



Jeb Bush
Governor

Department of Environmental Protection

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

David B. Struhs
Secretary

March 19th, 2004

Ronald Bearzotti
Senior Environmental Analyst
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406

Project: Stormwater Treatment Area 3/4
Subject: Permit Modification to Mercury Condition for Startup
File No.: FDEP No. 0192895-001-GL
FDEP Mod No.: 0192895-003-GL

Dear Mr. Bearzotti:

The Department acknowledges that your submittal dated February 18, 2004, to modify the above permit has been received and reviewed by the Department staff. The request is to modify Specific Condition 29 B. 2. in the above referenced permit to allow immediate flow-through operation of Cell 3. The current permit condition prohibits the start of flow-through operation until total mercury and methylmercury concentrations in the interior of each treatment cell are not significantly greater than their inflow concentrations. Flow-way 1 demonstrated this net improvement on January 15th, 2004, yet Cell 3 has shown higher than expected mercury concentrations in the water and fish.

Exhibit C, Condition (2) of the EFA permit for STA-3/4 allows discharge to commence when the interior concentrations of total mercury and methylmercury are not significantly greater than their corresponding inflow concentrations. Flow-way 1 of STA-3/4 has met the mercury start-up criteria, but Cell 3 still has not as of February 18, 2004. As in Cell 1 of STA-2, Cell 3 of STA-3/4 may not meet its mercury start-up criteria. The Department agrees with the District conclusion that this is a consequence of conditions that are occurring in Cell 3, which are similar to that in STA-2 Cell 1. The Department further agrees with the District's conclusion, as expressed in "*Report on Expanded Mercury Monitoring at Stormwater Treatment Area - 2*" and "*Technical Analysis Supporting A Request For Permit Modification Of The STA-2 Mercury Start-Up Criteria*" that an extended period of restricted discharge, resulting in standing rainfall-derived water in STA-3/4 Cell 3, is likely to be the worst case for methylmercury production, bioaccumulation, and risk. These documents were developed and submitted by the District in response to the findings of elevated mercury levels in STA-2 Cell 1 which, similarly to STA-3/4 Cell 3, have prevented it from meeting its criteria for startup.

The Department agrees with the District's request for a modification of the mercury start-up condition in the EFA permit for STA-3/4 to authorize Cell 3 flow-through operation as soon as possible. This will prevent an extended period of standing water and substantially reduce the likelihood of methylmercury build-up to anomalously high levels in water, soil, and aquatic biota. Geochemical investigations of mercury dynamics in other STAs indicates that it is highly unlikely that STA-3/4 Cell 3 will become a substantial source of excess inorganic mercury or methylmercury to the downstream environment following initiation of flow-through operation. Experience with the anomalous mercury conditions encountered in STA-2 indicates that operation of STAs will, over time, progressively damp down methylmercury spikes stemming from wetting and drying cycles, should this occur. Therefore, initiation of flow-through operation from Cell 3 is unlikely to increase substantially the mercury risks to fish-eating wildlife in downstream areas in response to the loads or concentrations of total mercury, methylmercury, or influential constituents present in the treated outflow. Having the flexibility to initiate flow-through operation now, in preparation for the wet season, will also result in a greater reduction in the phosphorus load entering the northern Everglades than if only Flow-way 1 is operational. It is also likely to produce a substantial decrease in the methylmercury concentrations of Cell 3 water and fish without a concomitant substantial increase in methylmercury concentrations in downstream fish.

The Department agrees with the District determination that, available water permitting; a flow-through operation at a minimum depth of 6 inches (0.15 m) in Cell 3 is more likely than not to foster the build-up of sulfide concentrations in pore water to levels that will inhibit methylmercury production, as long as the soil and water chemistry conditions are otherwise conducive. The District proposes to operate Cell 3 using a target average depth of 1 foot, and a target 6-inch minimum depth, to the maximum extent practicable and subject to available water and operational constraints.

