

RICK SCOTT  
GOVERNOR

CARLOS LOPEZ-CANTERA  
LT. GOVERNOR

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SECRETARY



**FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**  
MINING AND MITIGATION PROGRAM  
2600 BLAIR STONE ROAD, MS 3577  
TALLAHASSEE, FLORIDA 32399-2400

**BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

*E.I. du Pont de Nemours and Company, Inc.*  
*C/o Clement J. Hilton, Plant Manager*  
*PO Box 753*  
*Starke, FL 32091*  
*(904) 964-1220, fax (904) 964-5075*

Petition for Variance from  
Provisions of Rule 62C-37.008(11), F.A.C. and Chapter 378.601(4)(i), F.S.  
DEP File No.: 0137482-010  
OGC Case No. 14-0577

**ORDER GRANTING PETITION FOR VARIANCE**

On September 30, 2014, E.I. DuPont de Nemours and Company, Inc. (DuPont), Petitioner, filed a petition with the Florida Department of Environmental Protection (Department) requesting a section 378.404(9), Florida Statutes (F.S.), variance from the requirements of Rule 62C-37.008(11), Florida Administrative Code (F.A.C.), and Section 378.601(4)(i), F.S., which define time frames for completion of required mined land reclamation. The Petitioner seeks a variance in order to delay reclamation of 523 acres of land mined for heavy minerals to allow coordination with the Suwannee River Water Management District, which has purchased a portion of the property for water resource management projects.

**BACKGROUND AND APPLICABLE REGULATORY CRITERIA**

Section 378.601(4)(i), F.S. and rule 62C-37.008(11)(b), F.A.C., outline the timetable requirements for the reclamation of land mined for heavy minerals. Chapter 378, F.S., requires that reclamation, including a complete growing season for revegetation, be completed within 3 years of the completion of mining operations. Rule 62C-37, F.A.C., requires that contouring for all acres mined in a given calendar year be completed no later than 18 months after the end of that calendar year or 18 months after an area is capable of being contoured when additional mining operations, such as waste disposal, occur. Revegetation for any given area is required to be completed no later than six months after the required completion of contouring. Pursuant to Rule 62C-37, F.A.C., reclamation is required to be completed within three years of the actual completion of mining operations, inclusive of a one-year period after planting the required vegetation to allow for establishment.

DuPont has requested a variance from the required reclamation time frames to delay reclamation of approximately 523 acres located in Sections 1 and 12, Township 6 South, Range 22 East; Section 6, Township 6 South, Range 23 East; Section 31, Township 5 South Range 23 East; and Section 24, Township 5 South, Range 22 East, at approximately latitude 30°00'30" N / longitude 82°02'20" W (Figure 1). The area lies within the boundary of DuPont's Florida Mine, a heavy minerals mine in Clay and Bradford Counties, in the Santa Fe and St. Johns River watersheds, Class III waters.

Section 378.404(9), F.S., authorizes the Department "to grant variances from the provisions of this part to accommodate reclamation that provides for water supply development or water resource development not inconsistent with the applicable regional water supply plan approved pursuant to s. 373.709, appropriate stormwater management, improved wildlife habitat, recreation, or a mixture thereof, provided adverse impacts are not caused to the water resources in the basin and public health and safety are not adversely affected."

A portion of the Florida Mine has been purchased by the Suwannee River Water Management District (SRWMD) as a buffer adjacent to the Camp Blanding military reservation and training base. The SRWMD plans to utilize the site for water resource management projects. The additional time for reclamation for the site is requested to allow time for coordination and water management project planning and development, which will result in a revised reclamation plan for the site. DuPont will coordinate with the SRWMD and the Department's Mining and Mitigation Program to ensure that their revised reclamation plan for the site complies with Chapter 378, F.S., and Chapter 62C-37, F.A.C., and is not inconsistent with the applicable regional water supply plan, appropriate stormwater management, and improved wildlife habitat or recreation; and that the revised reclamation plan will not be expected to cause adverse impacts to water resources in the basin, or to adversely affect public health and safety.

