

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**FOURTH AMENDED EMERGENCY AUTHORIZATION
AND ORDER ALLOWING FP&L TO TAKE ACTIONS TO
REDUCE WATER FLOW TO THE ST. LUCIE ESTUARY
AND LAKE WORTH LAGOON**

OGC No.: 16-0396

FOURTH AMENDED EMERGENCY FINAL ORDER

Under Sections 120.569(2)(n), 252.46 and 403.504(12), Florida Statutes (“F.S.”), and upon consideration of the State of Florida Executive Orders 16-155, 16-156, and 16-204, and the following findings of fact, the State of Florida Department of Environmental Protection (“Department”) enters this Fourth Amended Emergency Final Order (“Order”), including the 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 from algae blooms in the St. Lucie River and Estuary and Lake Worth Lagoon.

FINDINGS OF FACT

1. Water discharges by the United States Army Corps of Engineers from Lake Okeechobee to the St. Lucie River and Estuary have increased by 1200 cubic feet per second since May 27, 2016.
2. These massive fresh water discharges have resulted in increased algae blooms, extensive environmental harm to wildlife and the aquatic ecosystem, and violations of state water quality standards in the downstream St. Lucie River and Estuary and Lake Worth Lagoon.

3. Taking action to redress these emergency conditions, Governor Rick Scott signed Executive Order 16-155 on June 29, 2016, declaring a state of emergency in Martin and St. Lucie counties and providing, in relevant part, as follows:

Section 3. I also find that the special duties and responsibilities resting upon some State, regional, and local agencies and other governmental bodies in responding to the emergency may require them to waive or deviate from the statutes, rules, ordinances, and orders they administer. Each State agency may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of that agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency. This includes, but is not limited to, the authority to suspend any and all statutes, rules, ordinances, or orders which affect leasing, printing, procurement, purchasing, travel, and the condition of employment and the compensation of employees. For the purposes of this Executive Order, "necessary action in coping with the emergency" means any emergency mitigation, response, or recovery action: (1) prescribed in the State Comprehensive Emergency Management Plan ("CEMP"); or, (2) directed by the State Coordinating Officer. Any waiver of statutes, rules, ordinances, or orders shall be by emergency rule or order in accordance with sections 120.54(4) and 252.46, Florida Statutes, and shall expire thirty days from the date of this Executive Order, unless extended in increments of no more than thirty days by the agency, and in no event shall remain in effect beyond the earlier of the date of expiration of this Order, as extended, or ninety (90) days from the date of issuance of this Order.

4. On June 30, 2016, Executive Order 16-156 was issued, expanding the state of emergency to include Lee and Palm Beach Counties.

5. On August 29, 2016, Governor Rick Scott signed Executive Order 16-204, declaring a state of emergency in Lee, Martin, Palm Beach, and St. Lucie Counties and extending Executive Order 16-155 (as amended by Executive Order 16-156) for 60 more days.

6. To help address this situation, on July 1, 2016, the Department issued an Emergency Final Order that allowed Florida Power & Light (FP&L) to mitigate some of the harmful fresh water flows by taking approximately 2.65 billion gallons of water from the St. Lucie River into their

Martin County facility's cooling system between July 7 and July 26, 2016. The Emergency Order was amended on July 7 and 28, and August 26, 2016.

7. Pursuant to Paragraph G of the Third Amended Emergency Order, that Order would expire on September 27, 2016, unless extended in increments of no more than thirty days.

8. Because the state of emergency continues, and because the actions of FP&L have helped abate the harmful flows to the St. Lucie River, the Department desires that FP&L continue to divert water into its Martin County facility's cooling system.

9. Additionally, in order to further reduce flows to the St. Lucie River and Lake Worth Lagoon, the Department desires that FP&L divert water from the L-8 Reservoir to its West County Facility cooling system. This will minimize the amount of freshwater going to the Lake Worth Lagoon and allow water managers operational flexibility to bring additional flow from Lake Okeechobee south for additional storage within the L-8 Reservoir.

10. However, to take these voluntary actions, FP&L requires temporary relief from certain permit conditions.

CONCLUSIONS OF LAW

11. Based on the findings of fact above, it is hereby concluded that the emergency caused by the discharges from Lake Okeechobee to the St. Lucie River and Estuary and Lake Worth Lagoon pose an immediate danger to the public health, safety, or welfare and requires an immediate order of the Department.