The Department hereby approves the following changes to the referenced permit pursuant to your request and accompanying supportive data. The issued permit shall be modified as follows utilizing ~~striketrough~~ for deletions and underlines for additions (sections of the permit not shown below remain the same):

SPECIFIC CONDITIONS:

- 16.F. *Mercury Monitoring.* The Start-Up Phase is also dependent on the individual treatment cells demonstrating a net improvement in total mercury and methyl mercury, in accordance with the provisions of the mercury monitoring condition (2) in Exhibit C.

SPECIFIC CONDITIONS FOR MONITORING PROGRAM

In accordance with Subsection (9)(h) of the EFA, the following monitoring conditions are intended to assess the water quality of the discharges of the STA-3/4 Project, to assess the ability of the STA in achieving the design objectives of the Everglades Construction Project, and to measure progress towards achieving state water quality standards.

29. Monitoring Program. Monitoring performed in accordance with this permit shall include the vegetation and water quality and quantity parameters listed below and in the attached tables. At a minimum, the monitoring program for the STA-3/4 Project shall include the following:

- A. **Aerial vegetation photographs and mapping.** Within twelve months after start-up, the permittee shall submit a baseline vegetation coverage map for STA-3/4, based upon ground-truthed aerial photographs. The baseline vegetation coverage map shall include color codes for cattail, open water, and mixed marsh vegetation, although the latter category may be broken down into subcategories if dominated by certain types of vegetation. From the baseline vegetation coverage map, the extent of area coverage of each vegetation cover type within STA-3/4, shall be assessed. Following completion, the baseline vegetation coverage map and a summary of the extent of area coverage of each vegetative coverage type shall be included in the following annual monitoring report to be submitted to the Department in accordance with Specific Condition 30.

In the event that the water quality performance requirements of Specific Conditions 16-21 are not being met, the Department may require the permittee to develop additional vegetation coverage maps of STA-3/4, developed using the same methods as for the baseline vegetation coverage map. The additional maps shall be developed within six months after such notification by the Department.

Based upon the vegetation coverage maps and the water quality performance information submitted in accordance with this permit, the operations plan for the STA-3/4 Project may be modified in accordance with Specific Conditions 25-28. The permittee must use their best efforts to modify the operations plan for the STA-3/4 Project, as soon as the vegetation analysis provides information warranting modification of the operations plan.

- B. **Research and Monitoring Program.** In accordance with the water quality research and monitoring objectives of Subsections (4)(d) and (9)(h)2 of the EFA, the permittee shall implement an EFA Research and Monitoring Program, which shall be in addition to the effluent monitoring required in this permit. This program shall evaluate the effectiveness of the STAs in improving water quality and maintaining designated and existing beneficial uses of the EPA and tributary waters. The research monitoring of the STAs shall include specific analysis for each treatment cell of each STA to determine treatment effectiveness for each of the cells and to obtain data needed for STA performance optimization. Results of research efforts shall be reported as part of the annual Everglades Consolidated Report.
- 1) **Start-Up Phase Monitoring Program.** For the first four weeks after flow-through operation of STA-3/4 begins, the permittee shall monitor total phosphorus at G-370 and G-372 (Inflow locations) and G-376B, G-376E, G-379B, G-379D, G-381B, and G-381E (Outflow Locations) in accordance with Table 2, and shall submit data to the Department within 60 days after the last date of sampling.

- 2) Mercury Monitoring Program. The permittee shall monitor mercury, report the results obtained, and take all necessary actions as specified in the document entitled "Mercury Monitoring Program," which is hereby incorporated by reference and made a part of this permit as Exhibit C.

Until treatment cell 3 of STA-3/4 meets Condition (2) ii of Exhibit C, the permittee shall operate and monitor the cell in accordance with the "Expanded Mercury Operation and Monitoring Program," dated March 19th 2004, which is hereby incorporated by reference and made part of this permit as Exhibit E.