The areas at Florida Mine for which a reclamation time frame variance has been requested (designated WL-1, WL-2, and HL-1 on Figure 2), remain subject to Chapter 378, F. S., and are required to be reclaimed. DuPont will be required to provide financial assurance for the reclamation of the unreclaimed land at a rate of \$ 11,278 per acre [with an annual 5 percent (%) inflation adjustment] to cover the reclamation of the land subject to this variance, in accordance with Table 1 and Condition 3 below.

**Table 1: FINANCIAL SECURITY REQUIREMENTS**

<b><u>CATEGORY</u></b>	<b><u>SECURITY PER ACRE</u></b>	<b><u>ACRES</u></b>
Unreclaimed acres	\$ 11,278	523
<b>TOTAL SECURITY REQUIRED</b>		<b>\$ 5,898,394</b>

It is therefore:

**ORDERED** by the State of Florida, Department of Environmental Protection, that the Petitioner's request for a variance from Rule 62C-37.008(11), F.A.C., and Section 378.601(4)(i), be and is hereby granted, subject to the following Special Conditions:

1. This variance from Rule 62C-37.008(11), F.A.C., and Section 378.601(4)(i), which define time frames for completion of required mined land reclamation, shall remain in effect for ten (10) years. The term of this variance shall expire on February 3, 2025. This variance applies to the approximately 523 acres of the site identified as "Un-Reclaimed Areas" on Figure 2.
2. A variance status report shall be submitted to the Department by March 1st of each year during the effective period of this variance, describing work done on the site during the previous year and documenting progress towards reclaiming the area subject to this variance. The dates of any meetings with SRWMD or other agencies regarding the land subject to this variance, progress on reclamation plan development, and reclamation activities (including acres contoured, acres revegetated and the number of remaining unreclaimed acres) shall be described in the annual status report. An annual site inspection will be performed by Department staff to confirm the information submitted with the annual status reports. The report should include a description of problems encountered and solutions undertaken and anticipated work for the following year.
3. DuPont is required to provide financial assurance for the reclamation of the unreclaimed land at a rate of \$ 11,278 per acre [with an annual 5 percent (%) inflation adjustment] to cover the reclamation of the unreclaimed land. Financial security shall remain in place until DuPont provides demonstration that all delinquent acres have been reclaimed. DuPont has elected to provide a corporate guarantee and has submitted financial information to the Department documenting its ability to cover the costs of the reclamation. If DuPont elects to change its financial assurance mechanism, an alternate financial security mechanism shall be provided in the form of cash or cash equivalent deposited in an Escrow Account, a Letter of Credit or a Performance Bond. Escrow Agreements, Letters of Credit, or Bonds shall be approved by the Department. The amount of security required shall be updated annually based on the approved variance status report. The posted security may be reduced for areas following the successful completion of approved reclamation through contouring or the initial revegetation stage. The security amount shall be adjusted annually for inflation by five percent (5 %) each year. Adjustment to the surety amount shall be effective July 1st of each year.
4. Failure to reclaim all delinquent acres prior to the expiration of the term of this variance, February 3, 2025, shall result in forfeiture of the security.
5. Forfeiture of the posted security shall not operate to relieve DuPont of its responsibility to reclaim all mandatory lands mined or disturbed at the Florida Mine.

## **PUBLICATION OF NOTICE**

You (the petitioner) are required to publish at your own expense the enclosed notice of this variance. The notice is required to be published one time within 30 days, in the legal advertisements section of a newspaper of general circulation in the area 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:

[MiningAndMitigation@dep.state.fl.us](mailto:MiningAndMitigation@dep.state.fl.us)

Or via regular mail:

Department of Environmental Protection  
Mining and Mitigation Program  
Division of Water Resource Management  
2600 Blair Stone Road, MS 3577  
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 denial of the variance or waiver.

