

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**In Re: EMERGENCY AUTHORIZATION FOR
REMOVAL OF DEBRIS, RESTORATION,
AND CERTAIN OTHER MEASURES MADE
NECESSARY BY THE FEBRUARY 15 and
23-24, 2016 STORM EVENTS.**

OGC No.: 16-0087

EMERGENCY FINAL ORDER

Under Sections 120.569(2)(n), 252.36, and 252.46 of the Florida Statutes, and upon consideration of the State of Florida Executive Order Nos. 16-54 and 16-56 and the following findings of fact, the State of Florida Department of Environmental Protection (Department) enters this Emergency Final Order (Order), including Findings of Fact and Conclusions of Law, in response to the imminent or immediate danger to the public health, safety, and welfare of the citizens of the State of Florida resulting from the damage wrought by the February 15 and 23-24, 2016 storm systems and resulting tornadoes and other damage (collectively hereinafter "the Storms").

FINDINGS OF FACT

1. On February 15, 2016, a storm struck the Panhandle of Florida, producing severe weather including a tornado with estimated peak winds of 152 miles per hour that traveled across portions of northern Escambia County. Numerous homes and businesses were damaged or destroyed along with extensive tree damage.

2. On February 23-24, 2016, another powerful storm system brought severe weather to the Florida Panhandle. The National Weather Service issued tornado watches and warnings for the affected counties throughout the Panhandle and a Particularly Dangerous Situation warning for Escambia, Santa Rosa, and Okaloosa Counties. The storm caused strong winds and a tornado that impacted Escambia County. The storm

damaged a significant number of structures in Escambia and Santa Rosa Counties (hereinafter "affected Counties"), which shall constitute the specific area covered by this Emergency Final Order. This area shall herein be referred to as the "Emergency Area."

3. By State of Florida Executive Order Nos. 16-54 and 16-56, the Governor declared that a state of emergency exists throughout the affected Counties, based upon the serious threat to the public health, safety and welfare posed by the Storms.

4. The Department finds that the Storms have created a state of emergency threatening the public health, safety, welfare, and property throughout the Emergency Area. As a result of the emergency, immediate action by Florida's citizens and government is necessary to dispose of debris related to the Storms.

5. An emergency authorization is required to address the need for immediate action because the normal procedures for obtaining the necessary authorizations would not result in sufficiently timely action to address the emergency.

6. Immediate, strict compliance with the provisions of the statutes, rules, or orders noted within this Order would prevent, hinder, or delay necessary action in coping with the emergency, and that the actions authorized under this order are narrowly tailored to address the immediate need for action and are procedurally appropriate under the circumstances.

CONCLUSIONS OF LAW

7. Based on the findings recited above, it is hereby concluded that the emergency caused by the Storms continues to pose an immediate danger to the public health, safety, or welfare and requires an immediate order of the Department.

8. Under State of Florida Executive Order Nos. 16-54 and 16-56, and Sections 120.569(2)(n), 252.36, and 252.46 of the Florida Statutes, the Secretary of the Department is authorized to issue this Emergency Final Order.

9. Suspension of statutes and rules as noted within this Order is required so as not to prevent, hinder, or delay necessary action in coping with the emergency.

***IT IS THEREFORE ORDERED, WITHIN THE EMERGENCY AREA,
as follows:***

A. SOLID WASTE MANAGEMENT

1. Field authorizations may be issued prior to or following a site inspection by Department personnel or a delegated local program for staging areas to be used for temporary storage and chipping, grinding or burning of Storm-generated debris. Field authorizations may be requested by providing a notice to the local office of the Department containing a description of the staging area design and operation, the location of the staging area, and the name, address, and telephone number of the site manager. Field authorizations also may be issued by Department staff without prior notice. Written records of all field authorizations shall be created and maintained by Department staff. Field authorizations may include specific conditions for the operation and closure of the staging area, and may include a required closure date which extends beyond the expiration date of this Order. Staging areas shall avoid wetlands and other surface waters to the greatest extent possible; such areas that are used or affected must be fully restored upon cessation of use of the area. Staging areas must cease operation, and all Storm-generated debris must be removed from the site, by the expiration date of this Order, unless a different closing date or closure conditions are specified in the field authorization. Failure to comply with the conditions of the field authorization, or failure to adequately

close the site by the required closure date, may result in enforcement actions by the Department. Field authorizations issued prior to the effective date of this Order remain in effect but may be modified by the Department to include conditions and closure dates as specified herein.