- 3) Routine Monitoring Program. The permittee shall conduct a Long-Term Monitoring Program at G-370, G-372, G-376B, G-376E, G-379B, G-379D, G-381B, and G-381E, and report the results to the Department, in accordance with the annual reporting requirements of this permit for the parameters listed in Table 2 of the "Monitoring Required" section of this permit. Data from this program may provide the basis for additional permit compliance requirements.
- 4) Representative Monitoring Program. The permittee shall collect grab samples at all outflow locations (G-381 A-F, G-379 A-E and G-376 A-F structures) in order to verify whether discharge water quality can be adequately characterized by monitoring at a limited number of outflow discharge structures in each flow-way. This program should include monthly grab samples collected concurrently from each outflow location. It should be initiated at Start-Up and should be conducted until sufficient data is gathered to support conclusions regarding water quality comparability amongst the stations in individual flow-ways. The permittee shall submit an evaluation of this data to the Department for approval upon determining that sufficient data exists to support conclusions. Upon approval by the Department, the permittee may cease this monitoring program. Data from this program may provide the basis for modifications to the number and location of outflow compliance monitoring stations and may be used to determine compliance with Specific Conditions 16-18.
- 5) Monitoring for Future Facilities or Structures. The permittee shall continue to collect the data from the STAs, including STA-3/4, and other applicable data needed to determine the effective settling rate for the STAs, the efficiency and effectiveness of STA-3/4 in treating waters from the EAA, and to adequately assess the need, if any, for future treatment wetland facilities or structures.
- 6) Monitoring for effectiveness of corrective actions related to former land use. As part of the start-up monitoring program, as identified in Table 1, the permittee shall monitor and evaluate potential impacts from historical land use and the effectiveness of completed corrective actions. Pre-construction contamination assessments and ecological assessments have identified concentrations of pesticides, petroleum, and metals ("compounds of concern"), related to former agricultural application and operations (e.g., pump stations, mix/load areas, storage facilities, and airstrips). Various contaminants including but not limited to, those found in Table 3, were found

to be present at concentrations of potential ecological and/or human concern and corrective actions, to address identified contamination or known conditions, were implemented prior to construction of the STA and associated structures. This Compounds of Concern monitoring program is intended to provide long term assessment to determine if operation of the permitted system causes detrimental release of compounds, currently bound to soils, into the water column or creates a sediment system that poses an ecological threat. Therefore, at a minimum the monitoring plan should include the parameters and frequency of monitoring listed in Table 3.

As the proposed modifications with the permit are not expected to result in any adverse environmental impact or water quality degradation and are consistent with the requirements of the Everglades Forever Act, the permit is hereby modified as requested. By copy of this letter, we are notifying all necessary parties of the modifications.

This letter of approval does not alter the original expiration date, the Specific or General Conditions, or the discharge requirements of the permit, except as stated herein. This letter must be attached to the original permit.

PUBLICATION OF NOTICE

The Department has determined that the approved activity, because of its size, potential effect on the environment or the public, controversial nature, or location, is likely to have a heightened public concern or likelihood of request for administrative proceedings. Therefore, pursuant to Section 373.413(4), F.S., you (the permittee) are required to publish at your own expense the enclosed Notice of Permit Modification. The notice is required to be published one time within 30 days, in the legal ad section in a newspaper or newspapers of general circulation in the areas affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. The applicant shall provide proof of publication to:

Department of Environmental Protection
Water Quality Standards and Special Projects Program, Mail Station 3560
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

The proof of publication shall be provided to the above address within seven days of publication. Failure to publish the notice and provide proof of publication within the allotted time shall be grounds for revocation of the permit modification.

RIGHTS OF AFFECTED PARTIES

A person whose substantial interests are affected by the Department's proposed permitting 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.

To petition the Department's intended action, petitions by the applicant or parties requesting notice must be filed within twenty-one days of receipt of this written notice. Petitions against the Department's intended action filed by any persons other than those entitled to written notice under subsection 120.60(3) of the Florida Statutes, must be filed within twenty-one days of publication of this notice or within twenty-one days of receipt, whichever occurs first.

Under subsection 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 (for EFA actions), 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 permit 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, 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 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.

