

# **HURRICANE HERMINE EMERGENCY FINAL ORDER**

## **SUMMARY**

### **A. WASTE MANAGEMENT**

(Storage Tank Systems, Solid Waste Management, and Hazardous Waste)

#### **1. Storage Tank Systems:**

- **Repairs to Storage Tank Systems.** Owners and operators of storage tank systems and their licensed engineers and contractors are authorized to make all necessary repairs to restore essential services and repair or replace all structures, equipment, and appurtenances of the systems to their pre-Hurricane permitted or registered condition without prior notice to DEP. ([Emergency Order, ¶ A. 1. at page 3](#))
- **Notification Requirements.** The owner or operator shall notify DEP in writing of the nature of the work, the DEP Facility ID Number for the location, and the contact information of the representative of the owner or operator to contact concerning the work within 30 days of commencing the repair or replacement work. ([Emergency Order, ¶ A. 1. at page 3](#))

#### **2. Solid Waste Management:**

- **Field Authorizations for staging areas** used for the temporary storage and chipping, grinding, or burning of Hurricane-generated debris may be issued prior to or following a site inspection by Department personnel or a delegated local program and by notice to the District Office. Staging areas shall avoid wetlands and other surface areas to the greatest extent possible and areas used or affected must be fully restored upon cessation of use of the area. Staging areas must stop operating and all Hurricane-generated debris must be removed from the site by the Order expiration date unless a different closing date and conditions are specified in the field authorization. Field authorizations issued prior to the effective date of the Order remain in effect but may be modified to include conditions and closure dates specified in the Order. ([Emergency Order, ¶ A.2.a. at page 3-4](#))
- **Permitted landfills, waste-to-energy facilities, and transfer stations** which accept Hurricane-generated debris in accordance with this Order may do so without modifying existing solid waste permits or certifications. Operators of landfills shall seek modification of existing permits to address long term impacts (those which extend past the expiration date of the Order) of accepting Hurricane-generated debris on operations and closures not addressed in existing permits. Modification requests shall be submitted no later than the expiration date of the Order and there is no permit fee for modification necessitated solely by hurricane cleanup activities. Permanent lateral or vertical expansion of a facility beyond its permitted limits is not authorized. ([Emergency Order, ¶ A.2.h. at page 6](#)).
- **Disposal Requirements:**
  - **Hurricane-generated vegetative debris** 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. Vegetative debris may be managed at permitted waste processing or registered yard trash processing facilities in accordance with applicable rules and permit conditions. ([Emergency Order, ¶ A.2.b. at page 4](#))
  - **Construction and demolition debris** that is mixed with Hurricane-generated debris does not need to be separated from other solid waste prior to disposal in a lined landfill. Construction and demolition debris that is source separated or separated from Hurricane-generated debris at authorized staging area or other Department authorized area, may be managed at a permitted construction or demolition debris disposal or recycling facility upon Department approval of methods and operational practices used to inspect waste during segregation. ([Emergency Order, ¶ A.2.c. at page 5](#))

- **Asbestos-containing debris** shall be disposed of in a Class I landfill, not a waste-to-energy facility. ([Emergency Order, ¶ A.2.d. at page 5](#))
- **Ash residue from combustion of Hurricane-generated vegetative debris** may be disposed of in a permitted disposal facility or land spread in areas approved by local government except in wellhead protection areas or water bodies. ([Emergency Order, ¶ A.2.f. at page 5](#))
- **Ash from combustion of other Hurricane-generated debris** shall be disposed of in a Class I landfill. Metals or other non-combustible materials segregated from ash residue may be disposed of in an unlined, permitted landfill. ([Emergency Order, ¶ A.2.f. at page 5](#))
- **Domestic wastewater residuals** may be disposed of in Class I landfills even if residuals meet the definition of a liquid waste in Florida Administrative Code 62-701.200(65), provided that disposal is approved by DEP in advance and managed so as to minimize liquid content, odors, and runoff. ([Emergency Order, ¶ A.2.i. at page 6](#))
- **Other Hurricane-generated debris**, including non-recyclables and residuals generated from segregation of Hurricane-generated debris shall be disposed of in a Class I landfill or in a waste-to-energy facility. ([Emergency Order, ¶ A.2.d. at page 5](#))
- **Refrigerators and freezers** containing solid waste such as rotting food may be disposed of in a Class I landfill provided that chlorofluorocarbons and capacitors must be removed and recycled to the greatest extent possible using techniques and personnel meeting 40 CFR Part 82 requirements. ([Emergency Order, ¶ A.2.g. at page 5-6](#))

### 3. Hazardous Waste:

- **Blanket approval of time extensions.** All hazardous waste generators within the Emergency Area are granted a general extension of time by DEP of 30 days from the expiration of the Order for the storage of their hazardous wastes on-site, pending the cleanup of the Hurricane damage and restoration of essential services. ([Emergency Order, ¶ A.3. at page 6-7](#)).

