period, within 15

days after conclusion of a public hearing held on the application, or within 45 days after the recommended order is submitted to the Department and the parties, whichever is latest, shall be deemed approved.

(4) Notice.

(a) After a determination of proposed agency action, the applicant shall publish, at his expense, a Notice of Proposed Agency Action. This notice shall be published one time only in a newspaper of general circulation in the county or counties in which the site is located. The applicant shall publish the notice as soon as possible after notification by the Department of its intended action, and no later than 14 days prior to final agency action. The applicant shall provide proof of publication to the Department within 7 days of publication.

(b) The public notice shall be surrounded by a prominent black border with a three-column heading in bold letters: "Notice of Proposed Agency Action on an Application for the Port of (name)". The notice shall be prepared by the Department and shall contain:

1. Name of applicant, brief description of the proposed activity, and its location;
2. Location of the application and its availability;
3. Statement of the Department's intended action; and
4. Notification of opportunity for administrative hearing.

(c) The notice shall read as follows:

"Notice of Proposed Agency Action on an Application for the Port of (name)"

"The Department of Environmental Protection gives notice of its intent to (issue) (deny) a long-term maintenance dredging permit to (name of applicant) to (brief description of project)."

A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative proceeding (hearing) in accordance with Sections 120.569 and 120.57, F.S. The petition must conform to the requirements of Rules 62-110.106, and 28-106.201 or 28-106.301, F.A.C., and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000, within fourteen (14) days of publication of this notice. Failure to file a request for hearing within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this preliminary statement. Persons whose substantial interests will be affected by any decision of the Department have the right to intervene in the proceeding. A petition for intervention must be filed pursuant to Uniform Rule 28-106.205, F.A.C., at least five (5) days before the final hearing and be filed with the Hearing Officer, if one has been assigned, at the Division of Administrative Hearings, Department of Administration, 1230 Apalachee Parkway, Tallahassee, Florida 32301. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, F.S.

"The application is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office)."

Specific Authority 403.061(7), 403.087(6), 403.805(1) FS. Law Implemented 403.087(6), 403.816 FS. History--New 3-28-84, Amended 10-16-84, 8-28-85, Formerly 17-45.06, 17-45.060.

62-45.070 Phase I.

(1) Purpose.

Phase I of the permit commences upon permit issuance and has a term of up to 5 years as specified in the specific permit conditions. Phase I shall be the period of time used to verify the predicted or expected effects of the permitted activities when conducted in accordance with the terms and conditions of the permit.

(2) Monitoring.

(a) Monitoring of water and sediment quality or aquatic resources may be required to supplement information obtained before application for permit.

(b) Operational monitoring shall be required to determine adequacy of performance and effectiveness of specific permit conditions.

(c) All sampling, laboratory analysis, and data collection shall be in accordance with the methodology set forth in the

publications referenced in Rule 62-45.150, F.A.C., including quality assurance procedures.

(3) Recordkeeping and Reporting.

During Phase I, operational and monitoring reports shall be submitted as required by specific permit conditions. These reports shall be reviewed by the Department, and if these reports or any other data received by the Department indicate that the requirements of any specific permit condition are not achieving the required water quality standards or affording adequate protection to the aquatic natural resources, the permittee shall be advised by the Department. The permittee shall be afforded the opportunity to resolve the problem. The permittee may informally consult with the Department. If the problem is not resolved, the permit shall be suspended or revoked in accordance with Rule 62-45.100, F.A.C.

(4) Transition to Phase II.

(a) If the reports required by the Phase I permit or other pertinent reliable data indicate operational achievement of water quality standards, protection of aquatic resources, and satisfactory development of and compliance with a Port-Wide Long-Term Maintenance Dredged Material Management Plan in accordance with Rule 62-45.190, F.A.C., the Department shall notify the permittee and any interested parties of its intent to initiate Phase II of the permit. If there are no substantive objections filed in response to a public notice published in accordance with subsection 62-45.060(4), F.A.C., the Department shall initiate Phase II by written notice to the permittee.