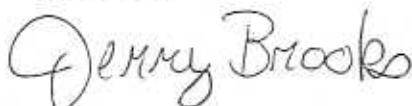
The application is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Water Quality Standards and Special Projects Program, 2600 Blair Stone Road, Mail Station 3560, Tallahassee, Florida, 32399.

Any party to this order has the right to seek judicial review of it 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 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.

The permittee, or any party within the meaning of section 373.114(1)(a) of the Florida Statutes, may also seek appellate review of this order before the Land and Water Adjudicatory Commission under section 373.114(1) of the Florida Statutes. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department and on any person named in this order, as described in section 373.114(1)(a), within 20 days from the date when the final order is filed with the Clerk of the Department.

If you have any questions concerning this Modification Approval to the issued permit, contact Temperance Morgan at (850) 245-8424.

Sincerely,



Jerry Brooks
Deputy Division Director

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FILING AND ACKNOWLEDGMENT

FILED, on this date, with the designated Department Clerk, receipt of which is hereby acknowledged.

 Clerk 3/19/04 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
Charles Lee, Florida Audubon Society
Samuel B. Reiner, II, Esq., Lehtinen O' Donnell, Vargas & Reiner, P.A.
Michelle W. Smith, Esq., Earl, Blank, Cavanaugh & Stotts

COPIES FURNISHED TO:

Bob Pace, U.S. Fish and Wildlife Service
Jim Quinn, FL. Dept. of Community Affairs
Charles Oravetz, Nat. Marine Fisheries Service
Laura Kammerer, FL. Dept. of State- Historical Resources
Don Klima, U.S. Advisory Council on Historic Preservation
John Childe, Friends of the Everglades
David Reiner, Friends of the Everglades
Col. Robert Carpenter, USACOE, Jacksonville
Richard Bonner, USACOE, Jacksonville
Lloyd Pike, Esq., USACOE, Jacksonville
Richard Harvey, USEPA, West Palm Beach
Philip Mancusi-Ungaro, Esq., USEPA, Atlanta
Roosevelt Childress, USEPA, Atlanta
Gina Fonzi, USEPA, Atlanta
Dan Scheidt, USEPA, Athens
Eric Hughes, USEPA, Jacksonville

Janet Bussell, The Everglades Foundation
Mark Musaus, Loxahatchee National Wildlife Refuge
Mike Zimmerman, Everglades National Park
Ken Haddad, Florida Fish and Wildlife Conservation Commission
Joe Walsh, Florida Fish and Wildlife Conservation Commission, Vero Beach
Steve Coughlin, Florida Fish and Wildlife Conservation Commission, West Palm Beach

ADDITIONAL COPIES FURNISHED TO:

Chris Flack, Governor's Office
Henry Dean, SFWMD, West Palm Beach
Sheryl Wood, SFWMD, West Palm Beach
Gary Goforth, SFWMD, West Palm Beach
Tom Teets, SFWMD, West Palm Beach
Larry Fink, SFWMD, West Palm Beach
Neil Larson, SFWMD, West Palm Beach
Ron Bearzotti, SFWMD, West Palm Beach
Kirk Burns, Esq., SFWMD, West Palm Beach
Ernie Barnett, FDEP, Tallahassee
Jerry Brooks, FDEP, Tallahassee
Frank Nearhoof, FDEP, Tallahassee
Temperince Morgan, FDEP, Tallahassee
Tom Atkeson, FDEP, Tallahassee
John Outland, FDEP, Tallahassee
Herb Zebuth, FDEP, West Palm Beach
Inger Hansen, FDEP, West Palm Beach
Jennifer Fitzwater, Esq., FDEP, Tallahassee
John Mitnik, SFWMD, West Palm Beach
Shelley Yaun, FDEP, Tallahassee

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this, including all copies, were mailed or emailed before the close of business on 3/19/04 to the above listed persons.

