



Florida Department of Environmental Protection

South District Office
P.O. Box 2549
Fort Myers, FL 33902-2549

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

May 11, 2011

CERTIFIED MAIL NO. 7010 1870 0001 8477 6047
RETURN RECEIPT REQUESTED

City of Cape Coral
c/o Oliver Clarke
P.O. Box 150027
Cape Coral, Florida 33915

Re: Lee County - ERP
File No. 36-0295854-002

Dear Mr. Clarke:

Enclosed is Notice of Denial of Department File No.: 36-0295854-002, for the construction of the "North Spreader Temporary Diversion", the replacement for the removed Ceitus boat lift and barrier, consisting of: (1) 200 linear feet of steel sheet piling with concrete cap crossing the North Spreader Waterway, east to west; (2) 300 linear feet of steel sheet piling extending north along the west side of the spreader waterway; (3) a cut-off wall and riprap extending west approximately 50 linear feet into the Charlotte Harbor Preserve State Park; (4) approximately 50 linear feet of steel sheet piling with concrete cap and riprap installed on the eastern side of the sheet piling, running north to south, adjacent to the City property; and, (5) additional support facilities installed on the uplands.

Pursuant to Consent Order 06-2345-DF, you are required to submit a modified design within 90 days of receipt of this Notice addressing all of the reasons identified by the Department for why the original design was not acceptable. The Department has identified possible changes to the project design that may enable the Department to grant a permit under Section IV of the Notice of Denial.

If you have any questions regarding this matter, please contact Megan Mills at the letterhead address, by phone at (239) 344-5670, or by email at Megan.Mills@dep.state.fl.us.

Sincerely,



Jon M. Iglehart
Director of
District Management

JMI/mm

Enclosure: Notice of Denial

cc: U.S. Army Corps of Engineers, 2007-679, Susan Blass
Lee County Property Appraiser
DEP, Office of General Counsel, Tallahassee, Kirk White
DEP, Florida Coastal Management Program, Danny Clayton
Office of Coastal and Aquatic Managed Areas, Matlacha Pass Aquatic Preserve
Florida Fish and Wildlife Conservation Commission, Imperiled Species
Management Section
Department of Historical Resources
Save the Manatee Club
Charlotte Harbor Preserve State Park
Representative Gary Aubuchon
Stakeholders
Objectors/Parties requesting notice



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SUBMERGED LANDS AND ENVIRONMENTAL RESOURCE PROGRAM

NOTICE OF DENIAL FOR ERP ACTIVITIES NOT ON SOVEREIGN SUBMERGED LANDS

In the Matter of an
Application for Permit/Water Quality Certification, by:

City of Cape Coral
c/o Oliver Clarke
P.O. Box 150027
Cape Coral, Florida 33915

Project Name:
Ceitus Boat lift Replacement
File No. 36-0295854-002
County: Lee

NOTICE OF DENIAL ENVIRONMENTAL RESOURCE PERMIT

The State of Florida Department of Environmental Protection (Department) gives notice of denial of an environmental resource permit under Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.), which also constitutes denial of certification of compliance with state water quality standards pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341.

Where applicable (such as for activities in coastal counties), this denial of the environmental resource permit also constitutes a finding of inconsistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act. Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the Florida Coastal Management Program and the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

This Notice of Denial is based on the reasons stated below.