(b) If conditions arise as described in subsection 62-45.070(3), F.A.C., which cannot be resolved in permit modification by mutual agreement of the permittee and the Department, then Phase II of the permit may not be entered without a Final Order requiring entry into Phase II issued pursuant to Chapter 28-106, F.A.C.

(c) If conditions arise as described in subsection 62-45.070(3), F.A.C., which require a greater time for testing or correction than remains in Phase I, Phase I may be extended for a period of time sufficient to include a demonstration of the effectiveness of the management practices permitted for the maintenance dredging and for the disposal of maintenance dredged material.

(d) The Secretary may issue a variance to the permittee for the parameter(s) in violation, after public notice and opportunity for hearing in accordance with Section 403.201, F.S., in the event it is:

1. Determined through review of periodic monitoring reports, five-year comprehensive review, or any other means that dredging operations are producing pollution in violation of the water quality standards of Chapter 62-4 or 62-302, F.A.C., outside the assigned mixing zones; and
2. Determined that the permittee, his contractors and agents are adhering to all terms and conditions of the permit; and
3. Determined that there is no other practicable way to conduct the operations in question which would reduce the degree of pollution to levels meeting the standards of Chapters 62-4 and 62-302, F.A.C.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Amended 10-16-84, Formerly 17-45.07, 17-45.070.

62-45.080 Phase II.

(1) The specific permit conditions of Phase II shall include, but not be limited to:

- (a) Phase I conditions, adjusted as necessary,
- (b) A functional Port-Wide Long-Term Maintenance Dredged Material Management Plan,
- (c) A modified monitoring program to reflect the operational character of Phase II, and
- (d) Appropriate recordkeeping and reporting.

(2) The term of Phase II shall be stated in the notice of entry into Phase II and shall be no greater than the number of years which when added to the term of Phase I and any Phase I extension is equal to 25 years.

(3) Monitoring.

(a) The water and sediment quality or aquatic resources monitoring described in subsection 62-45.070(2), F.A.C., shall be reviewed by the Department and such monitoring shall be continued as appropriate in order to address concerns identified in Phase I of the permit. However, the stations, frequency and parameters may be adjusted to reflect knowledge of port conditions gained by monitoring during Phase I.

(b) Operational monitoring as described in subsection 62-45.070(2), F.A.C., shall be required.

(4) Department Review.

(a) Monitoring and operational reports shall be reviewed by the Department and any significant deviations from expected

results, indications of trends toward higher pollution levels or other evidence of problem areas shall be communicated to the permittee, and consultation with the permittee for problem resolution shall be undertaken.

(b) A comprehensive review of the permit shall be conducted by the Department at the end of every fifth year of Phase II. The topics of review shall include, but not be limited to:

1. Zones of mixing,
2. Specific permit conditions,
3. Maintenance dredged material disposal capability, and
4. The Port-Wide Long-Term Maintenance Dredged Material Management Plan as described in Rule 62-45.190, F.A.C.

(c) Interim review or inspection of maintenance dredging or maintenance dredged material management operations may be undertaken as deemed necessary by the Department.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History--New 3-28-84, Formerly 17-45.08, 17-45.080.

62-45.090 Malfunctions or Emergencies.

(1) Any malfunction of equipment or structures associated with permitted maintenance dredging or maintenance dredged material transportation or storage resulting in a violation of the permit or of water quality standards shall be reported to the appropriate district office of the Department by direct conversation, telephone, or telegram within 24 hours of the violation. A written report may be required by the Department. The report, verbal or written, shall include the date, time and location of the violation, the approximate volume of the discharge, its probable effects on water or sediment quality and aquatic resources, steps taken by the permittee or the contractor to halt or correct the violation and the steps and methods of proposed clean-up.

(2) Other emergencies such as storms, navigational accidents, or other unanticipated events, resulting in conditions, or requiring the permittee to conduct operations, which will violate permit conditions also shall be reported to the appropriate district office of the Department following the procedures set forth in subsection (1) above.

