

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**EMERGENCY AUTHORIZATION FOR
REPAIRS, REPLACEMENT,
RESTORATION, AND CERTAIN
OTHER MEASURES MADE NECESSARY
BY HURRICANE KATRINA**

OGC NO. 05-2053

FIRST AMENDED EMERGENCY FINAL ORDER

Under Sections 120.569(2)(n) and 252.36 of the Florida Statutes, and upon consideration of the State of Florida Executive Order No. 05-176 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 devastation wrought by Hurricane Katrina (hereinafter "the Hurricane").

FINDINGS OF FACT

1. On the 25th day of August, 2005, the Hurricane struck Florida with reported maximum sustained winds of over 80 miles per hour and a storm surge of 2-4 feet. On August 29, 2005 the hurricane again made landfall at Louisiana/Mississippi border with estimated wind speeds of approximately 125 miles per hour and an estimated storm surge of approximately 22 feet. The magnitude of the hurricane caused widespread damage to certain counties in the Florida Panhandle. The Hurricane caused widespread damage within the following locations: Broward, Dade, Monroe, Palm Beach, Escambia, and Santa Rosa, which shall constitute the specific area covered by this Amended Emergency Final Order. This area shall herein be referred to as the "Emergency Area."

2. By State of Florida Executive Order No. 05-176, the Governor declared that a state of emergency exists throughout the State of Florida, based upon the serious threat to the public health, safety and welfare posed by the Hurricane.

3. The Department finds that the Hurricane 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 repair, replace, and restore structures, equipment, surface water management systems, works, and operations damaged by the Hurricane.

4. The Department finds that an emergency authorization is required to address the need for immediate action because the normal procedures for obtaining the necessary authorizations would not result in sufficiently 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 Hurricane 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 No. 05-176, and Sections 120.569(2)(n) and 252.36 of the Florida Statutes, 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. WASTE MANAGEMENT

Within the Emergency Area:

1. Petroleum Storage Tank Systems

Owners and operators of petroleum storage tank systems, and their licensed engineers and contractors, are authorized to make all necessary repairs to restore essential services and repair or replace (as necessary) all structures, equipment, and appurtenances of the systems to their pre-storm permitted or registered condition without prior notice to the Department. Within thirty days of commencing the work of such repair or replacement, however, the owner or operator shall notify the Department in writing, describing the nature of the work, giving its location, and providing the name, address, and telephone number of the representative of the owner or operator to contact concerning the work.

2. Solid Waste Management

a. Field authorizations may be issued prior to or following a site inspection by Department personnel for staging areas to be used for temporary storage and chipping, grinding or burning of Hurricane-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 without prior notice. Written 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 which extends beyond the expiration date of this Order. Staging areas shall avoid wetlands 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. Staging areas must cease operation, and all Hurricane-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. Hurricane-generated vegetative debris which is managed at an authorized staging area may be disposed of in permitted lined or unlined landfills, permitted land clearing debris facilities, or permitted construction and demolition debris disposal facilities. Such vegetative debris may also be managed at a permitted waste processing facility or a registered yard trash processing facility in accordance with the terms of the applicable rules and permit conditions.

c. Construction and demolition debris that is mixed with other Hurricane-generated debris need not be segregated from other solid waste prior to disposal in a

lined landfill. Construction and demolition debris that is either source-separated or is separated from other Hurricane-generated debris at an authorized staging area, or at another area specifically authorized by the Department, may be managed at a permitted construction and demolition debris disposal or recycling facility upon approval by the Department of the methods and operational practices used to inspect the waste during segregation.

d. Except as otherwise specifically provided herein, Hurricane-generated debris shall be disposed of in a Class I landfill or, except for asbestos-containing materials, in a waste-to-energy facility. Non-recyclables and residuals generated from segregation of Hurricane-generated debris shall also be disposed of in a Class I landfill or waste-to-energy facility.

e. Ash residue from the combustion of Hurricane-generated vegetative debris may be disposed of in a permitted disposal facility, or may be land spread in any areas approved by local government officials except in wellfield protection areas or water bodies.

f. Ash from the combustion of other Hurricane-generated debris shall be disposed of in a Class I landfill. Metals or other non-combustible materials segregated from the ash residue may also be disposed of in an unlined, permitted landfill.

g. Unsalvageable refrigerators and freezers containing solid waste such as rotting food that may create a sanitary nuisance may be disposed of in a Class I landfill; provided, however, that chlorofluorocarbons and capacitors must be removed and recycled to the greatest extent practicable using techniques and personnel meeting the requirements of 40 CFR Part 82.

