

FINAL ORDER GRANTING VARIANCE**PETITIONER:**

The US Army Corps
of Engineers
PO Box 2288
Mobile, AL 36628

PROJECT INFORMATION:

Variance No. 0333871-006-EV/03
Date of Issue: February 28th, 2020
Expiration Date: *Same as expiration date of
Permit No. 0333871-004-EM/03*
County: Bay
Project: USACE Federal Channel Dredge

FINAL ORDER BY THE DEPARTMENT:

The Department of Environmental Protection (Department) hereby grants, to the U.S. Army Corps of Engineers, a variance from the requirements of Rule 62-4.244(5)(c), Florida Administrative Code (F.A.C.), to temporarily expand the mixing zone for turbidity to 730 meters longitudinally and 122 meters laterally from the edges of the spoil discharge zone.

The associated Individual permit (No. 0333871-004-EM/03) authorizes the applicant to dredge approximately 430,000 cubic yards of material from two (2) different dredge areas and deposit the dredged material within an approved in-water disposal site.

After reviewing the Petition for Variance, the Department concluded the Petitioner demonstrated there is no practical means known or available for the adequate control of the pollution involved.

The Consolidated Notice of Intent to Issue Environmental Resource Permit, Intent to Grant a Lease and Letter of Consent to Use Sovereign Submerged Lands, and Intent to Grant a Variance from Rule 62-4.244(5)(c), F.A.C., notified the US Army Corps of Engineers of the Department's proposed agency action and advised them of their right to a hearing pursuant to Sections 120.569 and 120.57, F.S. On February 7, 2020, notice was given in The News Herald and on February 7, 2020, notice was given in the Florida Administrative Register informing the public of the Department's intended action and offering an opportunity for hearing pursuant to Sections 120.569 and 120.57, F.S.

The Petitioner and interested parties having been advised of their rights under Chapter 120, F.S., and having failed or declined to file a Petition pursuant to Sections 120.569 and 120.57, F.S., are hereby deemed to have waived those rights. Acceptance of the variance constitutes notice and agreement that the Department will periodically review this variance for compliance, including site inspections where applicable, and may initiate enforcement action for violation of the conditions and requirements thereof. It is therefore:

ORDERED by the State of Florida, Department of Environmental Protection, that the Petition of the US Army Corps of Engineers requesting a variance be and is hereby granted, subject to the conditions specified by the Department in Permit No. 0333871-004-EM/03.

The variance shall only be valid during the construction activities authorized in Permit No. 0333871-004-EM/03 and shall expire when the permit expires on January 27, 2025, unless the permit is modified to grant a time extension.

Any Party to this Order has the right to seek judicial review of the Order Pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of the Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 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 Order is filed with the clerk of the Department.

DONE AND ORDERED this 28th day of February, 2020, in Pensacola, Florida.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION



Elizabeth Mullins Orr
Interim Director

Copies furnished to:

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FILING AND ACKNOWLEDGMENT

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

Anita Bless

February 28, 2020

Deputy Clerk

Date

Prepared by: Wade Dandridge