I. DESCRIPTION OF THE PROPOSED ACTIVITY

The Applicant, the City of Cape Coral ("City"), applied on November 19, 2010, to the Department for an environmental resource permit/water quality certification to construct the "Ceitus Boat lift Stormwater Barrier" within the North Spreader Waterway (Consent Order OGC No.: 06-2345-DF). The Department sent the City a Request for Additional Information on December 17, 2010, requesting clarification of the terminology of the "Ceitus Boat lift Stormwater Barrier" and requesting the Applicant provide reasonable assurance that the proposed project met the criteria for an environmental resource permit. The Applicant responded to the Department's request for additional information on March 16, 2010. The proposed activity was described in the City's March 16, 2010, response as the construction of the "North Spreader Temporary Diversion", the replacement for the removed Ceitus boat lift and barrier, consisting of: (1) 200 linear feet of steel sheet piling with concrete cap crossing the North Spreader Waterway, east to west; (2) 300 linear feet of steel sheet piling extending north along the west side of the spreader waterway; (3) a cut-off wall and riprap extending west approximately 50 linear feet into the Charlotte Harbor Preserve State Park; (4) approximately 50 linear feet of steel sheet piling with concrete cap and riprap installed on the eastern side of the sheet piling, running north to south, adjacent to the City property; and, (5) additional support facilities installed on the uplands.

This project is located at 3916 Ceitus Parkway (Parcel ID: 18-44-23-C4-00800.H000), within the North Spreader Canal, Class III Florida Waters, and within uplands in the Charlotte Harbor Preserve State Park (Parcel ID: 13-44-22-C2-00001.0000), Lee County, Section 18, Township 44 South, Range 23 East, and Section 13, Township 44 South, Range 22 East.

Background

The proposed activity is located within the City's North Spreader Canal System. The North Spreader Canal was established to serve as a water distribution system for intercepting and releasing waters from the canal system while precluding direct connection of the canal system to waters of the State. The Department could not allow a direct connection of the canal system to waters of the State because of water quality concerns within the canal system that existed at the time. However, Consent Order 15 allowed for the construction of the boat lift located at the southern end of the North Spreader Canal to provide navigable access to the waterways within the City. This boat lift was known locally as the Ceitus Boat Lift, due to the proximity with Ceitus Creek, and was to serve as the southern barrier between the North Spreader Canal and waters of the State. The boat lift was located at the southern end of the North Spreader Canal, just north of Pine Island Road (SR 78), and just south of the historic Ceitus Creek.

As part of the settlement and because of the water quality benefits derived from the tidal wetlands west of the City, those lands owned by Gulf American Corporation (GAC), the developer responsible for the dredge and fill activities remediated by Consent Order 15, were deeded to the State. This area west of the North Spreader Canal System was intended to provide the necessary water quality treatment. This land later became known as the Charlotte Harbor Buffer Preserve, or the Charlotte Harbor Reserve, and is now incorporated into the State Park System as part of the Charlotte Harbor Preserve State Park ("Park").

The west bank of the North Spreader Canal System, the boundary between the City and the Park, together with the boat lift at the southern end of the North Spreader Canal, were designed to serve as the barrier between the northern City canal system and waters of the State. Since the construction of the North Spreader Canal, the west bank of the canal has failed in several locations. These breaches in the barrier allow direct connection between the North Spreader Canal System and waters of the State.

In 1993, the City identified 11 breached areas in the barrier. In 1995, the Department issued Permit No. 362339085 to the City authorizing restoration of the 11 breached areas; however, the work was never completed. In 2000, Department staff revisited the breach areas and found that 7 locations in the North Spreader west bank were still in need of restoration. In 2001, the Department received authorization from the South Florida Water Management District and the Army Corps of Engineers to fill in the 7 breached areas located within the North Spreader Canal System (SWFWMD Permit: 36-04014-P). The works were completed, yet failed shortly after completion.

After the failure of the breach plugging project, the Department and the City entered into negotiations to move the Ceitus Boat lift north, to a location north of Ceitus Creek, tying into an upland spoil area on the western side of the North Spreader Canal, within the boundaries of the Park. The relocation of the lift/plug, together with the repairs of the breaches in the western wall, would again provide for the separation of the canal system from waters of the state. In 2005 through 2006, erosion occurred within the wetlands in the vicinity of the boat lift, causing the loss of mangrove wetlands and the scouring of submerged sediments, such that there became navigation issues. The Department entered into a new consent order with the City on February 13, 2007, Consent Order 06-2345-DF requiring the relocation of the boat lift structure and the dredging of silt and sand from the canal and downstream channel which had been transported from the boat lift site.

