

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

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

OGC No.: 16-0396

THIRD 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 Order 16-155 and the following findings of fact, the State of Florida Department of Environmental Protection (“Department”) enters this Third 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.

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.
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 Lee, 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. To help address this situation, on July 1, 2016, the Department issued an Emergency Final Order that allowed Florida Power & Light 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, 2016.

5. Pursuant to Paragraph G, the Second Amended Emergency Order would expire on August 28, 2016, unless extended in increments of no more than thirty days, not to exceed a total of ninety days from June 29, 2016.

6. Because the state of emergency continues, and because the actions of Florida Power & Light have helped abate the harmful flows to the St. Lucie River, the Department desires that Florida Power & Light continue to divert water into their Martin County facility's

cooling system. However, to take these voluntary actions, Florida Power & Light requires continued temporary relief from certain permit conditions.

CONCLUSIONS OF LAW

7. 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 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 No. 16-155 and Sections 120.569(2)(n), 252.46 and 403.504(12), F.S., the Secretary of the Department is authorized to issue this Third Amended Emergency Final Order.

9. 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 Ultimate Facts and Conclusions of Law, and pursuant to the above cited laws, I hereby order that:

- A. Allow for the intake of water from the C-44 Canal.
- 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. 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 Third Amended Emergency Authorization and Order, Florida Power & Light shall monitor water quality in discharges to the Northwest Mitigation Area and Barley Swamp to the extent equipment and staff are available and it is practical given the emergency conditions.

E. This Third Amended Emergency Order supersedes and replaces the July 29, 2016 Second Amended Emergency Order.

F. This Third Amended Order may be rescinded or modified as conditions warrant.

G. This Third Amended Order shall automatically expire on September 27, 2016, unless extended in increments of no more than thirty days, not to exceed a total of ninety 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 Third Amended 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 Second Amended Order is filed with the Clerk of the Department.

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

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jonathan P. Steverson, Secretary
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: 08/26/2016