2. Storm-generated vegetative debris which is managed at an authorized staging area may be disposed of in permitted lined or unlined landfills, permitted land clearing debris facilities, or permitted construction and demolition debris disposal facilities. Such vegetative debris may also be managed at a permitted waste processing facility or a registered yard trash processing facility in accordance with the terms of the applicable rules and permit conditions.

3. Construction and demolition debris that is mixed with other Storm-generated debris need not be segregated from other solid waste prior to disposal in a lined landfill. Construction and demolition debris that is either source-separated or is separated from other Storm-generated debris at an authorized staging area, or at another area specifically authorized by the Department, may be managed at a permitted construction and demolition debris disposal or recycling facility upon approval by the Department of the methods and operational practices used to inspect the waste during segregation.

4. Except as otherwise specifically provided herein, Storm-generated debris shall be disposed of in a Class I landfill or, except for asbestos-containing materials, in a waste-to-energy facility. Non-recyclables and residuals generated from segregation of Storm-generated debris shall also be disposed of in a Class I landfill or waste-to-energy facility.

5. Ash residue from the combustion of Storm-generated vegetative debris may be disposed of in a permitted disposal facility, or may be land spread in any areas approved by local government officials except in wellfield protection areas or water bodies.

6. Ash from the combustion of other Storm-generated debris shall be disposed of in a Class I landfill. Metals or other non-combustible materials segregated from the ash residue may also be disposed of in an unlined, permitted landfill.

7. Unsalvageable refrigerators and freezers containing solid waste such as rotting food that may create a sanitary nuisance may be disposed of in a Class I landfill; provided, however, that chlorofluorocarbons and capacitors must be removed and recycled to the greatest extent practicable using techniques and personnel meeting the requirements of 40 CFR Part 82.

8. Permitted landfills, waste-to-energy facilities, and transfer stations which accept Storm-generated debris in accordance with the terms of this Order may accept Storm-generated debris for disposal or storage without the need to first modify existing solid waste permits or certifications. Operators of landfills shall seek modifications of their existing permits to address any long-term impacts of accepting Storm-generated debris on operations and closure that are not addressed in existing permits. Long-term impacts are those, that will extend past the expiration date of this Order. The requests for modification shall be submitted as soon as possible, but no later than the expiration date of this Order. No permit fee will be required for any modifications necessitated solely by the Storm clean-up activities. This paragraph does not authorize the permanent lateral or vertical expansion of any facility beyond its permitted limits.

B. AIR RESOURCE MANAGEMENT

1. **Air Curtain Incinerators:** Local governments or their agents may conduct the burning of Storm-generated yard trash and other vegetative debris in air curtain incinerators without prior notice to the Department. Within ten days of commencing any such burning, the local government or its agent shall notify the Department in writing, describing the general nature of the materials burned, stating the location and method of burning, and providing the name, address, and telephone number of the representative of the local government to contact concerning the work. This order does not relieve the air curtain incinerator operator from any requirement to obtain an open burning authorization from the Florida Forest Service or any other agency empowered to grant such authorizations. In operating any air curtain incinerator pursuant to this Order, the pit width shall not exceed 12 feet, vertical side walls shall be maintained, and waste material shall not be loaded into the air curtain incinerator such that it protrudes above the level of the air curtain. Ash shall not be allowed to build up in the pit higher than one-third the pit depth or to the point where the ash begins to impede combustion, whichever level is lower. Refractory-lined air curtain incinerators may operate 24 hours per day. Air curtain incinerators without refractory-lined walls may operate 24 hours per day provided reasonable efforts are made to prevent nuisance smoke. Notwithstanding the provisions of this paragraph, the burning of asbestos-containing materials or hazardous waste is prohibited.