At the time of the entry of Consent Order 06-2345-DF, the structure was directing flows into the adjacent mangrove system causing continued erosion and mangrove loss. It was this event that the parties to the Consent Orders realized that the forces causing the

erosive actions at the boat lift site were in part tidal, as sediment from the eroded area was displaced both north and south of the structure.

On October 19, 2007, the City requested the Department suspend the restoration requirements of Consent Order 06-2345-DF and authorization to remove the existing boat lift structure. The City also requested authorization to pursue an Ecosystem Management Agreement (EMA) pursuant to Section 403.0752, F.S., to provide a holistic approach to resolve the water quality and quantity problems associated with the North Spreader Canal System. Consent Order 06-2345-DF was amended on May 15, 2008, to accommodate the City's request.

The conditions of the amended Consent Order 06-2345-DF directed the City to remove the existing boat lift structure and required the initiation of the EMA process. The EMA process resulted in the formation of a stakeholders group and the development of a report analyzing the water quality loading of the system and a list of projects that would provide "Net Ecosystem Benefit". The term Net Ecosystem Benefit was defined as the benefits provided to the North Spreader Canal system that are greater than the benefits provided to the system by the replacement of the boat lift structure. The stakeholder group further defined the term "benefit" relating it specifically to water quality, quantity, and the timing and distribution of water. If the stakeholders were not able to achieve consensus that the developed list of projects that would provide a Net Ecosystem Benefit, then the City was required to submit a permit application to replace the boat lift.

Amended Consent Order 06-2345-DF also required the use of computer modeling to show water quality loading data for the existing conditions (with the Ceitus Boat lift) and for the system as it will be when all the lands in the basin are developed. The EMA process resulted in the development of a two-dimensional laterally-averaged hydrodynamic and water quality model ("Box Model") to satisfy this condition. The North Spreader Canal, City interior canals east of the North Spreader, and the mangroves west were divided into boxes where different parameters were assessed within and relative to each box. The data resulting from this box model was used in evaluating different scenarios, such as the effect of installing the new boat lift or implementing the proposed Net Ecosystem Benefit Projects.

The EMA process concluded in November 2010 without stakeholder consensus as to a list of projects that could provide a Net Ecosystem Benefit. The report included the list of projects that were considered as potential Net Ecosystem Benefit Projects. As a result, the City submitted the Environmental Resource Permit application, in accordance with Paragraph 12 of Amended Consent Order 06-2345-DF.

II. AUTHORITY FOR REVIEW

The Department has permitting authority under Part IV of Chapter 373, F.S., and Chapters 62-330, 62-341, and 62-343, F.A.C., and the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District, 1995 (Basis of Review). The activity is not exempt from the requirement to obtain an environmental resource permit. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing this application.

III. REASONS FOR DENIAL

After fully reviewing the application and taking into consideration documentation submitted to the Department, the Department has determined that this project is not clearly in the public interest and will result in adverse secondary impacts. The Department provides the following reasons for this denial:

1. The applicant has not provided reasonable assurance that the project is not contrary to the Public Interest pursuant to Section 373.414, Florida Statutes. Specifically, the applicant has not demonstrated that the proposed project will not:
 - a. Adversely affect the public health, safety, or welfare or the property of others:

The Department received 83 letters/electronic mail correspondence and a petition with 2,936 signatures by local property owners objecting to the Applicant's proposed project. The objections received expressed concerns about increased mangrove damage and erosion to adjacent property. However, the Department also received 56 letters/electronic mail correspondence in support of the replacement of the boat lift. These letters expressed concerns about increased freshwater outflow at the south end of the North Spreader Canal and the adverse affects downstream from that flow should the boat lift not be replaced.