(3) Report of a violation does not relieve the permittee of any liabilities set forth in Sections 403.121, 403.131, 403.141, 403.161, F.S., or the permit.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History--New 3-28-84, Formerly 17-45.09, 17-45.090.

62-45.100 Suspension and Revocation.

(1) Permits shall be effective until suspended, revoked, surrendered, or expired and shall be subject to the provisions of Chapter 403, F.S., and rules of the Department.

(2) Failure to comply with any rule, regulation, order, or permit condition shall be grounds for suspension or revocation of the permit.

(3) Also a permit may be suspended in accordance with Chapter 120, F.S., for:

- (a) Failure to submit monitoring or operational reports or other information required by Department rules;
- (b) Refusal to allow lawful inspections under Section 403.091, F.S.;
- (c) Uncorrected equipment malfunctions;
- (d) Determination by the Department that the maintenance dredged material disposal capacity is inadequate; or
- (e) Any other condition resulting in a violation of the permit, Department rules, or the statutes.

(4) Permit suspension or revocation shall not be effected unless informal consultation has failed to resolve the problem.

(5) A permit suspension shall remain in effect until the cause of the suspension has been corrected. During suspension, no maintenance dredging may take place under this permit. A notice of reinstatement of the permit shall indicate the end of the suspension. The term of the permit shall not be tolled during a suspension.

(6) A permit issued pursuant to this chapter shall not become a vested property right of the permittee.

(7) The Department may revoke, in accordance with Chapter 120, F.S., a permit issued under this chapter if it finds that the permittee or his agent has submitted false or inaccurate information in his application, operation, monitoring or malfunction reports, Port-Wide Long-Term Maintenance Dredged Material Management Plan, or other information required by Department rule or specific permit condition. The permit may also be revoked for repeated violations of any of the grounds for suspension listed in subsection (3).

Specific Authority 403.061, 403.087, 403.805 FS. Law Implemented 403.021, 403.061, 403.087, 403.088, 403.121, 403.141, 403.151, 403.161, 403.816, 403.901-403.915 FS. History—New 3-28-84, Formerly 17-45.10, 17-45.100.

62-45.110 Modifications.

(1) A request for modification of the project which involves the enlargement of or addition to a maintenance dredging area or a maintenance dredged material disposal area, or the deletion of a maintenance dredged material disposal area shall be on DEP Form 62-312.900(4) (Formerly DEP Form 62-1.203(6)) and accompanied by:

- (a) The water and sediment quality or aquatic resources data of each proposed additional area; or
- (b) The data necessary to support the proposed deletion of the disposal area; and
- (c) An update of the Port-Wide Long-Term Maintenance Dredged Material Management Plan incorporating each proposed additional area or each proposed deletion; and
- (d) An application fee as specified in Rule 62-4.050, F.A.C.

(2) A request for modification of the project which involves the deletion of a maintenance dredging area or modification of a permit which involves deletion or alteration of monitoring requirements, required methods of dredging, reporting or recordkeeping requirements shall be submitted by a letter to the Department containing the proposed change and the reasons therefore. Additionally, a request for deletion of a maintenance dredging area shall be accompanied by a plan review drawing showing the proposed deletion. The Department shall respond by letter. If the Department authorizes the request, the Department letter shall be attached to the permit and become a part thereof. No application fee shall be required.

(3) Department review and response to requests for modification of the project in accordance with subsection (1) above shall be handled pursuant to Chapter 120, F.S., and in the same manner as the processing of a Phase I permit.

(4) If a modification of the project is approved by the Department during Phase I of the permit, the Department may extend the term of Phase I if it is necessary to adequately demonstrate compliance with permit conditions.

(5) Modification of the project under Phase II may include an extension of the term of Phase II, however, the total time of Phase I, its extension, Phase II and its extension may not exceed 25 years.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Amended 10-16-84, Formerly 17-45.11, 17-45.110.