## **NOTICE OF RIGHTS**

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department.

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 of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action, the filing of a petition for an administrative hearing may result in a modification of the agency action or even a denial of the petition for a variance.

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 of the Department at 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. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that 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. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the petitioner 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 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 for an administrative hearing 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, F.S.

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, including an explanation of how the alleged facts relate to the specific rules or statutes; 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.

Mediation under Section 120.573, F.S., is not available for this proceeding.

Any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 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 this action is filed with the Clerk of the Department.

**A copy of the file may be obtained by contacting:** [MiningAndMitigation@dep.state.fl.us](mailto:MiningAndMitigation@dep.state.fl.us), Department of Environmental Protection, Mining and Mitigation Program, 2600 Blair Stone Road, MS 3577, Tallahassee, Florida 32399; during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Telephone 850.245.8336.

DONE AND ORDERED this 3<sup>rd</sup> day of February 2015, in Leon County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



Mark Thomasson, P.E.  
Director, Division of Water Resource Management  
Florida Department of Environmental Protection  
E-mail: [Mark.Thomasson@dep.state.fl.us](mailto:Mark.Thomasson@dep.state.fl.us)  
Phone: 850.245.8035  
Fax: 850.245.8356  
Bob Martinez Center, Room 618 J-2  
[2600 Blair Stone Road, MS 3500](#)  
[Tallahassee, FL 32399-2400](#)

Attachments:

Figure 1, Location / Vicinity Map, received 9/30/2014  
Figure 2, Variance Petition Map, received 9/30/2014  
Notice for Newspaper Publication

Copies furnished to:

Ann Shortelle – SRWMD – [ABS@srwmd.org](mailto:ABS@srwmd.org)  
Connie Henderson – DuPont – [Connie.Henderson@dupont.com](mailto:Connie.Henderson@dupont.com)  
Danny LeJeune – Kleinfelder – [dlejeune@kleinfelder.com](mailto:dlejeune@kleinfelder.com)



Dale Jenkins – SRWMD – [DJR@srwmd.org](mailto:DJR@srwmd.org)  
Fish and Wildlife Conservation Commission - [FWCCConservationPlanningServices@myfwc.com](mailto:FWCCConservationPlanningServices@myfwc.com)  
Jim Maher - FDEP Northeast District SLERP - [Jim.Maher@dep.state.fl.us](mailto:Jim.Maher@dep.state.fl.us)  
Jeff Martin - FDEP Northeast District IW - [Jeff.Martin@dep.state.fl.us](mailto:Jeff.Martin@dep.state.fl.us)  
Jim Wood - FDEP Office of Greenways & Trails - [Jim.M.Wood@dep.state.fl.us](mailto:Jim.M.Wood@dep.state.fl.us)  
Suwannee River Water Management District - [JMD@srwmd.org](mailto:JMD@srwmd.org)  
Everett Frye - SJRWMD - [efrye@sjrwmd.com](mailto:efrye@sjrwmd.com)  
Allen Baggett - SJRWMD Compliance - [abaggett@sjrwmd.com](mailto:abaggett@sjrwmd.com)  
Lance Hart – SJRWMD Permitting - [lhart@sjrwmd.com](mailto:lhart@sjrwmd.com)  
Paula L. Allen - FDEP Division of State Lands - [Paula.L.Allen@dep.state.fl.us](mailto:Paula.L.Allen@dep.state.fl.us)  
Patrick Webster – SRWMD – [PJW@srwmd.org](mailto:PJW@srwmd.org)  
R. Thomas Kiger – SRWMD – [RTK@srwmd.org](mailto:RTK@srwmd.org)  
Russell Simpson – FDEP – [Russell.Simpson@dep.state.fl.us](mailto:Russell.Simpson@dep.state.fl.us)  
Gregory M. Hitz, P.G. - Lampl Herbert Consultants, Inc. - [gmhitz@lampl-herbert.com](mailto:gmhitz@lampl-herbert.com)  
Brad Carter, CPM - Bradford County - [brad\\_carter@bradford-co-fla.org](mailto:brad_carter@bradford-co-fla.org)  
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Lynn M. Zenczak - Mitigation Marketing, LLC - [Lynn@MitigationMarketing.com](mailto:Lynn@MitigationMarketing.com)  
USACOE North Permits Branch – [SAJ-RD-N@usace.army.mil](mailto:SAJ-RD-N@usace.army.mil)  
W. Ben Hart, CMSP - W. Ben Hart & Associates - [WBenHart@gmail.com](mailto:WBenHart@gmail.com)  
LTC Lloyd “Bob” Thomas - Florida National Guard, Camp Blanding –  
[bob.thomas4@us.army.mil](mailto:bob.thomas4@us.army.mil)  
Daniel Crapps - 301 Land Investments LLC – [dcrapps@danielcrapps.com](mailto:dcrapps@danielcrapps.com)  
Baynard Ward – 301 Land Investments LLC – [ward@danielcrapps.com](mailto:ward@danielcrapps.com)  
William Agricola - Bradford Timberlands, LLC - [spfrontdesk@bellsouth.net](mailto:spfrontdesk@bellsouth.net)  
FDOT Highways & Transportation Dept – [fdot.pio@dot.state.fl.us](mailto:fdot.pio@dot.state.fl.us)  
J Paul Rice – Rayonier – [paul.rice@rayonier.com](mailto:paul.rice@rayonier.com)  
Mining and Mitigation Program File