The Applicant has indicated that construction of the boat lift will adversely affect the safety of the public; canoes and other small crafts navigating the tidal creeks will experience increased water velocities during tidal exchanges which can be hazardous.

The Applicant has further provided that the construction of the boat lift will cause future erosion similar to erosion observed at the old boat lift

site and the erosion will result in the destruction of mangroves and the transport of sediments downstream.

- b. Adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats:

On March 14, 2011, the Department received comments from FWC regarding the potential impacts to the Florida Manatee. The FWC evaluated the replacement of the boat lift structure and determined that if the following specific conditions (summarized) were included in the permit, that the project would be consistent with Section 373.414(1)(a)2 and 379.2431(2), F.S: 1) in-water work shall not occur between November 15, and March 31; 2) Standard Manatee Construction Conditions (2009) shall be followed for all in-water activity; 3) "Caution Boaters" signs shall be installed within 30 days following construction at the boat lift site; 4) Manatee observers shall be on-site during all in-water activities and shall advise personnel to cease work or vessel operation upon sighting a manatee within 50 feet of any in-water construction activity, keeping a log of any animal sighting and operation shutdowns; and 5) Once the boat lift is in place, an aerial survey of the canal system shall be conducted prior to and after closure to identify any manatees within the system; the City shall work with FWC to remove any animals.

In its response to the Department's Request for Additional Information, received by the Department on March 16, 2011, the Applicant is not willing to accept the recommended specific conditions. Comments regarding other endangered or threatened species were not received from FWC.

On April 14, 2011, the Department received comments from Save the Manatee Club in support of replacing the barrier and boat lift based on the increased boat traffic and the addition of larger vessels to the waterway should no structure be installed.

The Applicant has indicated the project will adversely affect fish and wildlife habitat as the construction of the boat lift will result in reduced salinity and increased velocity through the existing breaches, limiting access to habitat by fish and wildlife.

- c. Adversely affect navigation or the flow of water or cause harmful erosion or shoaling:

The management plan for the Charlotte Harbor Preserve State Park generalizes the possible impacts to the Park land from the various adjacent spreader waterways that abut the preserve throughout Lee and Charlotte Counties. The management plan states that the impacts of direct discharges from the spreader waterways into the preserve are likely to be detrimental from both an erosion and water quality perspective, and such proposals should be strongly discouraged; likewise, breaches that facilitate direct discharge to open waters should be assessed and addressed by the various regulatory agencies.

The Box Model, developed as part of the EMA process, assessed the effects of replacing the Ceitus Boat lift at the southern end of the North Spreader Canal versus the effects of leaving the boat lift out and implementing the Net Ecosystem Benefit Projects. A conclusion of this scenario stated that flows during both the wet and dry season are up to twice as high in some cells with the barrier replaced than with the Net Ecosystem Benefit Projects and no barrier. Higher flows increase erosion of mangroves, lower salinity, and can affect boating safety.

The Applicant has indicated that the construction of the boat lift has the potential to cause future erosion similar to that observed around the previous structure. The Applicant further maintains:

- Loss of mangrove wetlands can be expected;
- Sediment transport as a result of the erosion can be expected to be deposited downstream of those erosion sites as observed with the previous structure;
- The structure will restrict the types of vessels that can use the lift. Most small boats and canoes will be precluded from using the lift. As more breaches form, it is expected that vessel traffic by these types of vessels will increase, thereby exacerbating the erosion within that breach area; and,
- That Breach 8A is the most likely location for potential erosion as a result of the proposed activity.

The Department has received 56 letters/electronic mail correspondence in support of the replacement of the boat lift. These letters recommend that the opening of the breaches is critical to reestablishing historic flowways to Matlacha Pass.

The Department's hydrographic engineer reviewed the application and requested additional information regarding water velocity data from the

model that was developed as part of the EMA process. The Applicant responded that there is no water velocity data available.