h. Permitted landfills, waste-to-energy facilities, and transfer stations which accept Hurricane-generated debris in accordance with the terms of this Order may accept Hurricane-generated debris for disposal or storage without the need to first modify existing permits or certifications. Operators of landfills shall seek modifications of their existing permits to address any long-term impacts of accepting Hurricane-generated debris on operations and closure that are not addressed in existing permits. Long-term impacts are those, which will extend past the expiration date of this Order. The requests for modification shall be submitted as soon as possible, but no later than the expiration date of this Order. No permit fee will be required for any modifications necessitated solely by the Hurricane clean-up activities. This paragraph does not authorize the permanent lateral or vertical expansion of any facility beyond its permitted limits.

i. Domestic wastewater residuals may be disposed of in Class I landfills even if such residuals meet the definition of a liquid waste found in Rule 62-701.200(72) of the Florida Administrative Code, provided that such disposal is approved in advance by the Department and that the material is managed to the extent practicable so as to minimize liquid content, odors and runoff.

3. Hazardous Waste Management

A blanket approval of time extensions under Chapter 62-730 of the Florida Administrative Code is necessary within the Emergency Area for hazardous waste generators and small quantity generators for the storage of their hazardous wastes on site, pending the cleanup of the Hurricane damage and restoration of essential services. The rules authorize a thirty-day extension because of unforeseen and uncontrollable

circumstances. The specific effects of the Hurricane were unforeseen and uncontrollable. Therefore, to avoid having to issue a potentially large number of individual approvals on a case-by-case basis and waste limited agency resources during the time of emergency, the Department authorizes a general extension of time of thirty days from the expiration of this Order for all such hazardous waste generators and small quantity generators for the storage of their hazardous wastes on site, in the counties within the Emergency Area.

B. AIR RESOURCE MANAGEMENT

Within the Emergency Area:

1. Air Curtain Incinerators

The Department authorizes local governments or their agents to conduct the burning of Hurricane-generated yard trash and other vegetative debris in air curtain incinerators without prior notice to the Department. The Department also authorizes the burning of demolition debris in such air curtain incinerators, provided reasonable efforts are made to limit the material being burned to untreated wood. Within ten days of commencing any such burning, the local government or its agent shall notify the Department in writing, describing the general nature of the materials burned, stating the location and method of burning, and providing the name, address, and telephone number of the representative of the local government to contact concerning the work. This order does not relieve the air curtain incinerator operator from any requirement to obtain an open burning authorization from the Division of Forestry or any other agency empowered to grant such authorizations. In operating any such air curtain incinerator, the pit width shall not exceed 12 feet, vertical side walls shall be maintained, and waste material shall not be loaded into the air curtain incinerator such that it protrudes above the level of the

air curtain. Ash shall not be allowed to build up in the pit higher than one-third the pit depth or to the point where the ash begins to impede combustion, whichever level is lower. Refractory-lined air curtain incinerators may operate 24 hours per day. Air curtain incinerators without refractory-lined walls may operate 24 hours per day provided reasonable efforts are made to prevent nuisance smoke. Notwithstanding the provisions of this paragraph, the burning of asbestos-containing materials or hazardous waste is prohibited.

2. Open Pile Burning

Only vegetative material can be burned on an open pile. Open pile burning of vegetative debris is managed under the authority of the Division of Forestry in the Department of Agriculture and Consumer Services, and the Department will defer to decisions made by that agency, provided that burning does not occur in wetlands or other surface waters. Open pile burning shall avoid adversely affecting wetlands and other surface waters to the greatest extent possible; any wetland or other surface water areas that are used or affected must be fully restored upon cessation of use of the area in consultation with the Department.

3. Other Air Pollution Sources

The Department authorizes the minor repair of any previously permitted stationary source of air pollution that was damaged by the Hurricanes to restore it to its previously permitted condition without prior notice to the Department. Within thirty days of commencing such repairs, however, the permittee shall notify the Department in writing, stating the location and nature of the work and providing the name, address, and telephone number of the representative of the permittee to contact concerning the work.

Minor repairs are repairs that would not constitute reconstruction under any definition of 40 CFR part 60, 61 or 63 and that could not affect potential to emit any pollutant. Repairs that would constitute reconstruction under any definition of 40 CFR Part 60, 61 or 63, or repairs that could affect potential to emit any pollutant are not authorized by this Order.

4. Asbestos Clean-up

The Department waives the requirement for prior notification for emergency demolition or emergency cleanup of asbestos-containing material resulting from the Hurricanes. Within one business day of commencing such demolition or cleanup, however, the person responsible for such work shall notify the Department in writing. The notification shall be consistent with the information on the Notice for Asbestos Renovation or Demolition, and shall include the location and nature of the work and the name, address, and telephone number of operator on the project. The procedures in 40 CFR 61 Subpart M for handling asbestos-containing material shall be complied with during demolition and cleanup. Asbestos-containing material shall be disposed of in a Class I, II, or III landfill in accordance with Rule 62-701.520(3) of the Florida Administrative Code. Burning of asbestos containing material is prohibited.