62-45.120 Renewals.

No permit issued under this chapter shall be renewed. However, a permittee may apply for and obtain a new permit in accordance with Rule 62-45.080, F.A.C. In the event modifications of the project are requested, the permittee shall apply under Rule 62-45.070, F.A.C.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Formerly 17-45.12, 17-45.120.

62-45.130 Liabilities.

(1) The recipient of a permit issued under this chapter shall be the port authority, a private interest, the U.S. Army Corps of Engineers, or a combination of these persons in accordance with subsection 62-45.020(3), F.A.C.

(2) The permittee shall supervise, control, direct, or act as sponsor for maintenance dredging conducted in the port area pursuant to a permit issued under this chapter, including the disposal of such maintenance dredged material.

(3) Responsibility for implementation of all terms and conditions of the permit and liability for any permit violation or violation of any Department rule or the statutes resulting from any aspect of the maintenance dredging or maintenance dredged material disposal operations shall be with the permittee.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Formerly 17-45.13, 17-45.130.

62-45.140 Transfer of Permit.

A permit issued under this chapter may not be transferred without written authorization by the Department. A private interest or the

U.S. Army Corps of Engineers shall request a transfer of a permit on DEP Form 62-343.900(8). A port authority shall request a transfer of a permit on DEP Form 62-343.900(8), except when the body governing the port is changed. In the latter case, the request shall be by letter which shall include an unequivocal agreement on the part of the new governing body of the port to abide by all the terms and conditions of the permit.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Formerly 17-45.14, 17-45.140.

62-45.150 General Technical Guidance.

(1) Information relating to the spoil capacity of dredged material disposal areas, sediment characteristics, quality and quantity of dredged material, the general water quality of the port waters and associated dredged material disposal areas, potential impacts to proximate areas of biological productivity, and subsequent arthropod and wildlife use of disposal areas if permitted provides a basis for permit decisions and a rationale for requiring specific permit conditions. The methods of data acquisition, analysis and reporting found in the Department's Deepwater Ports Maintenance Dredging and Disposal Manual, or subsequent amendments thereto, are hereby incorporated by reference. Other publications providing general technical guidance, which are hereby incorporated by reference are:

(a) Technical Report EPA/CE-81-1, Environmental Protection Agency/Corps of Engineers Technical Committee on Criteria for Dredged and Fill Material, Procedures for Handling and Chemical Analysis of Sediment and Water Samples (May 1981); and

(b) EPA Methods of Chemical Analysis for Water and Waste (EPA600/479020).

(2) Topics to be discussed and evaluated for inclusion into the scope of work, the Port-Wide Long-Term Maintenance Dredged Material Management Plan and the preapplication stipulation include, but are not limited to:

(a) Sediment grain size analysis, elutriate testing and bulk chemical analysis;

(b) Water quality analysis;

(c) Proposed type of dredging equipment to be used in each reach of the project and proposed method for transporting maintenance dredged material to the disposal site;

(d) Marine or estuarine natural resources within the proposed zone of mixing for the dredging of channels, turning basins and harbor berths;

(e) Marine or estuarine natural resources within the proposed zone of mixing adjacent to the disposal site (the Department generally will ask for this information within at least a 300 meter radius of the disposal site but may request it for a larger area);

(f) Hydrographic analysis of dredged material disposal or of dike construction in waters of the State;

(g) An initial inventory of available disposal sites, their volumetric capabilities, channel and harbor reaches from which dredged material for each site shall be derived, projected dredged material volumes, projected service life of each available disposal site, and information regarding existing disposal area management programs and practices; and

(h) Information on proposed disposal sites, including size, location, estimated capacity, present ownership, method of acquiring, projected date of acquisition, type of construction in preparation for use, source of materials for dike construction, projected general schedule for site preparation, potential for wildlife use, methods to prevent mosquito propagation, and information regarding proposed disposal area management programs and practices.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Formerly 17-45.15, 17-45.150.

