

**ORDER ESTABLISHING COMPLIANCE SCHEDULE
UNDER SECTIONS 373.4592 and 403.088(2)(f), F.S.**

IN THE MATTER OF:
Everglades Forever Act
Permit No. 0192895

STA-3/4 Project
Administrative Order No. AO-008-EV

Issued January 9, 2004

The Department of Environmental Protection (Department) issues this Administrative Order under the authority of Section 403.088, of the Florida Statutes (F.S.) and consistent with the requirements of Section 373.4592, 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 3/4 (STA-3/4) is one of the ECP projects included in the Everglades restoration effort, pursuant to Subsection 373.4592(4) of the EFA.
3. To address water quality standards and facilitate restoration of the Everglades ecosystem, the EFA establishes a compliance schedule of events to be undertaken by the Department and the District so that waters delivered to the Everglades Protection Area meet water quality standards by December 31, 2006, pursuant to Subsection 373.4592(10) of the EFA.

Public Interest

4. 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 Subsection 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 Subsection 373.4592(1)(a) of the EFA.

Project Permitting

5. On May 30, 1994, and December 17, 2001, the South Florida Water Management District

applied for a permit to construct, operate, and maintain the STA-3/4 Project, pursuant to Subsection 373.4592(9) of the EFA.

6. In order to obtain permits to discharge treated waters from the ECP into the Everglades Protection Area, the District, pursuant to Subsection 373.4592(9) of the EFA, must provide reasonable assurances to the Department of the following:
 - a. the project will be constructed, operated, and maintained in accordance with the Everglades Construction Project;
 - b. the Best Management Practices Program (BMP) set forth in paragraph (4)(f) of the EFA has been implemented;
 - c. the final design of the project shall minimize wetland impacts, to the maximum extent practicable and consistent with the Everglades Construction Project;
 - d. the STAs achieve the design objectives of the Everglades Construction Project for phosphorus;
 - e. for water quality parameters other than phosphorus, the quality of water discharged from the STAs is of equal or better quality than inflows; and,
 - f. discharges from STAs do not pose a serious danger to the public health, safety, or welfare.
7. Existing information, including data from the Everglades Nutrient Removal Project, STA-1W, STA-2, STA-5, and STA-6, as well as, the administrative record and permit conditions for EFA Permit No. 0192895, provide reasonable assurances that the STA-3/4 Project will meet all of the requirements for the EFA permit, except that dissolved oxygen discharges from the STA-3/4 project may not be of equal or better quality than inflows, and may not immediately comply with dissolved oxygen water quality standards in Chapter 62-302, F.A.C.

Standards for Administrative Orders

8. Subsection 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.

Analysis for Dissolved Oxygen

- 9. Dissolved oxygen concentrations fluctuate naturally in marsh environments such as the Everglades and routinely fall below the Class III water quality criterion of 5 milligrams per liter (mg/L). The treatment marsh of the STA-3/4 Project is also expected to experience natural fluctuations in dissolved oxygen which routinely fall below the Class III water quality criterion of 5 mg/L. *See*, Robert H. Kadlec and Robert L. Knight, Treatment Wetlands (Lewis, 1996) pp. 102-118, enclosed as Exhibit 1.
- 10. Based upon information submitted by the District, the operation and maintenance of the STA-3/4 Project 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 Subsection 403.088(2)(e)1., F.S.;
 - b. the District needs permission to discharge from the STA-3/4 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 Subsection 373.4592(4)(e) of the EFA, and the Long Term Compliance Plans, which shall be developed by December 31, 2003, in accordance with Subsection 373.4592(10) of the EFA;
 - c. there is no present, reasonable, alternative means to this discharge, which is driven by rainfall, other than by discharging it untreated into the waters of the state, in accordance with Subsection 403.088(2)(e)3., F.S.;
 - d. the granting of this permit will be in the public interest, in accordance with Subsection 403.088(2)(e)4., F.S., and Subsection 373.4592(9)(a) of the EFA, as the permitted facility is a treatment wetland that is expected to provide significant

removal of phosphorus and other pollutants 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 Subsection 403.088(2)(e)5., F.S. Low levels of dissolved oxygen can occur naturally in the Everglades, and furthermore, since the facility is removing pollutants, the discharges authorized by this Administrative Order will be beneficial to the overall quality of downstream waters.
- 11. In addition, in recognition of the fact that all water bodies may not naturally meet their respective water quality criteria, the Department has the authority under rules 62-302.500 and 62-302.800, F.A.C., to establish a Site Specific Alternative Criteria (SSAC) for any parameter, including dissolved oxygen criterion, and may base that SSAC on natural background conditions or man-induced conditions which cannot be controlled or abated.
 - 12. The Department is also directed by Subsections 373.4592(4)(e)3. and 4. of the EFA, to evaluate existing Class III water quality standards in the Everglades Agricultural Area canals and the Everglades Protection Area.