C. WATER RESOURCE MANAGEMENT

Within the Emergency Area:

1. Definitions

The following definitions apply to activities authorized under Section C of this Order:

a. For purposes of subsection C.2. of this Order, the term "structures" includes:

(1) utility infrastructure, including wastewater treatment plants, substations, lift stations, solid and hazardous waste facilities, utility lines (including transmission and distribution), poles, towers, support structures, cables, conduits, outfalls, intake structures, and pipelines;

(2) roads, bridges, culverts, driveways, sidewalks, bike paths, and other similar public and private infrastructure;

(3) public, private, and commercial habitable and non-habitable buildings, and structures ancillary to these buildings, such as garages, cabanas, storage sheds, bath houses, pools, and decks;

(4) piers (including docks, boardwalks, observation platforms, boat houses, and gazebos), and pilings;

(5) shore-stabilization structures, such as seawalls, bulkheads, revetments, breakwaters, and groins;

(6) fences, signs and billboards; and

(7) buoys, navigational aids, and channel markers.

b. For purposes of subsection C.2. of this Order, the term "drainage systems" includes ditches, canals, ponds, swales, and other surface water conveyances; dams, weirs, dikes, and levees; underdrains, outfalls, and associated water control structures.

c. For purposes of subsections C.2, C.3, and C.4 of this Order, the term "water dependent activity" means an activity that can only be conducted in, on, over, or adjacent to water areas because the activity requires direct access to the waterbody or sovereignty submerged lands for transportation, recreation, energy production or

transmission, or source of water, and where the use of the water or sovereignty submerged lands is an integral part of the activity.

d. For purposes of subsections C.2 and C.3 of this Order, the term "completely destroyed" means none of the structure that existed before the storm remains standing. For example, if at least one piling of a dock or pier remains in place as constructed, then the structure has not been completely destroyed.

e. For purposes of this Order, the term "water management districts" shall mean the Northwest Florida, St. Johns River, Suwannee River, Southwest Florida, and South Florida Water Management Districts, as they are affected within the Emergency Area.

2. Environmental Resource, Dredge and Fill, and Surface Water Management Activities

This subsection applies to activities located in uplands and waters of the state, including wetlands, but excludes activities located along the sandy beaches or inlets fronting the Atlantic Ocean and the Gulf of Mexico seaward of the Coastal Construction Control Line (CCCL) in counties where a CCCL has been established (these activities are addressed in subsection C.3. of this Order). The public is advised that Sections 403.813(2)(b), (d), (e), (f), (g), (h), (j), (l), (n), (p) or (t) of the Florida Statutes and the corresponding rule exemptions of the Department and water management districts authorize certain repair, restoration, and replacement activities, provided the terms, conditions, and limitations of the exemptions are followed. Such activities located in, on, or over sovereignty submerged lands that do not qualify for consent by rule under Rule 18-21.005(1)(b) of the Florida Administrative Code are hereby granted a Letter of Consent under Rule 18-21.005(1)(c) of the Florida Administrative Code, provided all the

terms and conditions of those rules are met (including certain restrictions for activities performed within aquatic preserves and Monroe County), and provided that activities that require an easement under Rule 18-21.005(1)(f) of the Florida Administrative Code must obtain the applicable sovereignty submerged lands easement under Chapter 18-21 of the Florida Administrative Code within one year of expiration of this Order. This Order does not limit the provisions of those statutory and rule provisions. The following activities are authorized to be undertaken in the Emergency Area to repair, restore, or replace structures, land, and submerged contours to the conditions that were authorized or otherwise legally existing immediately prior to the Hurricane, provided the repair and restoration activities do not result in any expansion, addition, or relocation of the existing structure or systems, subject to the limitations in this Order. However, this Order does not authorize the construction of structures that did not exist prior to the emergency, unless specifically authorized below.

a. No Notice Required

The following activities are authorized to be conducted under this Order without notification to the Department or a water management district:

(1) Temporary and permanent repair or restoration of structures and drainage systems that are not completely destroyed to the conditions, dimensions, and configurations that were authorized or otherwise legally existing immediately prior to the Hurricane, provided the repair and restoration activities do not result in any expansion, addition, or relocation of the existing structure or systems, and provided any such structures or drainage systems in, on or over sovereignty submerged lands are water dependent. This may include the use of different construction materials or minor

deviations to allow upgrades to current structural and design standards, or to replace a seawall with a rip rap revetment.