- d. Adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity

The Box Model, developed as part of the EMA process, assessed the effects of replacing the Ceitus Boat lift at the southern end of the North Spreader Canal versus the effects of leaving the boat lift out and implementing the Net Ecosystem Benefit Projects. Conclusions from this scenario stated that the salinity levels in water flowing to Matlacha Pass are higher in both wet and dry seasons with the barrier out and the implementation of the Net Ecosystem Benefit Projects than replacement of the barrier (a higher salinity is desirable); and, higher flows increase erosion of mangroves, lower salinity, and can affect boating safety.

The Applicant has indicated that the increased flow of water in the breaches will cause physical disruption of habitats as a result of the increased velocity and salinity changes, thereby reducing fishing value and marine productivity. The Applicant also indicated recreational values would also be adversely affected due to the increased public safety risks associated with the higher velocities through the breaches.

- e. Whether the regulated activity will be of a temporary or permanent nature.

The boat lift is intended to be a permanent structure. However, the Applicant has indicated that the function of the boat lift, as part of the barrier separating the North Spreader Canal System from waters of the state, would be temporary due to the conditions of the system.

- f. Adversely affect significant historical and archaeological resources under the provisions of section 267.061, F.S.

The Department sent a copy of the application to the Department of State, Division of Historical Resources for review and comment. On December 27, 2010, the Department received a letter from the Division of Historical resources stating that no significant archaeological or historical resources are recorded within the project area, and recommending that the permit, if issued, should include a special condition regarding unexpected discoveries during ground disturbing activities.

The Applicant has indicated that unaccounted archeological resources located within the area west of the North Spreader Canal could be adversely affected by erosion effects associated with the proposed project.

- g. Adversely affect the current condition and relative value of functions being performed by areas affected by the proposed regulated activity

The North Spreader Canal System was intended to function as a "pollution retention system", to serve as a water distribution system for intercepting and releasing indirect discharges of waters from the City. At the time of the design, it was assumed that the water quality within the canals of the City would not meet state water quality standards. The proposed project is located within the West Cape Coral water segment (WBID: 2082C1). This waterbody has been determined to be an impaired waterbody for nutrients and as such does not meet water quality standards for that parameter (See DEP Order 09-1785).

Furthermore, the construction of the boat lift will result in the increase of water movement in and out of the North Spreader Canal to Matlacha Pass. No significant improvements in water quality can be expected from construction of the project.

2. The applicant has not provided reasonable assurance that the project will not cause adverse secondary impacts pursuant to Rule 40E-4.301(1)(f), F.A.C, and Section 4.2.7 of the South Florida Water Management District Basis of Review.:

The Applicant has indicated that secondary impacts will occur as a result of constructing the boat lift. The Applicant maintains that:

- The increased flows through the breaches will decrease the salinity in the fringing wetlands and result in erosion of mangroves and transport sediment downstream and that these effects will adversely affect fish and wildlife habitat; and,
- Secondary impacts have the ability to disturb possible historical and archaeological resources in the area west of the North Spreader Canal System.

Therefore, the Applicant has not provided reasonable assurance that the construction and operation of the activity, considering the direct and secondary impacts, will comply with the provisions of Part IV of Chapter 373, F.S., and the rules adopted thereunder. Specifically, the activity does not meet the Conditions for Issuance or Additional Conditions for Issuance of an environmental resource permit, pursuant to Part IV of

Chapter 373, F.S., Chapter 62-330, F.A.C., and Rules SFWMD—40E-4.301 and 40E-4.302, F.A.C., because the activity:

- Is not clearly in the public interest for those portions of the activity that significantly degrade or are within an Outstanding Florida Water. Specifically, those portions of the activity located in, or, or over wetlands or other surface waters are expected to:
 - adversely affect the public health, safety, or welfare or the property of others;
 - adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
 - adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
 - adversely affect the fishing or recreational values or marine productivity in the vicinity of the project;
 - be permanent in nature;
 - adversely affect significant historical and archaeological resources; and
 - diminish the current condition and relative value of functions being performed by areas affected by the proposed activity
- Will not meet the criteria regarding unacceptable secondary impacts upon wetland and other surface waters.
- Will not meet the criteria regarding unacceptable cumulative impacts upon wetland and other surface waters.