62-45.160 Standards for Issuance or Denial of a Permit.

(1) A permit may be issued to the applicant(s) upon such conditions as the Department may direct, only if:

(a) The applicant(s) affirmatively provides the Department with reasonable assurance based on plans, test results, proposed specific permit conditions and other information that the maintenance dredging and dredged material disposal operations will not discharge, emit, or cause pollution in contravention of Department standards or rules, and

(b) The provisions of Section 373.414(1)(a)-(b), F.S., have been met.

(2) A permit may be issued under this chapter only when it is determined that the dredging equipment to be employed, proposed specific permit conditions, pollution control measures to be taken during maintenance dredging and maintenance dredged material transportation, and the maintenance dredged material disposal site design and management practices will abate or prevent pollution to the degree that the project will comply with the standards and rules of the Department, including approved local programs where

applicable.

(3) If, after review of the application and all of the information, the Department determines that the equipment to be used, proposed specific permit conditions, pollution control measures to be taken during maintenance dredging and maintenance dredged material transportation, and the maintenance dredged material disposal site design and management practices will not be in accordance with applicable laws or rules of the Department or an approved local program, if applicable, a permit shall be denied.

(4) Compliance with one or more management practices, described in Rule 62-45.170, F.A.C., which are determined by the Department to be applicable to the specific port or reaches thereof shall be presumed to provide the affirmative reasonable assurances required in subsection (1). The appropriate management practices shall be enumerated as specific permit conditions.

(5) Issuance of a permit shall constitute a determination or concurrence by the Department that the proposed maintenance dredging and disposal of maintenance dredged material is consistent with the approved Florida Coastal Management Program.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Amended 10-16-84, Formerly 17-45.16, 17-45.160.

62-45.170 Sediment Criteria and Management Practices.

(1) The Department finds that disturbance of bottom sediments may release metals, hydrocarbons, nutrients and other potentially harmful substances into the water column. The following criteria shall be used in evaluating maintenance dredging and disposal practices.

(2) Sediment Criteria – Metals.

(a) The Department finds that there is a correlation between aluminum and other metals that may be found in sediments.

(b) The Department shall accept minimal monitoring, as described in Parts Two and Three of the Deepwater Ports Maintenance Dredging and Disposal Manual, or subsequent amendments thereto, of metal content of the sediments to be dredged as reasonable assurance that water quality standards for metals will not be violated, provided that the applicant selects methods of dredging and disposal that are defined in Table 1 as appropriate for the sediment grain size and metal concentration involved.

1. Dredging and disposal methods other than those defined as appropriate in Table 1 may be acceptable, provided that the applicant submits sufficient evidence to support a finding that water quality standards for metals will not be violated.

2. Evidence supporting a finding of reasonable assurance that standards for metals will not be violated shall be provided in accordance with procedures described in Parts Two and Three of the Department's Deepwater Ports Maintenance Dredging and Disposal Manual.

(3) Sediment Criteria – Nutrients and Hydrocarbons.

(a) If the criteria enumerated below are exceeded by any sediment sample from a port, elutriate tests may be required. Further, the applicant(s) or permittee shall identify the extent and approximate volume of this sediment type and shall consult with the Department on the potential adverse environmental impacts associated with the dredging, transportation, disposal and management of these sediments. Additionally, allowable treatment methods and special management practices shall be determined during this consultation in order to minimize the identified impacts.

(b) Nutrients. The applicant(s) or permittee shall provide the information required in paragraph (a) above if the ratio of Total Kjeldahl Nitrogen to Total Organic Carbon exceeds 15 and TOC is greater than 30 milligrams/kilogram (mg/kg) dry sediment.

(c) Hydrocarbons. The applicant or permittee shall provide the information required in paragraph (a) above:

1. If the concentration of oils and greases exceeds 400 milligrams/kilograms (mg/kg) dry sediment; or

2. If the Total Kjeldahl Nitrogen to Total Organic Carbon ratio is less than .05; or

3. If sediments are found to contain known or suspected carcinogenic, mutagenic, or teratogenic hydrocarbons.

(4) Management Practices – Dredging.