(2) The restoration (regarding, dredging, or filling) by local, regional, and state governments of surface (upland), wetland, and submerged land contours to the conditions and configurations that were authorized or otherwise legally existing immediately prior to the Hurricane, provided the restoration does not result in any expansion or addition of land or deepening of waters beyond that which existed immediately prior to the Hurricane, subject to the following limits:

(a) The removal or deepening of plugs formerly separating canals from other waters is specifically not authorized by this Order;

(b) In the case of dredging, all excavated material shall either be deposited on uplands that are diked or otherwise sloped or designed to prevent any discharge into wetlands or other surface waters, or shall be used to restore bottom contours and shorelines to the conditions existing immediately prior to the Hurricane, subject to (c), below;

(c) In the case where upland or dredged material is placed in water to restore pre-existing conditions, only clean material (free from debris and pollutants) from the uplands that existed prior to the Hurricane may be used in the restoration, and no change (from the conditions that legally existed immediately prior to the Hurricane) in the slope of the land or the type, nature, or configuration of any pre-existing shoreline stabilization materials is authorized (e.g., sloping revetments cannot be replaced with vertical seawalls, and rock riprap cannot be replaced with interlocking blocks);

(d) Best management practices and devices such as hay bales, mulch, and floating turbidity screens shall be used to prevent violations of state water quality standards for turbidity during the performance of restoration activities, in accordance with the guidelines and specifications in Chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation 1988). Best management practices also shall be used to prevent erosion and retain sediment of all newly established or restored exposed shorelines during and after the restoration activities, which may include methods such as planting of temporary and permanent vegetation and placing of clean natural rock or concrete rubble riprap;

(e) Any fill that is deposited to restore a former shoreline, and any riprap that is used to stabilize a shoreline, must not be placed any farther waterward than the toe of slope of the shoreline that legally existed immediately prior to the Hurricane. If the pre-Hurricane shoreline was stabilized with a functioning seawall or riprap, the seawall or riprap may be restored at its former location or within 18 inches (or, within an aquatic preserve, one foot) waterward of the location where the seawall or riprap legally existed immediately prior to the Hurricane, as measured from the face of the existing seawall slab to the face of restored seawall slab or from the front slope of the existing riprap to the front slope of the restored riprap; and

(f) This section shall not constitute authorization to fill submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, except as provided above.

(3) Removal of debris, including sunken or grounded vessels, vegetation, and structural remains that have been deposited into waters, wetlands, or uplands by the Hurricane, where such removal does not result in filling of wetlands or other surface waters, or dredging that creates or expands surface waters. All removed materials must be deposited on self-contained uplands and must be managed in accordance with Department rules or provisions of this Order.

b. Field and Individual Authorization Required

(1) Field authorizations may be issued following a site inspection by Department personnel to restore structures and property to authorized or otherwise legally existing conditions that existed immediately prior to the Hurricane, to recover property, to protect property from further damage, to maintain navigation, or to protect public health, safety and welfare, when such activities are not otherwise authorized by statutory or rule exemptions or under paragraph C.2.a of this Order. Specifically, field authorizations may be issued for:

(a) Activities including the replacement of structures that are completely destroyed;

(b) Activities on sovereignty submerged lands that are not water dependent;

(c) Restoration (regrading, dredging, or filling) of the contours of uplands, wetlands, and submerged bottoms, by parties other than local, regional, or state governments;

(d) Trimming or alteration of mangroves that threaten public health, safety, welfare, or property, or that currently interfere with navigation;

(e) Removal of debris, including sunken or grounded vessels, vegetation and structural remains, that has been deposited into waters, wetlands, or uplands by the Hurricane, the removal of which requires filling of wetlands or other surface waters, or dredging that creates or expands wetlands or other surface waters. Any wetlands or other surface waters that are dredged or filled to affect such removal must be restored to the contours and conditions that existed before the Hurricane; and

(f) Other activities determined by Department personnel as having the potential to result in only minimal adverse individual or cumulative impact on water resources and water quality.

(2) Field authorizations to replace structures shall not preclude the use of different construction materials or minor deviations to allow upgrades to current structural and design standards, including building codes, or to a more environmentally compatible design, as determined by the Department, than existed immediately prior to the Hurricane.

