

**ORDER ESTABLISHING COMPLIANCE SCHEDULE
UNDER SECTION 403.088 (2)(f), F.S.**

IN THE MATTER OF:

National Pollutant Discharge
Elimination System
Permit No. FL0304549

STA-1E
Administrative Order No. AO-009-EV

The Department of Environmental Protection (Department) issues this Administrative Order (Order) under the authority of Section 403.088 of the Florida Statutes (F.S.)

I. FINDINGS

Project Background

1. In 1994, the Florida Legislature passed the Everglades Forever Act (the EFA), Section 373.4592, F.S. This landmark piece of legislation identifies the importance of the Everglades ecosystem, recognizes that the Everglades ecosystem is endangered as a result of adverse changes in water quality and in the quantity, distribution, and timing of flows, and mandates the implementation of the Everglades Construction Project (ECP) as an important component of Everglades restoration.
2. Stormwater Treatment Area 1E (STA-1E) consists of the Inflow Pumping Stations S-319 and S-361, Gated Spillway G-311, STA-1E Interior Works, Outflow Pumping Station S-362, C-51 Basin Divide Structure S-155A, C-51 Canal Improvements, and Recreational Enhancements.
3. STA-1E is one of the ECP projects included in the Everglades restoration effort, pursuant to Section 373.4592(4) of the EFA.
4. To address water quality standards and facilitate restoration of the Everglades ecosystem, the EFA establishes a compliance schedule of actions to be undertaken by the Department and the District to implement the pre-2006 projects and strategies of the Long-Term Plan so that waters delivered to the Everglades Protection Area (EPA) meet water quality standards by no later than December 31, 2006, pursuant to Section 373.4592(10) of the EFA.

Public Interest

5. The Florida Legislature has declared the combination of Stormwater Treatment Areas (STAs) and Best Management Practices (BMPs) to be the best available technology for achieving the interim goals of the Everglades restoration program, pursuant to Section 373.4592(1)(g) of the EFA. Furthermore, the Florida Legislature found that STAs and

BMPs are intended to restore the Everglades ecological system and protect the system from adverse changes in water quality, quantity, and timing of water delivery, pursuant to Section 373.4592(1)(a) of the EFA.

Project Permitting

6. It has been determined that STA-1E will require a National Pollutant Discharge Elimination System (NPDES) Permit, pursuant to the State of Florida's federally approved NPDES program and Section 403.0885, F.S.
7. Although the NPDES permit for STA-1E, Permit No. FL0304549, requires compliance with the narrative water quality criterion for phosphorus, pursuant to Rule 62-302, Fla. Admin. Code, the standard may not be immediately achieved by the STA-1E discharges.

Standards for Administrative Orders

8. Section 403.088(2)(e), F.S., states that if a discharge will not meet permit conditions or applicable statutes and rules, the Department may issue, renew, or reissue the operation permit if:
 - A. the applicant is constructing, installing, or placing into operation, or has submitted plans and a reasonable schedule for constructing, installing, or placing into operation, an approved pollution abatement facility or alternative waste disposal system;
 - B. the applicant needs permission to pollute the waters within the state for a period of time necessary to complete research, planning, construction, installation, or operation of an approved and acceptable pollution abatement facility or alternative waste disposal system;
 - C. there is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the state;
 - D. the granting of an operation permit will be in the public interest; or,
 - E. the discharge will not be unreasonably destructive to the quality of the receiving waters.

Administrative Order Analysis for Phosphorus

9. Section 373.4592(1) of the EFA recognizes that waters flowing into the Everglades Protection Area contain excessive levels of phosphorus. The primary objective of the ECP is to reduce the levels of excess nutrients in the Everglades, in accordance with Sections 373.4592(1)(d) and (g) of the EFA. That objective is also consistent with state anti-degradation requirements, which acknowledge excessive nutrients as one of the most severe

water quality problems facing the state. Rule 62-302.300(13), F.A.C.