2. **Open Pile Burning:** Only vegetative material can be burned on an open pile. Open pile burning of vegetative debris is managed under the authority of the Florida Forest Service in the Department of Agriculture and Consumer Services, and the Department will defer to decisions made by that agency, provided that burning does not

occur in wetlands or other surface waters. Open pile burning shall avoid adversely affecting wetlands and other surface waters to the greatest extent possible; any wetland or other surface water areas that are used or affected must be fully restored upon cessation of use of the area in consultation with the Department.

3. **Asbestos Clean-up:** The Department waives the requirement for 10 day prior notification for emergency demolition or emergency cleanup of asbestos-containing material resulting from the Storms. Within one business day of commencing such demolition or cleanup, however, the person responsible for such work shall notify the Department in writing. The notification shall be consistent with the information on the Notice of Demolition or Asbestos Renovation, and shall include the location and nature of the work and the name, address, and telephone number of operator on the project. The procedures in 40 CFR 61 Subpart M for handling asbestos-containing material shall be complied with during demolition and cleanup. Asbestos-containing material shall be disposed of in a Class I or III landfill in accordance with Rule 62-701.520(3) of the Florida Administrative Code. Burning of asbestos containing material is prohibited.

C. **WATER RESOURCE MANAGEMENT**

1. **Environmental Resource and Dredge and Fill Activities**

a. **Removal of Debris:** Debris, including sunken or grounded vessels, vegetation, and structural remains, that have been deposited into waters, wetlands, or uplands by the Storms may be removed without providing notice to the Department or water management district when the removal activities does not result in filling of wetlands or other surface waters, or dredging that creates or expands surface waters. However, if the removal activities require the filling of wetlands or other surface waters, or dredging that creates or expands wetlands or other surface waters, a field

authorization must be obtained from the Department or water management district. In either case, all removed materials must be deposited on self-contained uplands and must be managed in accordance with Department rules or provisions of this Order.

b. Field authorizations may be requested by providing a notice to the local office of the Department or water management district containing a description of the work requested, the location of the work, and the name, address, and telephone number of the owner or representative of the owner who may be contacted concerning the work. Field authorizations may be issued following a site inspection by Department or water management district personnel. Field authorizations also may be issued by Department or water management district staff without prior notice. Field authorizations may not be issued unless requested on or before April 24, 2016. Written records of all field authorizations shall be created and maintained by Department and water management district staff. Field authorizations may include specific conditions for the construction, operation, and maintenance of the authorized activities. Field authorizations issued prior to the effective date of this Order remain in effect for the duration specified in the field authorization, but may be extended through written modification by the Department or water management district in accordance with the provisions of paragraph C.1.c. of this Order. Failure to comply with the conditions of the field authorization may result in enforcement actions by the Department or water management district.

c. Debris removal activities that may be conducted without notice must be completed by April, 24, 2016. Debris removal activities that require a field authorization must be completed by the date specified in the field authorization. However, the deadline for completing such activities may be extended if a written request is received by the

District Office of the Department that issued the field authorization at least 30 days prior to expiration of the field authorization.

2. General Conditions

a. Applicable environmental resource, surface water management, dredge and fill, coastal construction control line or joint coastal permits shall be required following provisions of statute and rule for other activities not authorized in this Order that do not otherwise qualify as an exempt activity under statute or rule.

b. The nature, timing, and sequence of debris removal activities authorized under this Order shall be conducted in such a manner as to provide protection to, and so as to not disturb, native salt-resistant vegetation and listed species and their habitat, including threatened or endangered sea turtles, endangered manatees, endangered beach mice, endangered plant communities, and migratory shorebirds.

c. Nothing in this order authorizes the taking, attempted taking, pursuing, harassing, capturing or killing of any species (or the nests or eggs of any species) listed under Rule 68A-27 of the Florida Administrative Code or under the Federal Endangered Species Act.

d. It is recommended that, where possible, owners of property should maintain documentation (such as photos) of the condition of the structures or lands as they existed prior to initiating any activities authorized under this Order, and should provide such documentation to the Department if requested to do so.