(3) Field authorizations may be requested by providing a notice to the local office of the Department containing a description of the work requested, the location of the work, and the name, address, and telephone number of the owner or representative of the owner who may be contacted concerning the work. Field authorizations also may be issued by Department staff without prior notice. Field authorizations may not be issued unless requested on or before October 21, 2005. Written records of all field authorizations shall be created and maintained by Department staff. Field authorizations may include specific conditions for the construction, operation, and maintenance of the authorized activities. Field authorizations issued prior to the effective date of this Order

remain in effect for the duration specified in the field authorization, but may be extended through written modification by the Department in accordance with the provisions of paragraph C.4.h. of this Order. Failure to comply with the conditions of the field authorization may result in enforcement actions by the Department.

(4) Other activities not described above shall be regulated in accordance with Part IV of Chapter 373 of the Florida Statutes, and the rules adopted thereunder. 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 of the Florida Administrative Code.

3. Coastal Construction Control Line Activities

This section applies to activities conducted waterward of the Coastal Construction Control Line (CCCL). Emergency Field Permits are issued by the Bureau of Beaches and Coastal Systems pursuant to Rule 62B-33.014, F.A.C. A listing of exemptions are contained in Rule 62B-33.004, F.A.C., and Chapter 161.053(12)(c), Florida Statutes, for some activities seaward of the CCCL. The Bureau has also developed a Public Information Handout to provide property owners with a concise explanation of activities that are authorized seaward of the Coastal Construction Control Line (CCCL) in this Order. To obtain a copy, please visit the Bureau's web-site at www.dep.state.fl.us/beaches or contact the Bureau directly by mail at 3900 Commonwealth Boulevard, Mail Station #300, Tallahassee, Florida 32399-3000, or by phone at 850/487-4475.

This Order does not authorize the construction of structures that did not exist prior to the emergency, nor does it authorize beach scraping performed by itself or in association with any other activities. In addition, activities that extend onto sovereignty lands of Florida seaward of the mean high-water line and are likely to have a material physical effect on the coastal system or natural beach and inlet processes, which are regulated pursuant to Section 161.041 of the Florida Statutes (i.e., regulated under the Joint Coastal Permit program), are not authorized under this Order. However, an Emergency Joint Coastal Permit is available to federal, state or local governments to alleviate certain hazardous conditions resulting from a hurricane, pursuant to Rule 62B-49.009 of the Florida Administrative Code.

a. Activities Undertaken by Local Governments and Utility Companies

The following activities may be undertaken by local governments and utility companies to protect, repair, or replace structures and property without notice to the Department or a water management district, subject to the limitations below.

(1) Removal of Hurricane-generated debris. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on site. To prevent debris from becoming buried, all Hurricane-generated debris shall be removed prior to conducting any fill activities.

(2) The repair of the following public facilities: utilities, roads and beach access ramps.

(3) Return of sand to the beach and dune system that has been deposited upland by the Hurricane, and restoration of a damaged dune system using beach compatible sand from an upland source. The fill material shall not cover any Hurricane-

generated debris or construction debris. All fill material shall be sand that is similar to the pre-storm beach sand in both coloration and grain size and be free of debris, rocks, clay or other foreign matter. No sand may be obtained from the beach or below the mean high water line seaward of the CCCL without specific written authorization from the Department.

b. Activities Requiring Local Authorization

Local governments are authorized to issue permits in lieu of Department permits to private and public property owners for the activities listed below.

(1) Temporary or remedial activities that are necessary to secure structures in order to remove safety hazards and prevent further damage or collapse of foundations.

(2) Repair or replacement of minor ancillary structures (such as stairs, landings, and HVAC platforms) and services utilities that are associated with the existing habitable structure and are necessary for occupancy of the habitable structure. The repair of minor ancillary structures or service utilities shall not exceed the size of the original structure or service utility damaged or destroyed by the Hurricane. Repair of surviving beach/dune walkovers is authorized provided the structure is substantially intact and the repair allows for adjustments to be made to the seaward terminus of the walkover if necessary to accommodate changes in the shoreline topography and native salt-resistant vegetation patterns resulting from the post-storm recovery of the beach and dune system.

(3) Restoration of a damaged dune system using beach compatible sand from an upland source. All fill material shall be sand that is similar to the pre-storm beach sand in both coloration and grain size and be free of debris, rocks, clay or other

foreign matter. No sand may be obtained from the beach or below mean high water seaward of the CCCL without specific written authorization from the Department.

(4) Return of sand to the beach dune system which has been deposited upland by the Hurricanes. The recovered fill material shall be free of debris and not cover any Hurricane-generated debris or construction debris.

c. Other Activities

(1) Actions taken by local governments and utility companies under paragraphs C.3.a. and C.3.b. of this Order do not require additional permits from the Department.

(2) Subsection C.3. does not authorize the following activities:

(a) Permanent repair of foundations of major structures which have been substantially damaged;

(b) Rebuilding of or substantial improvements to major structures;

(c) The repair or reconstruction of coastal or shore protection structures; or

(d) Replacement of walkover structures, retaining walls, decks, gazebos and other similar structures.