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, maintain and operate its facilities in compliance with the conditions and monitoring requirements of EFA Permit No. 0192895, unless otherwise specified herein.
- 2. The District shall submit an Annual Report (the Everglades Consolidated Report), in accordance with EFA Permit No. 0192895 demonstrating compliance with the terms of this Administrative Order.

Dissolved Oxygen Conditions

- 3. Dissolved oxygen levels shall be monitored upstream of the G-370 and G-372 inflow pump stations and at the G-376B, G-376E, G-379B, G-379D, G-381B, and G-381E discharge culverts with insitu multi-parameter probe readings from bi-weekly grab samples.
- 4. The District shall provide to the Department, in an STA-3/4 Annual Report, to be

included in the Everglades Consolidated Report and submitted by January 1st of each year, an analysis of dissolved oxygen demonstrating that dissolved oxygen levels in the STA-3/4 discharge do not adversely change the downstream Everglades ecological system or downstream water quality based upon the following:

- a. a comparison of dissolved oxygen levels in STA discharges with background conditions in receiving waters;
 - b. an evaluation of dissolved oxygen levels at representative interior Everglades Marsh Stations, demonstrating that STA discharges fully maintain and protect the existing designated uses of the downstream waters and the level of water quality consistent with applicable anti-degradation requirements;
 - c. an evaluation of whether discharges are necessary or desirable, and otherwise in the public interest;
 - d. a comparison of STA-3/4 effluent with other historic dissolved oxygen data from the Everglades Protection Area.
5. If the Department, based upon a review of the information submitted pursuant to condition 2 above, determines that STA-3/4 discharges are adversely changing the downstream Everglades ecological system or downstream water quality, then within 90 days of receipt of notice of the Department's determination, the District shall submit for review and approval, a remedial plan to address the dissolved oxygen levels. This plan must include an implementation schedule.
6. In accordance with Subsection 373.4592(4)(d) of the EFA, the Department shall review dissolved oxygen water quality standards in the Everglades, and shall, by July 1, 2003, take proposed agency action, if necessary, on:
 - a. a revised dissolved oxygen criterion;
 - b. a site-specific alternative criterion; or
 - c. some other form of moderating provision for dissolved oxygen.
7. In accordance with Subsection 373.4592(10) of the EFA, the District shall, by no later than December 31, 2003, submit plans, cost estimates, and schedules for compliance with:
 - a. the revised dissolved oxygen criterion established by the Department;
 - b. the site-specific alternative criterion established by the Department;

- c. the moderating provision for dissolved oxygen established by the Department; or,
 - d. the dissolved oxygen limits established in Rule 62-302, Fla. Admin. Code.
8. The District shall be in compliance with the permit limit for dissolved oxygen as soon as possible, but no later than December 31, 2006, in accordance with Subsection 373.4592(10)(a) of the EFA.

Relationship Between Administrative Order and Other Legal Authorities

9. This order does not operate as a permit under Section 403.088 of the Florida Statutes. However, this order is incorporated by reference into to EFA Permit No. 0192895 which requires the District to comply with this Administrative Order.
10. Failure to comply with the requirements of this order shall constitute a violation of this order and EFA Permit No. 0192895 and may subject the District to penalties as provided in Section 403.161 of the Florida Statutes.
11. This order may be modified following the procedures for a permit modification as set forth in Subsection 373.4592(9) of the EFA and Chapter 62-4 of the Florida Administrative Code. The District shall design and request modifications to the STA-3/4 Project, 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, pursuant to Subsection 373.4592(9)(j) of the EFA.
12. 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

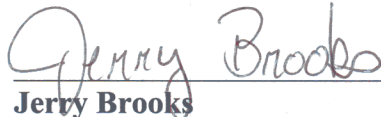
Mediation under section 120.573 of the Florida Statutes is not available for this proceeding.

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 9th day of January, 2003, in Tallahassee, Florida.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Jerry Brooks
Deputy 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.



Jaro Joseph

Date

1/9/04

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

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Gary Goforth, SFWMD, West Palm Beach
Neil Larson, SFWMD, West Palm Beach
Ron Bearzotti, SFWMD, West Palm Beach
Kirk Burns, Esq., SFWMD, West Palm Beach
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Frank Nearhoof, FDEP, Tallahassee
Temperince Morgan, FDEP, Tallahassee
Tom Atkeson, FDEP, Tallahassee
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Inger Hansen, FDEP, West Palm Beach
Jennifer Fitzwater, Esq., FDEP, Tallahassee
John Mitnik, FDEP, West Palm Beach
Shelley Yaun, FDEP, Tallahassee
Eric Bush, USACOE, Jacksonville