3. Authorization to Use State Owned Submerged Lands:

Debris removal activities located on submerged lands owned by the state, authorized under this Order, that do not qualify for consent by rule under Section 18-

21.005(1)(b) of the Florida Administrative Code are hereby granted a Letter of Consent under Section 18-21.005(1)(c) of the Florida Administrative Code, provided:

(1) Such removal is conducted in accordance with the terms, conditions, and limitations of this Order;

(2) The activities are conducted remove debris resulting solely from the Storms; and

(3) All the terms and conditions of Rule 18-21.005(1)(b) or 18-21.005(1)(c) of the Florida Administrative Code, as applicable, are met (including certain restrictions for activities performed within aquatic preserve), and provided that activities that require an easement under Rule 18-21.005(1)(f) of the Florida Administrative Code must obtain the applicable state owned submerged lands easement under Chapter 18-21 of the Florida Administrative Code within one year of expiration of this Order. This Order does not limit the provisions of those statutory and rule provisions.

D. GENERAL PROVISIONS

1. **General Limitations:** The Department issues this Emergency Final Order solely to address the emergency created by the Storms. This Order shall not be construed to authorize any activity within the jurisdiction of the Department except in accordance with the express terms of this Order. Under no circumstances shall anything contained in this Order be construed to authorize the repair, replacement, or reconstruction of any type of unauthorized or illegal structure, habitable or otherwise. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

2. **Suspension of Statutes and Rules:** Within the Emergency Area, the requirements and effects of statutes and rules which conflict with the provisions of this Order are suspended to the extent necessary to implement this Order.

To the extent that any requirement to obtain a permit, lease, consent of use, or other authorization is waived by this Order, it should also be construed that the procedural requirements for obtaining such permit, lease, consent of use or other authorization, including requirements for fees and publication of notices, are suspended for the duration of this order.

3. **Review of Requests for Field Authorizations:** It is the intent of the Department to act on requests for field authorizations in a timely and expeditious manner. The Department will generally ask for any needed additional information within 5 days of receipt of the request for field authorization, and will generally take action on the request with 15 days of receipt of a complete request.

4. **Other Authorizations Required:** This Order only provides relief from the specific regulatory and proprietary requirements addressed herein for the duration of the Order, and does not provide relief from the requirements of other federal, state, water management districts, and local agencies. This Order therefore does not negate the need for the property owner to obtain any other required permits or authorizations, nor from the need to comply with all the requirements of those agencies. This Order does not provide relief from any of the requirements of Chapter 471 of the Florida Statutes, regarding professional engineering.

Activities subject to Federal consistency review that are emergency actions necessary for the repair of immediate, demonstrable threats to public health or safety are consistent with the Florida Coastal Management Program if conducted in strict conformance with this Order.

5. **Expiration Date:** This Emergency Final Order shall take effect immediately upon execution by the Secretary of the Department, and shall expire on **April 24, 2016** unless modified or extended by further order.

6. **Violation of Conditions of Emergency Final Order:** Failure to comply with any condition set forth in this Order shall constitute a violation of a Department Final Order under Chapters 253, 258, 373, 376, and 403 of the Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

7. **Applicability to Delegated Programs:** The provisions of this Order apply in those cases where a water management district, local government or other entity is acting for the Department in accordance with a delegation agreement, operating agreement, or contract. Such water management district, local government or other entity shall comply with the terms of this Order to the extent that it is acting as an agent of the Department. This Order does not apply in those cases where a water management district, local government or other entity is acting under its own independent authority.

TERM OF ORDER


This Order shall be retroactive to February 15, 2016, the date of Executive Order No. 16-54. This Order shall expire on Sunday, April 24, 2016, unless extended by the Department.

NOTICE OF RIGHTS

Pursuant to Section 120.569(2)(n) of the Florida Statutes, any party adversely affected by this Order has the right to seek an injunction of this Order in circuit court or judicial review of it under Section 120.68 of the Florida Statutes. Judicial review must be sought 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.

DONE AND ORDERED on this 26th day of February, 2016, in Tallahassee, Florida.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION


Jonathan P. Steverson, Secretary
3900 Commonwealth Blvd
Tallahassee, FL 32399-3000

FILED on this date, pursuant to
§120.52 Florida Statutes, with the
designated Department Clerk, receipt
of which is hereby acknowledged.


Clerk/Deputy Clerk
2-26-16
Date