(3) Activities not covered by subsection C.3. of this Order may require a permit from the Department under Section 161.053 of the Florida Statutes and Rule 62B-33.014 of the Florida Administrative Code. For more information, please contact the Bureau of Beaches and Coastal Systems by mail at 3900 Commonwealth Boulevard, Mail Station #300, Tallahassee, Florida 32399-3000 or by phone at 850/487-4475.

4. **General Conditions**

a. All activities conducted under subsections C.2. and C.3. of this Order shall be performed using appropriate best management practices in accordance with the guidelines and specifications in Chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation 1988). 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. The authorizations in subsections C.2. and C.3. of this Order shall not apply to structures and associated activities that were not legally existing or otherwise properly authorized by all applicable agencies before the passage of the Hurricanes.

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

d. The nature, timing, and sequence of construction authorized under this Order shall be conducted in such a manner as to provide protection to, and so as to not disturb, native salt-resistant vegetation and listed species and their habitat, including threatened or endangered sea turtles, endangered manatees, endangered beach mice, endangered plant communities, and migratory shorebirds. If activities conducted under section C.3 of this Order occur during the marine turtle nesting season (March 1 through October 31 in Brevard through Broward County, May 1 in all other coastal counties), such

activities must be coordinated with the Florida Fish and Wildlife Conservation Commission's Imperiled Species Management Section to ensure that all activities comply with state and federal requirements for the protection of sea turtles, their nests, hatchlings, and nesting habitat.

e. Nothing in this order authorizes the taking, attempted taking, pursuing, harassing, capturing or killing of any species (or the nests or eggs of any species) listed under Rule 68A-27 of the Florida Administrative Code or under the Federal Endangered Species Act.

f. Persons are advised that all structures that are rebuilt should be rebuilt in accordance with all applicable local, state, and federal building standards and requirements of the Federal Emergency Management Act (FEMA).

g. It is recommended that, where possible, owners of property should maintain documentation (such as photos) of the condition of the structures or lands as they existed prior to initiating any activities authorized under this Order, and should provide such documentation if requested to do so.

h. Activities authorized under subsections C.2. or C.3. of this Order must be completed as follows:

(1) By August 25, 2006, for activities that qualify under the No Notice provisions of subparagraphs C.2.a.(2), C.2.a.(3), or C.2.a.(4) of this Order;

(2) By the date specified in the field authorization for activities that qualify under the provisions of subparagraph C.2.b.(1) of this Order. However, the deadline for completing such activities may be extended if a written request with accompanying documentation as described below is submitted by the person(s) authorized in the field

authorization and received by the District Office of the Department that issued the field authorization at least 30 days prior to expiration of the field authorization. Such request must be accompanied by a statement that contractors or supplies are not available to complete the work, or that additional time is needed to obtain any required authorization from the U.S. Army Corps of Engineers. Such permittee should maintain a list of contractors that have been contacted and a record of supplies that are on backorder as needed to demonstrate compliance with this provision.

5. Authorization to Use Submerged Lands Owned by the State

The Department has been delegated by the Board of Trustees of the Internal Improvement Trust Fund the authority to grant the following authorizations to use sovereignty submerged lands, that is, most lands lying waterward of the line of mean high water or ordinary high water, in association with the structure or activity subject to repair, restoration, removal, or replacement authorized in this section.

a. Except as provided in paragraphs C.5.b., c., and d., and subsection D.1. of this Order, activities authorized under this Order involving the repair, replacement, or restoration of the activities and structures, and the removal of debris located on submerged lands owned by the state that do not qualify for consent by rule under Rule 18-21.005(1)(b) of the Florida Administrative Code are hereby granted a Letter of Consent under Rule 18-21.005(1)(c) of the Florida Administrative Code, provided:

(1) Such repair, restoration, or replacement or removal is conducted in accordance with the terms, conditions, and limitations of this Order;

(2) The structure or activity subject to repair, restoration, or replacement was authorized by the Board of Trustees of the Internal Improvement Trust Fund prior to the Hurricane, or was otherwise legally existing immediately prior to the Hurricane;

(3) The activities are conducted solely to repair, restore, or replace structures or land that was damaged by the Hurricane, or to remove debris resulting solely from the Hurricane; and

(4) The structures and activities are repaired, restored, or replaced in the same location and configuration as was authorized by the Board of Trustees of the Internal Improvement Trust Fund or which otherwise legally existed immediately prior to the Hurricane.