12. Under State of Florida Executive Order Nos. 16-155, 16-156 and 16-204, and Sections 120.569(2)(n), 252.46 and 403.504(12), F.S., the Secretary of the Department, or designee, is authorized to issue this Emergency Final Order.

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

THEREFORE, IT IS ORDERED:

Based upon the above Findings of Fact and Conclusions of Law, and pursuant to the above cited laws, I hereby order that:

A. FP&L shall be permitted to intake water from the C-44 Canal to FP&L's Martin County Facility.

B. NPDES permit FL0030988 is temporarily modified to authorize relief from the permit condition I.A.19 (effluent limitations for un-ionized ammonia, pH, dissolved oxygen and Acute Whole Effluent Toxicity, 96 Hour LC 50 for both *Ceriodaphnia dubia* and *Cyprinella leedsi*) for the discharge of wastewater from 1) outfall D-03D to the Barley Swamp and then to the L-65 canal, and 2) outfall D-03E to the north perimeter ditch and then the Northwest Mitigation Area. All other permit conditions shall remain in full force and effect.

C. FP&L's Martin County Facility Site Certification PA89-27N is temporarily modified to authorize temporary relief of certification condition VI.B.2.d to allow for a surface water elevation of 37 NGVD in the facility cooling pond. All other conditions shall remain in full force and effect.

D. During the effective period of this Fourth Amended Emergency Authorization and Order, FP&L shall monitor water quality in discharges from the Martin County Facility to the Northwest Mitigation Area to the extent equipment and staff are available and it is practical given the emergency conditions.

E. FP&L shall be permitted to intake water from the L-8 Reservoir to FP&L's West County Facility.

F. FP&L's West County Facility Site Certification PA05-47B is temporarily modified to authorize temporary relief of certification condition XXXII.B.2.c(1) to allow for temporary withdrawals from the L-8 Reservoir, not to exceed 20 million gallons per day. All other conditions shall remain in full force and effect.

G. FP&L may not withdraw water from the L-8 Reservoir for eight (8) consecutive hours during South Florida Water Management District's (SFWMD) contractor Guaranteed Maximum Energy Consumption Rate (GMEC) testing. At least four occurrences of GMEC testing are expected within the next ninety days, at a time to be determined. SFWMD will provide FP&L twenty-four (24) hours advance notice of these tests.

H. Pumping facilities shall be located external to the L-8 Reservoir so as to not interfere with the filling/emptying of the Reservoir. Any pump facilities that must be located within the footprint of the L-8 Reservoir shall be subject to the review and approval of SFWMD.

I. This Order shall not be construed as a certification of use by FP&L, pursuant to Rule 40E-8.421(1)(e), Florida Administrative Code, or Section 3.2.1.E.5(a) or 6(a) of the Applicant's Handbook. This Order shall not be construed to grant a consumptive use permit or establish FP&L as an existing legal user pursuant to Parts II and III, Chapter 373, Florida Statutes.

J. This Order is an authorization and not a mandate for FP&L's temporary water withdrawals.

K. This Fourth Amended Emergency Order supersedes and replaces the August 26, 2016 Third Amended Emergency Order.

L. This Fourth Amended Order may be rescinded or modified as conditions warrant.

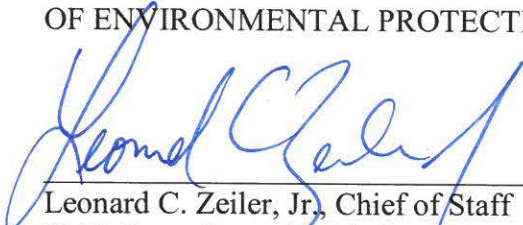
M. This Fourth Amended Order shall automatically expire on October 16, 2016, unless extended in increments of no more than thirty days, not to exceed a total of one-hundred and fifty days from June 29, 2016 (the date of issuance of Executive Order 16-155).

NOTICE OF RIGHTS

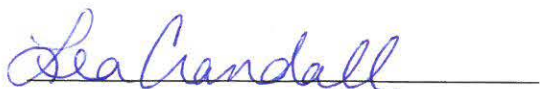
Pursuant to Section 120.569(2)(n), 252.46 and 403.504(12), F.S., any party adversely affected by this Order has the right to seek an injunction of this Order or any authorization issued hereunder in circuit court or judicial review of it under Section 120.68, F.S. Judicial review must be sought by filing 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 16th day of September 2016, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


Leonard C. Zeiler, Jr., Chief of Staff
3900 Commonwealth Blvd.
Tallahassee, Florida 32399-3000

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



Clerk Date: 9-16-16