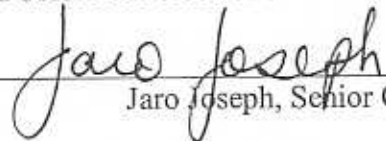

Jaro Joseph, Senior Clerk

EXHIBIT E

EXPANDED MERCURY OPERATION and MONITORING PROGRAM March 19, 2004

Cell 3 of STA-3/4 has not yet met Condition (2) ii of Exhibit C, but the permittee may discharge from Cell 3 under the following conditions:

1. Optimization of STA water depths. Cell 3 will be operated to achieve a target average depth of 1 foot and a target minimum depth of 0.5 ft to the maximum extent practicable and subject to available water and operational constraints;

2. Net Improvement in Water Column Mercury

- A. The permittee shall expand the mercury monitoring program as shown in Table 1 and Figure 1, and shall provide the Department with these monitoring results in the form of a time-series graph upon verification of the water column mercury data. The time-series graphs shall be submitted to the Department on a quarterly basis.
- B. Following a dry out in Cell 3 the permittee shall monitor as shown in Table 3 and Figure 1. Monitoring shall revert to the mercury monitoring program as shown in Table 1 and Figure 1 when the data demonstrates that any elevated mercury has subsided.
- C. When the total mercury and methylmercury water column concentrations at the mid-point of Cell 3 are not significantly greater than the inflow (measured at G-370 and G-372, as applicable) at the 95% confidence level the permittee, upon notification to the Department, shall revert to the STA operational monitoring set forth in Exhibit C(3).
- D. If either the total mercury or methylmercury water column concentrations at the mid-point of Cell 3 is still significantly greater than the concentrations at the inflow (measured at G-370 and G-372, as applicable) at the 95% confidence level after one year from the date of this modification, the permittee will assess whether the net improvement provisions of this permit are being met for total mercury and methylmercury and submit the assessment to the Department within one year plus 90 days from the date of this modification. The net improvement assessment shall adhere to the following conditions:
 - a. If the net improvement assessment determines that the net improvement provisions of this permit are not being met for total mercury or methylmercury, the District will include a Remediation Plan. The Remediation Plan will contain a discussion of potential remedial actions. The department may approve this Remediation Plan with modifications or take action under Condition (6) of Exhibit C.
 - b. If the net improvement assessment determines the net improvement provisions of this permit are being met for total mercury and methylmercury, the monitoring program shall revert to the routine STA operational monitoring in Exhibit C(3) upon submittal of the assessment under condition C above, unless otherwise notified by the Department.

3. Total Mercury Values in Fish Tissue

- A. The permittee shall implement the expanded fish-monitoring program in accordance with Table 2 for one year. The permittee shall provide the Department with these monitoring results in the form of a time-series graph upon verification of the fish tissue mercury data.
- B. After one year from the date of this modification, in the event that mercury levels in both mosquitofish and sunfish tissue exceed their corresponding baseline Everglades-wide 90th percentile upperbound concentrations for the pre-ECP baseline period 1997-1999, then the mercury levels in STA-3/4, Cell 3 shall be deemed anomalously high. In this event, the District shall:
 - a. immediately notify the Department;
 - b. within 90 days, submit to the Department a Remediation Plan. The Remediation Plan will contain a discussion of potential remedial actions. The department may approve this Remediation Plan with modifications or take action under Condition (6) of Exhibit C.; and
 - c. after submission of the Remediation Plan, consult with the Department, and implement additional mutually-agreed upon corrective measures, as appropriate.
- C. After one year from the date of this modification, in the event that mercury levels in both mosquitofish and sunfish tissue do not exceed their corresponding baseline Everglades-wide 90th percentile upperbound concentrations for the pre-ECP baseline period 1997-1999, upon notification to the Department, the permittee shall revert to the STA operational monitoring set forth in Exhibit C(3).

4. Continued adaptive management provision

Upon review of the submitted data, the Department may require the District to implement additional monitoring, corrective, or remedial activities if the data scientifically justifies that such measures are needed to assess, prevent, or correct adverse environmental impacts. Notwithstanding the above, the other provisions of Exhibit C, including Conditions (4), (5) and (6), shall remain in effect at all times for Cell 3.

Failure to comply with these requirements may trigger an enforcement action by the Department, and may result in additional monitoring or corrective measures, as appropriate.