Postal Mail Addressee:  
Peoples Gas System, 702 North Franklin St. Tampa FL 33602

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Order, including all copies, were mailed before the close of business on February 3, 2015, to the above listed persons.

#### FILING AND ACKNOWLEDGMENT

FILED, on this date, under 120.52(7) of the Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

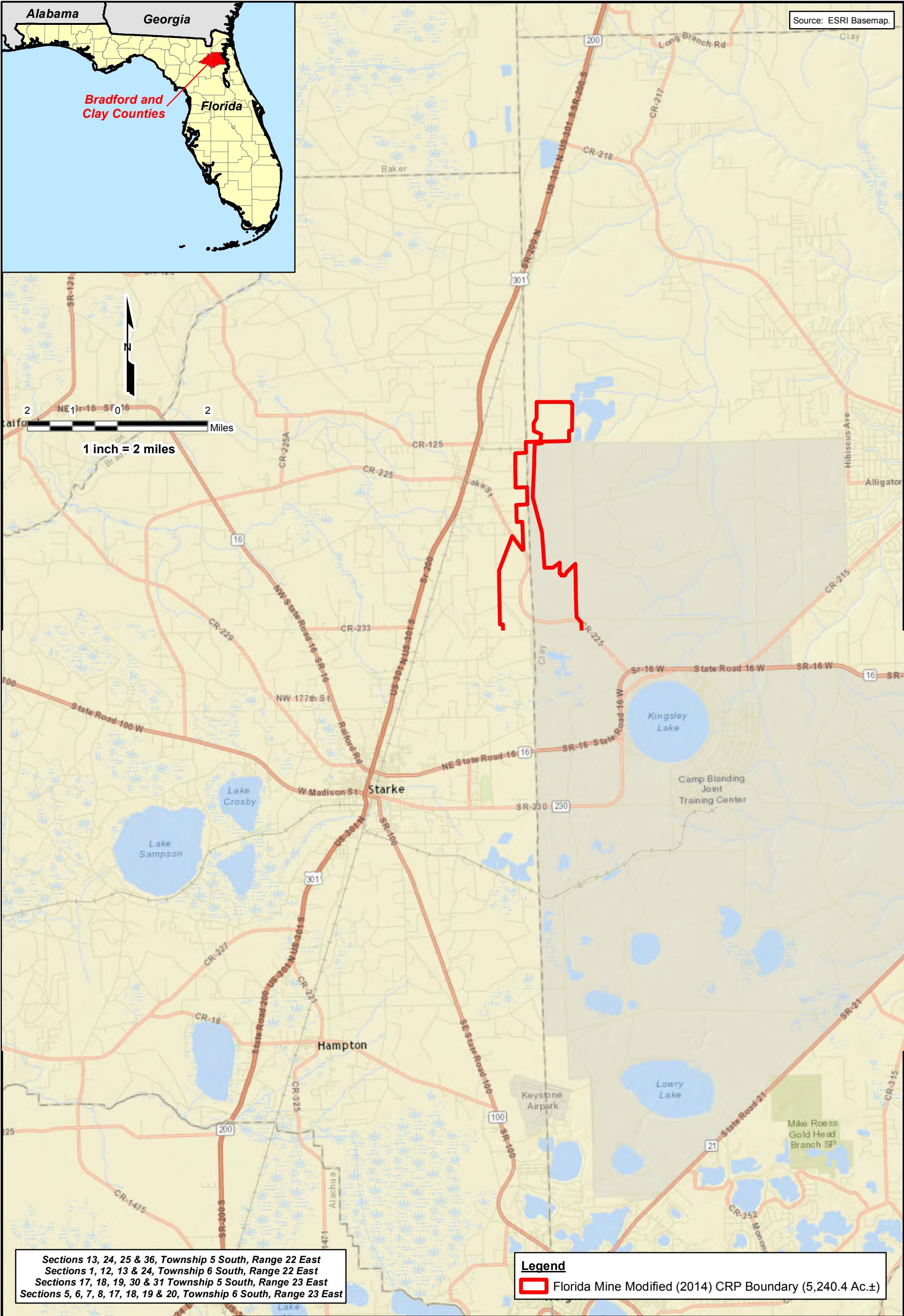


02/03/2015

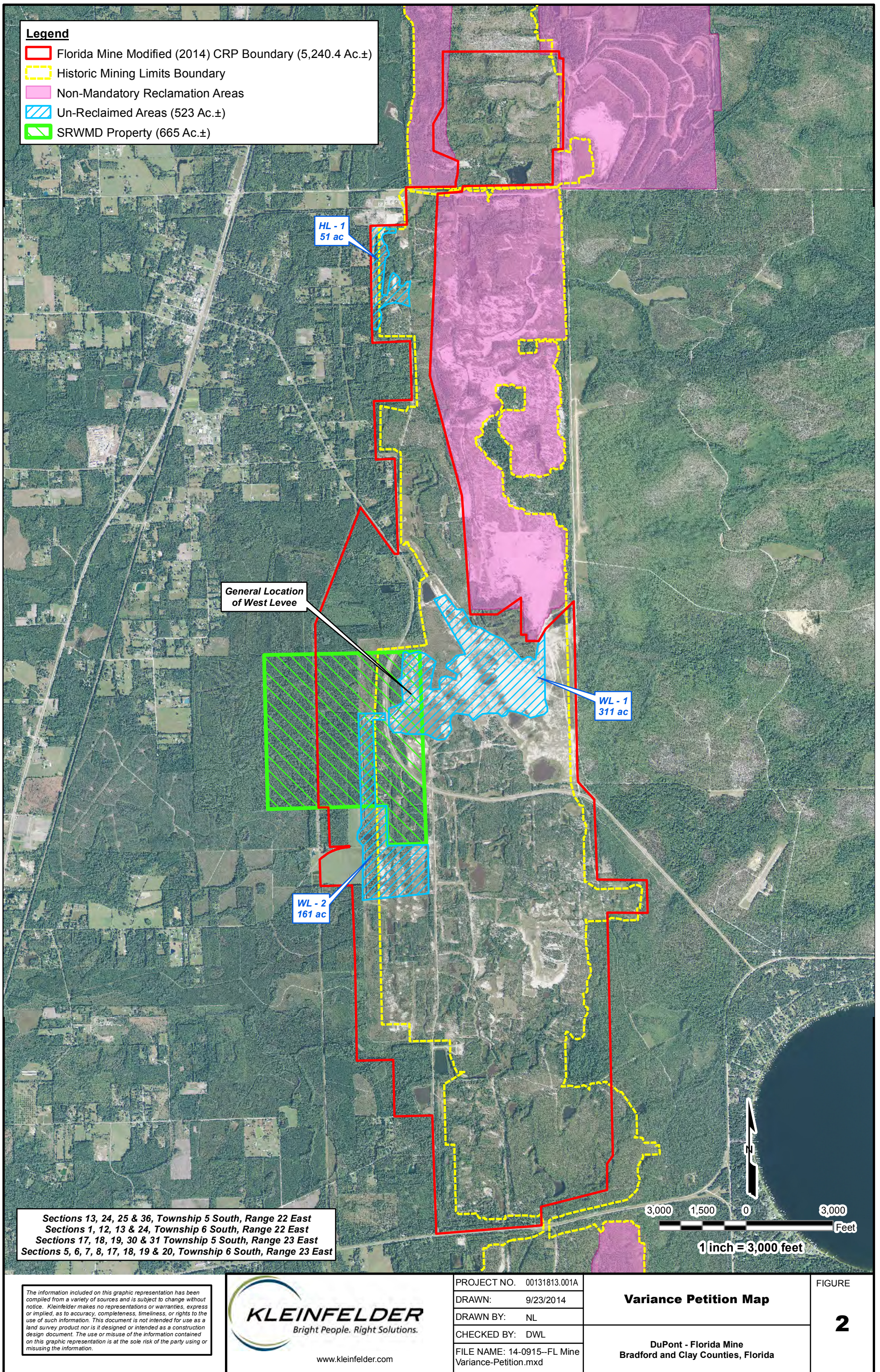
Clerk

Date











STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NOTICE OF ORDER GRANTING VARIANCE

The Department of Environmental Protection gives notice of its determination pursuant to Chapter 378.404(9), Florida Statutes (F.S.), to grant a variance to E.I. DuPont de Nemours and Company, Inc. (Dupont), P.O. Box 753, Starke, Florida 32091, from Section 378.601(4)(i), F.S. and Rule 62C-37.008(11), Florida Administrative Code (F.A.C.), which define time frames required for completion of mined land reclamation. The file has been assigned File No. 0137482-010 (OGC # 14-0577). The variance will allow for the delay in reclamation of 523 acres of land mined