(a) The Department finds that the following management practices, when used appropriately, constitute reasonable assurance that water quality standards will not be violated. If one or more of these practices are to be used, the applicant shall be responsible for proposing the specific measure(s) in his application for a permit. If, subsequent to granting a permit, the Department finds that the measure(s) when used in a specific location does not provide the expected water quality protection, the permittee may be required, in accordance with Chapter 120, F.S., to use more stringent measures.

(b) Hydraulic dredging may be used when:

1. Pumping rates do not exceed the ability of the disposal area to provide sufficient settling time to ensure that the discharge

(return flow) achieves water quality standards at the boundary of the mixing zone; and

2. Pipelines are maintained free from breaks and leaks, with a plan of surveillance and maintenance provided by the applicant; and

3. Dredging operations are coordinated with disposal site operations to achieve disposal site management.

(c) Hopper dredges may be used when not filled beyond overflow while dredging hazardous or toxic sediments, or clay or silt.

(d) Clam bucket dredges may be used when operational procedures specified and enforced by the permittee provide assurance that the bucket will be employed in a manner which minimizes resuspension of sediments.

(e) Side casting dredges may be used in inlets or seaward channel reaches where uncontaminated sands are to be dredged and there is no adjacent marine or estuarine natural resource which would be adversely impacted by the operation.

(f) Silt screens may be used in specialized settings (dependent upon tides and currents) to protect a specific marine or estuarine resource.

(5) Management Practices – Dredged Material Disposal.

(a) The Department finds that dredged material site operational technology is such that the following management practices provide reasonable assurance that water quality standards will not be violated. If one or more of these are to be used, the applicant shall be responsible for proposing the specific and appropriate practice(s) in his application for a permit. If, subsequent to issuance of the permit, the Department finds that these practices are not sufficient to provide the required water quality, the permittee may be required, in accordance with Chapter 120, F.S., to use more stringent measures.

(b) When sediments are contaminated and the effluent cannot be treated, confined disposal areas where no discharge takes place may be used.

(c) When sediments are not contaminated, discharge weirs located to minimize impact of effluent discharges may be used when:

1. Weirs are monitored continuously during dredging operations; and

2. Weirs will facilitate aeration of effluent; and

3. Ponding depth is maintained during pumping operations at maximum depth consistent with dike safety.

(d) Qualified personnel shall be used at the disposal site during pumping operations to control and adjust operations as necessary to achieve the required levels of pollution control. Such personnel shall have the authority to regulate dredge operations as well as disposal site operations.

(e) Bank or dike stabilization or revegetation may be used for disposal areas in or abutting waters of the State to prevent escape or erosion of the dredged material from the site.

(6) Open Water Disposal Within Waters of the State.

(a) The Department finds that open water disposal may result in significant adverse impacts on the waters of the State and on marine and estuarine resources. Therefore, it shall be the policy of the Department to deny permits under this rule for open water disposal except for instances described in paragraph (b) below.

(b) The Department may allow open water disposal within waters of the State where the applicant has:

1. Demonstrated through a Port-Wide Long-Term Maintenance Dredged Material Management Plan described in Rule 62-45.190, F.A.C., that open water disposal is the only available method of disposal; and

2. Submitted procedures acceptable to the Department which will adequately protect the disposal area and areas in the vicinity of the disposal area from significant damage.

(7) Deviations from the management practices listed in subsections (1) through (5) may be approved by the Department as providing comparable treatment; however, a monitoring program which is sufficiently detailed to demonstrate the effectiveness of the alternate methodology shall be required.

