

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**EMERGENCY AUTHORIZATION FOR
PROVISION OF STATE REVOLVING FUNDS
FOR REPAIR OR REPLACEMENT OF
DRINKING WATER AND DOMESTIC
WASTEWATER FACILITIES IN EMERGENCY AREA
MADE NECESSARY BY HURRICANE MICHAEL**

OGC NO. 18-1409

EMERGENCY FINAL ORDER

Under Sections 120.569(2)(n), 252.36, and 252.46, Florida Statutes, and upon consideration of the State of Florida Executive Order No. 18-276 and 18-277, 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 posed by Hurricane Michael (hereinafter "the Hurricane").

FINDINGS OF FACT

1. Hurricane Michael made landfall on the Florida Panhandle on October 10, 2018, as a Category 4 storm, causing catastrophic damage to drinking water and domestic wastewater facilities in Bay, Gulf, Franklin, Jackson, Calhoun, Liberty and Gadsden counties, which shall constitute the area covered by this Emergency Final Order, and shall be referred to herein as the "Emergency Area." Immediate action is warranted to repair or replace drinking water and domestic wastewater facilities and their associated systems damaged or destroyed by the Hurricane. The owners and operators of these damaged drinking and domestic wastewater facilities need adequate funding to make the necessary repairs or replacements to protect the public health, safety, welfare and the environment caused by the Hurricane in the Emergency Area.

2. By State of Florida Executive Order No. 18-276 and 18-277, the Governor declared that a state of emergency exists in specified counties in the State of Florida, based upon the serious threat to the public health, safety, and welfare posed by the Hurricane. The counties specified herein as the Emergency Area are counties that are included in the Governor's Executive Order, but do not constitute all the counties identified in the Governor's Executive Order.

3. The Department finds that the Hurricane created a state of emergency threatening the public health, safety, welfare, and the environment throughout the Emergency Area. As a result of the emergency, immediate action by the Department and owners/operators of drinking water and domestic wastewater facilities are necessary to repair or replace drinking water and domestic wastewater facilities and their associated systems damaged or destroyed by the Hurricane.

4. The Department finds that an emergency authorization is required to address the need for immediate action because the normal procedures and restrictions for obtaining and providing the necessary funding and/or appropriate authorizations would not result in sufficient funding or sufficiently timely action to address the emergency.

5. The Department finds that 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

1. Based on the findings recited above, it is hereby concluded that the emergency caused by the Hurricane poses an immediate danger to the public health, safety, and welfare and requires an immediate order of the Department.

2. Under State of Florida Executive Order Nos. 18-276 and 18-277, and Sections 120.569(2)(n), 252.36, and 252.46, Florida Statutes, the Secretary, or designee, of the Department is authorized to issue this Order.

3. 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.

THEREFORE, IT IS ORDERED:

A. DRINKING WATER AND DOMESTIC WASTEWATER FACILITIES LOCATED IN THE EMERGENCY AREA:

The following rules and their associated underlying statutes are waived regarding provision of State Revolving Funds for repair or replacement of structures, equipment and appurtenances of drinking water and domestic wastewater facilities and their associated systems that have been damaged or were destroyed by the Hurricane, and that are located within the Emergency Area:

1. For Drinking Water:
 - a. General Program Requirements regarding timing for submittals contained in Rule 62-552.300(1)(d), F.A.C. Pursuant to this Order, documents may be submitted after the priority list meeting but must be submitted and approved prior to loan or grant agreement execution;
 - b. The formulaic calculation of the affordability score contained in Rule 62-552.300(1)(e)2., F.A.C.;

- c. The procedures and eligibility for loans with principal forgiveness contained in Rule 62-552.300(2), (2)(a), (2)(b)2, (2)f, F.A.C.;
 - d. Ineligible project costs contained in Rules 62-552.300(4)(e) and (4)(g), F.A.C. Costs incurred on or after, and in response to, the Hurricane are hereby authorized as eligible;
 - e. The formulaic calculation of interest rate contained in Rule 62-552.300(6), F.A.C., except that the minimum financing rate is 0%;
 - f. The principal forgiveness percentage calculation contained in Rule 62-552.500, F.A.C., except the principal forgiveness percentage cannot exceed 100%; and
 - g. The public comment period contained in Rule 62-552.680(2)(a), F.A.C.
2. For Domestic Wastewater:
- a. General Program Requirements regarding timing for submittals contained in Rule 62-503.300(1)(d), F.A.C. Pursuant to this Order, documents may be submitted after the priority list meeting but must be submitted and approved prior to loan or grant agreement execution;
 - b. General Program Requirements regarding ineligible costs contained in Rule 62-503(3)(i), F.A.C., as costs incurred on or after, and in response to, the Hurricane are hereby authorized as eligible;
 - c. General Program Requirements establishing a formulaic financing rate set forth in Rule 62-503.300(5)(a), F.A.C., except that the minimum financing rate of 0% still applies;
 - d. Funds Reserved for Specific Purposes regarding eligibility for, and calculation of, federal cap grant-required principal forgiveness contained

in Rule 62-503.500(4), F.A.C., except the principal forgiveness percentage cannot exceed 100%; and

e. The public comment period contained in Rule 62-503.751(2)(a), F.A.C., for projects eligible for a categorical exclusion.

3. Any project utilizing the mechanisms in paragraph 1 or 2 above, are deemed a top priority for the protection of public health, safety, and welfare regardless of any other ranking, scoring or prioritization provided in Chapters 62-503 or 62-552, F.A.C.; and

4. For any project requesting and receiving funding under the provisions of paragraph 1 or 2, above, the Department approves payment based upon invoiced costs.

Repair or replacement of structures, equipment, and appurtenances of drinking water and domestic wastewater facilities and their associated systems may be subject to the provisions of and relief provided by Department of Environmental Protection Emergency Final Order regarding Hurricane Michael, OGC No. 18-1335, and specifically as provided in Section C.8.a. of that Order.

If any project funded by the Department pursuant to paragraphs 1 or 2, above, receive funding from other sources, any duplicative funding must be refunded to the Department.

B. GENERAL PROVISIONS

1. General Limitations

The Department issues this Order solely to address the emergency created by the Hurricane. 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. Except as

authorized in 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 the requirements for fees and publication of notices, are suspended for the duration of this order.

3. Other Authorizations Required

This Order only provides relief from the specific statute and rule requirements addressed herein for the duration of the Order, and does not provide relief from the requirements of other federal, state, water management districts or local agencies. This Order therefore does not negate the need for the facility 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, 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.

4. Expiration Date


This Emergency Final Order shall take effect immediately upon execution by the Secretary of the Department, or designee, and shall expire on December 6, 2018, unless modified or extended by further order.

NOTICE OF RIGHTS

Pursuant to Section 120.569(2)(n), 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, 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 9th day of November 2018, in Tallahassee, Florida.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION


Noah Valenstein, 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

11-9-18
DATE