10. Based upon information from the Everglades Nutrient Removal project, and performance data that has been collected to date from all of the existing STAs (*i.e.*, STA-1W, STA-2, STA-3/4, STA-5, STA-6) the STA-1E facility is likely to produce substantial reductions in loads and concentrations of phosphorus being delivered to the Everglades Protection Area.
11. Pursuant to Section 373.4592(4)(e)2 of the EFA, the Department adopted a 10 parts per billion (ppb) numeric criterion for phosphorus in the Everglades Protection Area, which was effective under State law on July 15, 2004 and approved by EPA on January 24, 2005. Upon approval by EPA, the state's adopted criterion superseded the default 10 ppb criterion currently in effect under Federal law.
12. Based upon information submitted by the District, the operation and maintenance of STA-1E complies with the requirements of Section 403.088, F.S., as follows:
 - A. the District has plans and a reasonable schedule for collecting data to determine if the discharge is having an adverse impact on water quality or causing an imbalance in the natural populations of aquatic flora and fauna in the receiving waters, in accordance with Section 403.088(2)(e)1., F.S.
 - B. the District needs permission to discharge from the STA-1E facility in order to begin Everglades restoration and the removal of pollutants from the watershed, while it also continues to implement the Everglades research and monitoring program in accordance with Section 373.4592(4)(e) of the EFA, and the Long Term Compliance Plans. In accordance with 373.4592(10)(a) of the EFA, the District submitted to the Department a permit modification to incorporate the changes proposed by the Long Term Plan on December 23, 2003. The changes were designed to achieve compliance with the phosphorus and other state water quality standards by December 31, 2006.
 - C. there is no present, reasonable, alternative means to this discharge, other than by discharging it into the waters of the state, in accordance with Section 403.088(2)(e)3., F.S.;
 - D. the granting of this permit will be in the public interest, in accordance with Section 403.088(2)(e)4., F.S., and Section 373.4592(9)(a) of the EFA, as the permitted facility is a treatment wetland that is expected to provide significant removal of phosphorus from the contributing basins;
 - E. the granting of this permit will not allow discharge of waters unreasonably destructive to the quality of the receiving waters, in accordance with Section 403.088(2)(e)5., F.S. In fact, since the facility is removing pollutants, including phosphorus, the discharges authorized by this Administrative Order will be beneficial to the quality of downstream waters.

II. ORDER

Based on the foregoing findings, IT IS ORDERED THAT:

Monitoring and Operation

1. The District shall collect the data, submit the reports, modifications, and other deliverables on schedule, and maintain and operate its facilities in compliance with the conditions and monitoring requirements of NPDES Permit No. FL0304549, unless otherwise specified herein.
2. The District shall submit an Annual Report (South Florida Environmental Report) demonstrating compliance with the terms of this Administrative Order. The Annual Report shall be received by the Department no later than March 1st of each year following the date of issuance of this order. Each Annual Report shall present the information for the previous water year, from May 1st to April 30th. Upon approval by the Department, the District may modify the Annual Report submission date to coincide with multiple reporting requirements and time periods needed for data acquisition and analysis.

Phosphorus Conditions

3. **Start-Up Phase.** During the Start-Up Phase, the permittee shall monitor phosphorus within STA-1E to demonstrate that the project is achieving a net reduction in phosphorus. Portions of STA-1E may operate independently of each other. Under those circumstances, start-up Phase operation and monitoring within STA-1E shall be performed as follows:
 - A. *Establishment of Marsh Vegetation.* The permittee shall manage water depths in the treatment cells to facilitate the recruitment of marsh vegetation in accordance with the Operations Plan, which may include recirculating waters within the STA.
 - B. *Start-Up Monitoring.* On a weekly basis, the permittee shall monitor total phosphorus at the upstream side of inflow pump stations S-319 and S-361 and structure G-311. Total phosphorus shall also be monitored on the upstream side of the S-365, S-369 and S-372 outflow structures (See Figure 1).
 - C. *Discharge/Flow-through Operations.* Discharge/flow-through operations, from an individual flow-way that has passed the Phosphorus Test described below, may commence once Start-Up Phase documentation and all supporting data and analyses are submitted to the Department via regular or electronic mail. For flow-ways that have not met these tests within two months after issuance of the permit, the permittee shall submit status updates regarding progress toward and identifying strategies to achieve these tests.