(8) If monitoring of actual operations at a specific site demonstrates that the water quality standards contained in Chapters 62-4 and 62-302, F.A.C., are not met at the boundary of any prescribed zone of mixing when the permittee uses the methodology described in subsections (1) through (5), the permittee shall employ a treatment or management method which is more stringent. In no case may Phase II of the permit be entered without correction of these conditions or without a variance issued pursuant to paragraph 62-45.080(4)(d), F.A.C.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Formerly 17-45.17, 17-45.170.

62-45.180 Mixing Zones.

(1) The Department may propose zones of mixing or approve zones of mixing proposed by the applicant for maintenance dredging and maintenance dredged material disposal sites permitted pursuant to this chapter.

(2) The Department may allow the water quality adjacent to a maintenance dredging operation or a return discharge point from a maintenance dredged material disposal site to be temporarily degraded to the extent that only the minimum conditions described in subsection 62-3.051(1), F.A.C., apply within a limited, defined region known as a zone of mixing. However, no zone of mixing or combination of zones of mixing shall be allowed to impair any of the designated uses of the receiving body of water.

(3) A zone of mixing shall be determined based on consideration of the following:

- (a) The presence of grass beds, live reefs, oyster and clam beds, or other productive marine and estuarine habitats;
- (b) Physical and chemical characteristics of the materials to be dredged;
- (c) The anticipated frequency of maintenance dredging or discharge from the disposal site(s);
- (d) The expected duration of the dredging operation or the return flow from the disposal site; and
- (e) The ambient water quality including any possible synergistic effects of resuspension of the material being dredged or return flow from the disposal site(s).

(4) A zone of mixing shall be time limited based on the following:

(a) The anticipated settling time of material resuspended during the dredging operation in the channels, turning basins, or harbor berths; or

(b) The anticipated mixing or settling time of material or pollutants discharged from the disposal site(s).

(5) Zones of mixing shall be proposed by the applicant for dredging and disposal operations according to the following:

(a) Zones of mixing for the dredging operation shall be located at a specified distance from the cutter head, suction head, clam bucket, or other dredging tool based on hydrographic characteristics of the channel, turning basin or harbor berth, the presence of natural resources listed in paragraph (3)(a) above, and the length of settling time necessary for resuspended material. The Department recognizes that this zone of mixing will move with the dredge as it moves.

(b) A zone of mixing for the disposal operation shall extend a specified distance from the weirs or other points of discharge based on the hydrographic characteristics of the receiving waters, the presence of natural resources listed in paragraph (3)(a) above, the estimated rates of effluent discharge, and estimated settling time for removing suspended material.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.061(11), 403.816 FS. History—New 3-28-84, Formerly 17-45.18, 17-45.180.

62-45.190 Port-Wide Long-Term Maintenance Dredged Material Management Plan.

(1) A requirement for entry into Phase II of a long-term permit shall be the Department's approval of a plan demonstrating the applicant's capability for managing port-wide projected volumes of material in an environmentally sound and efficient manner during the term of the permit. The applicant's plan for managing dredged material shall be developed during the preapplication and Phase I stages of a permit and shall be updated on the basis of the permit review as described in Rule 62-45.080, F.A.C.

(2) Specific guidance for the development of a Port-Wide Long-Term Maintenance Dredged Material Management Plan is contained in Part I of the Department's Deepwater Ports Maintenance Dredging and Disposal Manual, or subsequent amendments thereto. A plan shall include at least the following elements:

- (a) Projections of volumes of dredged material according to physical and chemical characteristics of the sediments;
- (b) Assessment of existing and anticipated dredged material disposal capabilities, including contained disposal, beach renourishment, ocean disposal, and other appropriate methods;
- (c) Assessment of methods for maximizing service life of disposal sites;
- (d) Assessment of environmental protection needs and methods for addressing the identified needs;
- (e) Identification and assessment of dredging and disposal alternatives to meet projected needs; and
- (f) Proposed strategies for long term management of maintenance dredged material, including control of mosquito propagation.

Specific Authority 403.061(7), 403.805(1) FS. Law Implemented 403.816 FS. History—New 3-28-84, Formerly 17-45.19, 17-45.190.