(5) All the terms and conditions of Rule 18-21.005(1)(b) or 18-21.005(1)(c) of the Florida Administrative Code, as applicable, are met (including certain restrictions for activities performed within aquatic preserves and Monroe County), and provided that activities that require an easement under Rule 18-21.005(1)(f) of the Florida Administrative Code must obtain the applicable sovereignty submerged lands easement under Chapter 18-21 of the Florida Administrative Code within one year of expiration of this Order. This Order does not limit the provisions of those statutory and rule provisions.

b. Non-water dependent structures, grandfathered pursuant to Rule 18-21.00405 of the Florida Administrative Code are not authorized to be repaired, restored, or replaced when more than 50% of the structure or activity is lost (based on the cost to repair, restore, or replace the structure or activity);

c. Water-dependent structures that were legally existing immediately before the Hurricane but not in conformance with the current criteria of Chapters 18-20 or 18-21 of the Florida Administrative Code and chapter 18-18 of the Florida Administrative Code, as applicable, may be repaired, restored, or replaced to the footprint that existed immediately before the Hurricane, but shall, to the greatest extent practicable, be repaired, restored, or replaced to meet the current criteria of Chapters 18-20 and 18-21 of the Florida Administrative Code, and Chapter 18-18 of the Florida Administrative Code as applicable, with respect to design features such as the elevation of decking surfaces and the spacing of deck planking.

d. This Order does not authorize the reconstruction or repair of unauthorized structures that failed to qualify for the grandfathering provisions of Chapter 18-21 of the Florida Administrative Code.

6. Water and Wastewater Plants and Collection and Distribution Systems

a. Owners and operators of water and wastewater plants and collection and distribution systems, and their licensed engineers and contractors, are authorized to make all necessary repairs to restore essential services and repair or replace (as necessary) all structures, equipment, and appurtenances of the plants and systems to their pre-storm permitted or registered condition without prior notice to the Department. Within thirty days of commencing the work of such repair or replacement, however, the owner or operator shall notify the Department in writing, describing the nature of the work, giving its location, and providing the name, address, and telephone number of the representative of the owner or operator to contact concerning the work.

b. Owners and operators of underground injection control Class V Group 6 lake level control wells in existence and functioning immediately before the Hurricane are authorized, without prior permission by the Department, to lower the intake structure to allow a greater volume of lake water to flow down the wells when not to do so would result in immediate flooding of structures not usually inundated by such lake waters. Within 72 hours of lowering said structures, written notice shall be provided to the Department's District office in which the structure is located.

7. Suspension of Fees

For those activities noted above, subject to the limitations, duration, and other provisions of this Order, the following application fee, base fee, and minimal annual lease fee requirements of Sections 161.041, 161.053, 161.055, and 373.109 of the Florida Statutes and Rules 18-18, 18-20, 18-21, and 62-4 of the Florida Administrative Code, shall be suspended as follows:

a. For structures and activities authorized under paragraphs C.2.a. or C.3.a of this Order, the lessee may submit a written request to the Division of State Lands (at 3900 Commonwealth Blvd., MS 130, Tallahassee, FL 32399-3000) to waive applicable lease fees. In such cases, the owner must identify and document (such as with currently-dated photographs) the area (in square feet) of the structure or facility that is no longer useable. When such documentation is received and deemed sufficient, lease fees will be waived, but only for that portion of the structure that is no longer useable.

b. When the restoration or replacement of individual structures (such as a dock or pier) or entire facilities (such as marinas) on sovereignty submerged lands that are completely destroyed is authorized by a field authorization under paragraph C.2.b. of

this Order, applicable lease fees will be waived for the duration described in paragraph c. below.

c. Lease fees that are waived under paragraphs a. or b. above, will be waived only for the duration of this order (including subsequent extensions thereto) unless otherwise provided in a field authorization issued under paragraph C.2.b. of this Order, or until the repairs, restoration, or replacement commences, whichever is earlier. The duration of the waiver of suspension of lease fees may be extended beyond the duration of this order (including subsequent extensions thereto) or beyond the date specified in a field authorization issued under paragraph C.2.b of this Order, upon a written request by the lessee to extend the waiver of the lease fees. Such request must be received by the Division of State Lands before the expiration of this Order (or extensions thereto) or before the date specified in the field authorization (whichever date is later), and must be accompanied by a signed statement that construction has not yet commenced because contractors or supplies are not available to commence the necessary repairs, restoration or replacement, or because additional time is needed to obtain any required authorization from the U.S. Army Corps of Engineers or local government. Such request for extension of the waiver of lease fees must also contain a reasonable schedule for when repair, restoration, or replacement will commence. For purposes of this subsection, the date of commencement of construction shall be when materials are actually assembled together for the first time on-site in the process of repairing, restoring, or replacing the structure or facilities.

d. In all cases where lease fees are waived under paragraph a.(1) above, the lessee must notify the Division of State Lands of the time repair, restoration, or replacement construction commenced.