Table 1. Expanded Mercury Monitoring – Water Column

Parameter	Locations	Frequency
Unfiltered total mercury and unfiltered methylmercury in surface water	Inflow (G-370 and G-372, as applicable), and outflow (just downstream of G-381A) ¹	Biweekly (defined as every other week)
Unfiltered total mercury and unfiltered methylmercury in surface water	Existing mid-point in Cell 3 ¹	Every Other Week
Water depth ²	Existing mid-point in Cell 3 ¹	Daily

¹See Figure 1 for map of sampling locations

²Estimated from stage gages at inflow and outflow sites

Table 2. Expanded Mercury Monitoring – Fish Tissue

Parameter	Locations	Frequency
Total mercury in mosquitofish homogenate	Existing mid-point in Cell 3 ¹	Every Other Week
Total mercury in sunfish	Representative interior Cell 3 location	Semiannual
Water depth ²	Existing mid-point in Cell 3 ¹	Daily

¹See Figure 1 for map of sampling locations

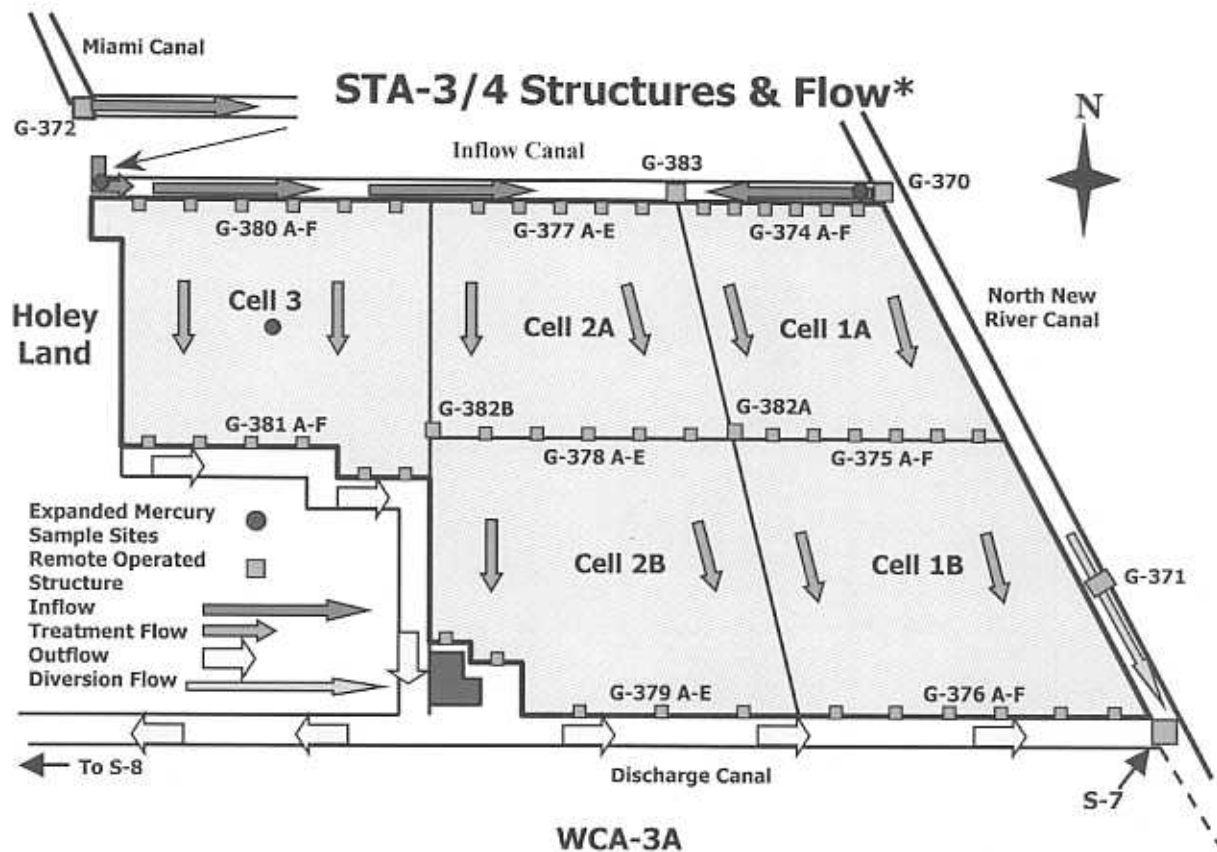
²Estimated from stage gages at inflow and outflow sites