1. *Phosphorus Start-Up Test.* The Phosphorus Start-Up Test for an individual flow-way is based on when the above samples demonstrate, over a four-week period, a net reduction in phosphorus occurs. This net reduction shall be deemed to occur when the 4-week geometric mean total phosphorus water column concentration from samples collected at the applicable outflow structures is less than the 4-week geometric mean total phosphorus water column concentration collected at the applicable inflow structure(s).

D. *Initiation of Individual Flow-way (Stabilization and Post-Stabilization) Discharges and Monitoring.* Once flow-through discharges from a flow-way begin, the permittee shall initiate routine water quality monitoring for that flow-way consistent with the monitoring program referenced in Section I.A.1 of the NPDES permit.

4. **Stabilization Phase.** Following completion of the Start-Up phase for all the flow-ways, STA-1E shall begin a period of stabilization, in accordance with Subsection 373.4592(9)(h) of the EFA. The stabilization period for STAs is where performance is improving toward the STA's optimal treatment performance and is generally anticipated to last one to two years after the Start-Up phase ends. During that period, compliance with the criteria in Subsection 373.4592(9)(h) of the EFA shall be evaluated as set forth below.

After start-up operations have ended and flow-through operations and discharges have begun from all flow-ways, the permittee shall operate and monitor STA-1E. The stabilization test for STA-1E shall be met when the 12 month flow-weighted average total phosphorus concentration at the outflow station is less than or equal to 50 ppb. Starting 12 months after commencing discharge from all flow-ways, the permittee shall provide rolling 12 month flow-weighted average total phosphorus concentration in monitoring reports. If, after the two years of full flow-through operation, STA-1E has not met this stabilization test, the permittee shall submit a report which shall evaluate reasons for not meeting the stabilization test. The report shall include results from the Process Development & Engineering (PD & E) component of the Long-Term Plan and any other applicable information. The report shall also include schedules and strategies for implementing an optimization plan to achieve the stabilization test.

5. **Post Stabilization Operations Phase.** At the end of the stabilization period, discharges from STA-1E, via the S-362 pump station, shall meet technology-based effluent limitations (TBELs) in accordance with Section 373.4592(10)(a), F.S. Based upon the Best Available Phosphorus Reduction Technology (BAPRT), the ECP identified an initial TBEL for phosphorus of a long-term flow-weighted mean of 50 ppb. Compliance with the 50 ppb TBEL shall be as defined in the May 2005 Nearhoof, et al. document attached as Exhibit J. A 10 part per billion (ppb) default numeric phosphorus criterion went into effect December 31, 2003 and was approved by the U.S. EPA on January 24, 2005. Pursuant to Section 373.4592(4)(e)2 of the EFA, the Department adopted a 10 parts per billion (ppb) numeric criterion for phosphorus in the Everglades Protection Area, which was approved by the U.S. EPA on January 24th, 2005, and superseded the default 10 ppb criterion. Under the State's

Long-Term Plan, the goal is to achieve the 10 ppb phosphorus criterion at the earliest achievable date, which will be accomplished through the iterative adaptive implementation process set forth in the Long-Term Plan. The initial 50 ppb TBEL will be revised as appropriate, consistent with the iterative implementation of BAPRT, until such time as the TBEL can achieve compliance with the 10 ppb phosphorus criterion.