Based on the above—the Department has determined that the activity is inconsistent with Florida’s Coastal Management Program (FCMP), as required by Section 307 of the Coastal Zone Management Act. Pursuant to Section 380.23, F.S., the Department may not issue a permit for an activity found to be inconsistent with the FCMP. The Department has recommended project design modifications which would bring the project into compliance with the Department’s statutory authority under the FCMP (see below). However, the Applicant has not modified the application in accordance with those recommendations.

IV. PROPOSED CHANGES

The inability of the Applicant to provide reasonable assurance of compliance with the public interest criteria and secondary impact criteria, as stated above, is predicated on increased water flow volumes and velocities, as modeled during the EMA process, and the resulting erosion effects predicted from the installation of the boat lift. The

following changes to the proposed project may enable the Applicant to provide reasonable assurance of compliance with the applicable criteria:

- Prevent the exchange of water along the western bank and at the southern end of the North Spreader Canal with waters of the state, in accordance with the conditions of Consent Order 15; or,
- Meet all applicable rule criteria while mitigating for the secondary impacts associated with the replacement of the boat lift structure at the southern end, without permanently plugging the breaches along the western bank; or,
- Meet all applicable rule criteria, providing a net improvement to water quality, without permanently installing a structure at the southern end of the North Spreader Canal and along the western bank; or,
- Provide reasonable assurance that the construction and operation of the activity, considering direct and secondary impacts, meets Sections 4.2.3(a) through (g) and Section 4.2.7 of the Basis of Review and will comply with the provisions of Part IV of Chapter 373, F.S., and the rules adopted thereunder and otherwise meets the Conditions for Issuance or Additional Conditions for Issuance of an environmental resource permit and is clearly in the public interest, pursuant to Part IV of Chapter 373, F.S., Chapters 62-330, and Sections 40E-4.301 and 40E-4.302, F.A.C.

Modification of the project as specified above may enable the Department to determine that the activity is consistent with Florida's Coastal Management Plan.

V. RIGHTS OF AFFECTED PARTIES

This denial is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., as provided below. If a sufficient petition for an administrative hearing is timely filed, this action automatically becomes only proposed agency action on the application, subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in granting the application.

Mediation is not available.

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, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

In accordance with Rules 28-106.111(2) and 62-110.106(3)(a)(4), F.A.C., petitions for an administrative hearing by the applicant must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), F.S., however, any person who has 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 for an administrative hearing within the appropriate time period shall constitute a waiver of that right.

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 are or 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 that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that 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 that the 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.

Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative

process have the right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

Under Rule 62-110.106(4), F.A.C, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation is not available.

This denial constitutes an order of the Department. Subject to the provisions of Section 120.68(7)(a), F.S., which may require a remand for an administrative hearing, the applicant has the right to seek judicial review of the order under Section 120.68, F.S., 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, 3900 Commonwealth Boulevard, Mail Station 35, 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.

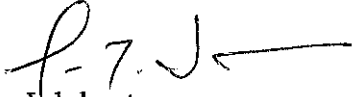
The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department. The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S.

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Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the order is filed with the Clerk of the Department.

Executed in Lee County, Florida

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


Jon Iglehart
Director of District Management

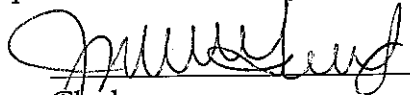
JMI/mm

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this document, including all copies, was mailed before the close of business on May 11, 2011, to the above listed person(s).

FILING AND ACKNOWLEDGMENT

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


Clerk

5/11/11
Date