Table 3. Expanded Mercury Monitoring (After Cell 3 Dry Out) – Water Column

Parameter	Locations	Frequency
Unfiltered total mercury and unfiltered methylmercury in surface water	Inflow (G-370 and G-372, as applicable) ¹	Biweekly (defined as every other week)
Unfiltered total mercury and unfiltered methylmercury in surface water	Existing mid-point in Cell 3 ¹	Every Other Week
Unfiltered total mercury and unfiltered methylmercury in surface water	Outflow (just downstream of G-381A) ¹	Weekly
Water depth ²	Existing mid-point in Cell 3 ¹	Daily

¹See Figure 1 for map of sampling locations

²Estimated from stage gages at inflow and outflow sites



*Not to Scale

Figure 1

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF PERMIT MODIFICATION

The Department of Environmental Protection gives notice of a permit modification at the request of the South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, Florida 33406, to modify an Everglades Forever Act (EFA, Chapter 373.4592, Florida Statutes) Permit (0192895) for the operation of Stormwater Treatment Area 3/4 (STA-3/4) and associated works. This STA is part of the Everglades Construction Project, construction, operation, and maintenance of which is required by the EFA. The specific request is to modify the permit to incorporate a modified Mercury Monitoring Program and to allow discharges from Cell 3 of the facility. Cell 3 is producing methylmercury partially because of the lack of flow from the cell. The Department approved the modification request due to four reasons: 1) the methylmercury is being produced due to Everglades-like biogeochemical conditions that are presently outside the control of the permittee; 2) it would be less harmful to the environment to discharge from Cell 3 and prevent an extended period of standing water and substantially reduce the likelihood of methylmercury build-up to anomalously high levels in water, soil, and aquatic biota; 3) water quality data indicates that the total mercury levels discharged from Cell 3 will be less than the state's water quality standard of 12 ng/l for Class III freshwaters; and 4) similar operations in STA-2 Cell 1 resulted in decreased total mercury and methylmercury.

The activity is located within the following property descriptions in Palm Beach County:

STA-3/4 Cell 3. The southwestern corner of Section 31 and the southern 1/2 of Sections 32, 33, 34, Township 45 South Range 37 East; Sections 4, 5, 6, 7, 8, 9, and a small part within the northern 1/2 of Section 16, Township 47 South, Range 37 East.

A person whose substantial interests are affected by the Department's permitting 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, within twenty-one days of publication of this notice or receipt of written notice, whichever occurs first.

To petition the Department's intended action, petitions by the applicant or parties requesting notice must be filed within twenty-one days of receipt of this written notice. Petitions against the Department's intended action filed by any persons other than those entitled to written notice under subsection 120.60(3) of the Florida Statutes, must be filed within twenty-one days of publication of this notice or within twenty-one days of receipt, whichever occurs first.

Under subsection 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 (for EFA actions), regardless of the date of publication.

The petitioner shall mail a copy of the petition to the permittee 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, 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 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 and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

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, 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 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.

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 the Department of Environmental Protection, Water Quality Standards and Special Projects Program, 2600 Blair Stone Road, Mail Station 3560, Tallahassee, Florida, 32399.

Any party to this order has the right to seek judicial review of it 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 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.

The permittee, or any party within the meaning of section 373.114(1)(a) of the Florida Statutes, may also seek appellate review of this order before the Land and Water Adjudicatory Commission under section 373.114(1) of the Florida Statutes. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department and on any person named in this order, as described in section 373.114(1)(a), within 20 days from the date when the final order is filed with the Clerk of the Department.