Pursuant to Section 373.4592(10), the permittee shall take such action as necessary to implement the pre-2006 projects and strategies of the Long-Term Plan relevant to STA-1E. If implementation of the pre-2006 projects and strategies will not achieve the 10 ppb phosphorus criterion for discharges from STA-1E by December 31, 2006, the permittee will submit the necessary information to demonstrate the applicability of a moderating provision pursuant to Rule 62-302.540(6), F.A.C. Current Long-Term Plan performance estimates for STA-1E after implementation of the pre-2006 projects and strategies range from 15-24 ppb as a long-term flow-weighted mean; therefore, it is anticipated that the initial 50 ppb TBEL for STA-1E will be revised by December 31, 2006, to reflect a new TBEL in this range

Factors Impacting Compliance

6. In the event that discharges are not meeting any of the compliance requirements set forth above, the District and Department shall evaluate the performance of STA-1E relative to the design documents, the Operations Plan, the District's Pollution Prevention Plan, dated October 25, 2004, and any other documentation addressing STA-1E operation. Design parameters to be evaluated shall include, but not be limited to, phosphorus loads, hydraulic loading rates, hydraulic retention times, and minimum, mean and maximum depths. Appropriate remedial measures shall be taken after that review is completed.

Relationship Between Administrative Order and Other Legal Authorities

7. This order does not operate as a permit under Section 403.088 of the Florida Statutes.
8. Failure to comply with the requirements of this order shall constitute a violation of this order and may subject the District to penalties as provided in Section 403.161 of the Florida Statutes.
9. This order may be modified following the procedures for a permit modification as set forth in Chapter 62-620 of the Florida Administrative Code. The District shall design and request modifications to STA-1E, if analysis of the monitoring data reveals the project is not achieving the design objectives, or, if technologies become available that are determined to be superior at achieving the goals of the Everglades restoration program.
10. This order is final when filed with the clerk of the Department, and the District shall then implement this order unless a petition for an administrative proceeding (hearing) is filed in accordance with the notice set forth in the following section.

III. NOTICE OF RIGHTS

A person whose substantial interests are affected by the Department's proposed decision 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 by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Petitions by the applicant or any of the parties listed below must be filed within twenty-one days of receipt of this written notice. Petitions filed by any persons other than those entitled to written notice under section 120.60(3) of the Florida Statutes must be filed within twenty-one days of publication of the notice or within twenty-one days of receipt of the written notice, whichever occurs first.

Under section 120.60(3) of the Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within twenty-one days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. 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. 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 of the Florida Administrative Code.

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

- (a) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any; 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 all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;
- (f) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; 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 dispute 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.

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

Mediation under section 120.573 of the Florida Statutes is not available for this proceeding.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

Any party to the order has the right to seek judicial review of the order under section 120.68 of the Florida Statutes, by the filing of 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 30 days from the date when the final order is filed with the Clerk of the Department.

DONE AND ORDERED on this 30th day of August, 2005 in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jerry Brooks
Deputy Division Director
Water Resource Management

FILING AND ACKNOWLEDGMENT

FILED, on this date, under Section 120.52 (7), F.S., with the designated deputy clerk, receipt of which is hereby acknowledged.



Jennifer Kretschman **8/30/05**
Date

PARTIES REQUESTING NOTICE:

Miccosukee Tribe of Indians of Florida, c/o Dexter Lehtinen, Esq.
Miccosukee Tribe of Indians of Florida, c/o Kelly Brooks, Esq.
United States Sugar Corporation, c/o Bubba Wade
Seminole Tribe of Indians of Florida, c/o Stephen A. Walker, Esq.
Sugar Cane Growers Cooperative, Roth Farms, Inc., and Wedgeworth Farms, Inc.,
c/o William H. Green, Esq.
Keith Saxe, Esq., U. S. Department of Justice
Michael Stevens, U.S. Department of the Interior (fax)
Jeffrey J. Ward, Sugar Cane Growers Cooperative
Philip S. Parsons, Landers & Parsons
Helen Hickman, Brown & Caldwell
Tom MacVicar, MacVicar, Frederico, & Lamb
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