D. GENERAL PROVISIONS

1. General Limitations

The Department issues this Emergency Final Order solely to address the emergency created by the Hurricane. 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

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.

To the extent that any requirement to obtain a permit, lease, consent of use, or other authorization is waived by this Order, it should also be construed that the procedural requirements for obtaining such permit, lease, consent of use or other authorization, including requirements for fees and publication of notices, are suspended for the duration of this order, except as provided in subsection C.7.

3. Review of Requests for Field Authorizations

It is the intent of the Department to act on requests for field authorizations in a timely and expeditious manner. The Department will generally ask for any needed additional information within 30 days of receipt of the request for field authorization, and will generally take action on the request with 90 days of receipt of a complete request. However, in accordance with Section 120.569(2)(n) of the Florida Statutes, any Department actions under this Emergency Order are not subject to administrative review under Chapter 120 of the Florida Statutes, but are appealable or enjoinable in a court of competent jurisdiction.

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 for the property owner 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 Chapter 471 of the Florida Statutes regarding professional engineering.

5. Extension of time to comply with specified deadlines

For facilities and activities regulated by the Department in the Emergency Area, this Order extends by thirty days the time to comply with the following specified deadlines that occur between the date of issuance of this order and the expiration of this order:

- a. The time deadlines to conduct or report periodic monitoring or any other similar monitoring that is required by a permit, lease, easement, consent of use, letter of

consent, consent order, consent agreement, administrative order, or other authorization under Chapters 161, 253, 258, 373, 376 or 403 of the Florida Statutes, and rules adopted thereunder, except for monitoring required by air permits issued under Title IV or V of the Clean Air Act or under the PSD program;

b. The time deadlines to file an application for an extension of permit duration or renewal of an existing permit, lease, easement, consent of use, letter of consent, or other authorization under Chapters 161, 253, 258, 373, 376 or 403 of the Florida Statutes, and rules adopted thereunder, except for air permits issued under Title V of the Clean Air Act;

c. The time deadlines to file an application for an operation permit under Chapters 161, 253, 258, 373, 376 or 403 of the Florida Statutes, and rules adopted thereunder, except for air permits issued under Title V of the Clean Air Act;

d. The expiration date for an existing permit, lease, consent of use, or other authorization under Chapters 161, 253, 258, 373, 376 or 403 of the Florida Statutes, and rules adopted thereunder, except for air permits issued under Title V of the Clean Air Act; and

e. The time deadlines to obtain a permit for and commence construction of the initial phase of a system for which a conceptual permit was issued pursuant to Part IV of Chapter 373 of the Florida Statutes or sections 403.91 – 403.929 of the Florida Statutes, and rules adopted thereunder.

6. Deadlines for Agency Actions

For each of the following offices, any deadlines specified in statutes, rules, agreements, or Department orders, under which the Department is required by law to

take action within a specified time period, and under which failure by the Department to timely take such action could result in any type of default binding on the Department, are hereby suspended and tolled for a period of 58 days provided such deadline had not expired as of the effective date of this order:

a. Each Department office and delegated local program that sustains within its geographic boundaries any significant physical damage occurring as a direct result of the Hurricane. This includes Department offices located outside the impacted area that perform any of their duties in the impacted area.

b. Any office of the Department not directly impacted by the Hurricane if that office has deployed staff to any Department district office or delegated local program specified above, or to any Water Management District office in an impacted area, to assist in Hurricane relief efforts or to supplement the normal staff in those impacted offices.

7. Expiration Date

This Emergency Final Order shall take effect immediately upon execution by the Secretary of the Department, and shall expire on October 21, 2005, unless modified or extended by further order.

8. 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 of the Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

9. Applicability to Delegated Programs

The provisions of this Order apply in those cases where a local government or other entity is acting for the Department in accordance with a delegation agreement or contract. Such local government or other entity shall comply with the terms of this Order to the extent that it is acting as an agent of the Department. This Order does not apply in those cases where a local government or other entity is acting under its own independent authority.


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 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.

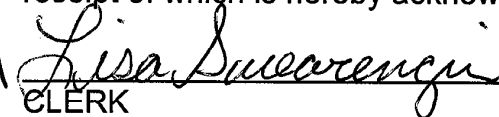
DONE AND ORDERED on this 2nd day of September, 2005, in

Tallahassee, Florida.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION


COLLEEN M. CASTILLE, 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.

Deputy 
CLERK

DATE: 9-2-05