for heavy minerals to allow coordination with the Suwannee River Water Management District, which has purchased a portion of the property for water resource management projects. The site is located in Sections 1 and 12, Township 6 South, Range 22 East; Section 6, Township 6 South, Range 23 East; Section 31, Township 5 South Range 23 East; and Section 24, Township 5 South, Range 22 East, at approximately latitude 30°00'30" N / longitude 82°02'20" W. The area lies within the boundary of DuPont's Florida Mine, in Clay and Bradford Counties, in the Santa Fe and St. Johns River watersheds, Class III waters.

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. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing 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, including an explanation of how the alleged facts relate to the specific rules or statutes; 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.

The petition 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. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

In accordance with rule 62-110.106(3) of the Florida Administrative Code, petitions for an administrative hearing must be filed within 21 days of publication of this notice or receipt of written notice, whichever occurs first. However, any person who has previously asked the

Department for notice of this agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication. The failure 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, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A. C.

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 of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline for filing a petition for an administrative hearing. 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 in this proceeding.

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 formulate final agency action, this process may result in a modification of the agency action or even a denial of the request for a variance or waiver.

**A copy of the Order may be obtained by contacting:** [MiningAndMitigation@dep.state.fl.us](mailto:MiningAndMitigation@dep.state.fl.us), Department of Environmental Protection, Mining and Mitigation Program, 2600 Blair Stone Road, MS 3577, Tallahassee, Florida 32399; during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.