

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: North Indian River Lagoon,
BASIN MANAGEMENT ACTION PLAN

OGC Case No. 13-0020

FINAL ORDER ESTABLISHING NORTH INDIAN RIVER LAGOON
BASIN MANAGEMENT ACTION PLAN

Pursuant to Section 403.067(7), Florida Statutes, this Final Order adopts the attached Basin Management Action Plan ("BMAP") for Class II and III surface waterbody sections in the North Indian River Lagoon Basin. The adopted BMAP, including background and detailed management actions, is attached hereto and incorporated herein as Exhibit 1.

The North Indian River Lagoon BMAP has been developed as part of the Department's Total Maximum Daily Load ("TMDL") Program, as authorized under the Florida Watershed Restoration Act (Chapter 403.067, Florida Statutes). Surface waters in the North Indian River Lagoon Basin are designated as Class II and III waters in accordance with Rule 62-302, Florida Administrative Code ("F.A.C."). Class II waters must have suitable water quality for shellfish propagation or harvesting. Class III waters must have suitable water quality for recreational use and for the propagation and maintenance of a healthy, well-balanced population of fish and wildlife.

The North Indian River Lagoon Basin is located in Brevard and Volusia Counties, and includes Cocoa, Edgewater, Indian River, Indian Harbour Beach, Kennedy Space Center, Melbourne, Oak Hill, Palm Shores, Rockledge, and Titusville. In March 2009, the Department adopted Rule 62-304.520, F.A.C., establishing TMDLs for waters in the North Indian River Lagoon Basin. Excessive nutrients are the primary pollutants contributing to the impairments. Table 3 in the attached Exhibit 1 identifies the applicable TMDLs.

The Department worked closely with the affected stakeholders, including local and state agencies, in developing the BMAP to achieve the North Indian River Lagoon TMDLs. Beyond direct work with the affected stakeholders, the Department encouraged public participation to the greatest practicable extent by providing routine updates in technical meetings and requests for comment at technical meetings on the North Indian River Lagoon BMAP. The Department held a noticed public meeting in the basin on November 10, 2012, to discuss the BMAP and receive comments.

The North Indian River Lagoon BMAP represents the collaborative effort of local stakeholders to identify current and planned management actions to achieve pollutant load reductions required by the TMDLs. The adopted BMAP

documents the management actions that have been, or will be, undertaken by stakeholders to reduce discharge of pollutants in the watershed. The management actions (completed, ongoing, and planned) identified in the BMAP address known sources of pollutants, facilitate investigation of unknown sources, prevent new sources, and address future loads associated with population growth and land use changes in the basin.

THEREFORE, IT IS ORDERED that the attached Exhibit 1 is hereby adopted as the North Indian River Lagoon Basin Management Action Plan.

NOTICE OF RIGHTS

The North Indian River Lagoon BMAP shall become final unless a timely petition for an administrative proceeding is filed pursuant to the provisions of sections 120.569 and 120.57 of the Florida Statutes, before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in

the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000.

Petitions must be filed within 21 days of publication of the public notice or within 21 days of receipt of this order, whichever occurs first. Under Section 120.60(3), Florida Statutes, however, any person who asked the Department for notice of agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

(a) The name, addresses, and telephone number of each petitioner; the Department case identification number and

the county in which the subject matter or activity is located;

(b) A statement of how and when each petitioner received notice of the Department action;

(c) A statement of how each petitioner's substantial interests are affected by the Department action;

(d) A statement of the material facts disputed by the petitioner, if any;

(e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;

(f) A statement of which rules or statutes the petitioner contends require reversal or modification of the Department action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

A petition that does not disputes the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different

from the position taken by it in this order. Persons whose substantial interests will be affected by any such final decision of the Department on the petition have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation is not available for this proceeding.

A party who is adversely affected by this order has the right to seek judicial review under Section 120.68 of the Florida Statutes, 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 the 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 this 7th day of February, 2013,
in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Herschel T. Vinyard Jr.
Secretary

Marjorie Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Sealand
CLERK

2/7/13
DATE