## B. AIR RESOURCE MANAGEMENT

(Air Curtain Incinerators, Open Pile Burning, Other Air Pollution Sources, Asbestos Cleanup)

1. **Burning asbestos-containing materials or hazardous waste is prohibited.** ([Emergency Order, ¶ B.1 at page 7](#))

2. **Air Curtain Incinerator Operational Requirements:**

- Air curtain incinerators may be operated 24 hours per day pursuant to this Order, with the following limitations:
  - pit width of less than 12 feet;
  - vertical side walls maintained; waste material may not protrude above the level of the air curtain;
  - ash may not build up higher than one-third the pit depth; and
  - minimal nuisance smoke.

([Emergency Order, ¶ B.1. at page 7-8](#))

3. **Open Pile Burning Requirements:**

- Only vegetative material can be burned on an open pile.
- Parties may not burn such debris in wetlands or other surface waters and must 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.

([Emergency Order, ¶ B.1. at page 7-8](#))

4. **Permitted stationary source of air pollution:**

- The **minor restorative repair** of permitted stationary source of air pollution damaged by the Hurricane may take place without prior notice, however, within thirty days of such repairs, the permittee shall notify DEP in writing.
- The Order does not authorize **repairs that would constitute reconstruction** under any definition of 40 CFR Part 60, 61, or 63, and that could affect potential to emit any pollutant are not authorized by this Order.

([Emergency Order, ¶ B.3. at page 8](#))

5. **Asbestos Cleanup:**

- **DEP waives the ten-day advanced notice requirement** for emergency demolition or emergency cleanup of asbestos-containing material resulting from the Hurricane, however, within one business day of commencing such demolition or cleanup, the person responsible for such work shall notify DEP in writing.
- **The regulatory requirements for handling and disposing of asbestos-containing material remain in place.**

([Emergency Order, ¶ B.4. at page 8](#))

## C. WATER RESOURCE MANAGEMENT

### (ERP/Dredge/Fill/Surface-Water-Management, CCL, JCP, NPDES Stormwater Construction Generic Permit, Authorizations to use SSL, Water/Waste-Water Plants, & fees thereto)

#### 1. Environmental Resource, Dredge and Fill, and Surface Water Management Activities:

- **Statutory Exemptions:** Section 403.813, Florida Statutes, provides exemptions for certain activities. A Letter of Consent under Florida Administrative Code Rule 18-21.005 is granted via the Order for those activities that do not otherwise qualify for consent. ([Emergency Order, ¶ C.2. at page 11](#))
- **Activities that do not require Notice:** Authorization is provided, without notice to DEP, to repair, restore or replace structures to conditions that were authorized or otherwise legally existing immediately prior to the Hurricane for the following activities, which must be completed by September 2, 2017:
  - Temporary and permanent repair or restoration of structures and drainage systems that are not completely destroyed
  - The restoration (regrading, dredging, or filling) by local, regional, and state governments of upland surfaces, wetlands, and submerged land contours subject to some conditions.
  - Removal of debris, including sunken or grounded vessels, vegetation, and structural remains that have been deposited into waters, wetlands, or uplands by the Hurricane, where such removal does not result in filling of wetlands or other surface waters, or dredging that creates or expands surface waters.

([Emergency Order, ¶ C.2.a. at page 12-15](#))

- **Field Authorizations to Repair, Restore, or Replace Structures:**
  - **Requesting Field Authorizations.** Field authorizations may be requested by providing a notice to the District Office of DEP or water management district containing a description of the work requested. Field authorizations may not be issued unless requested on or before September 30, 2016. ([Emergency Order, ¶ C.3.b.\(3\) at page 16](#))
  - **Duration of Field Authorizations.** The work done pursuant to such authorizations must be completed by the date specified in the field authorization unless extended. To be extended, the party conducting the work must request the extension in writing 30 days in advance of the expiration. ([Emergency Order, ¶ C.3.b.\(3\) at page 16-17](#))
  - **Authorized Activities.** The emergency order provides authorization to issue field authorizations following a site inspection by DEP or WMD to repair, restore or replace structures to conditions that were authorized or otherwise legally existing immediately prior to the Hurricane for the following activities:
    - Activities including the replacement of structures that are completely destroyed;
    - Activities on state owned submerged lands that are not water dependent;
    - Restoration (regrading, dredging, or filling) of the contours of uplands, wetlands, and submerged bottoms by parties other than local, regional, or state governments;
    - Trimming or alteration of mangroves that threaten public health, safety, welfare, or property, or that currently interfere with navigation;
    - Removal of debris, including sunken or grounded vessels, vegetation, and structural remains that has been deposited into waters, wetlands, or uplands by the Hurricane, the removal of which requires filling of wetlands or other surface waters, or dredging that creates or expands wetlands or other surface waters.
    - Other activities determined by DEP or water management district personnel as having the potential to result in only minimal adverse individual or cumulative impact on water resources and water quality.

([Emergency Order, ¶ C.2.a. at page 12-15](#))

2. **Coastal Construction Control Line Activities (i.e., construction/activities seaward of the Coastal Construction Control Line, but landward of the mean high water line):**

- **Authorizes (1) local governments, (2) DEP's Division of Recreation and Parks, (3) Florida Department of Transportation, and (4) utility companies** to protect, repair, or replace structures and property seaward of the Coastal Construction Line, but landward of the mean high water line without notice to DEP or water management district, so long as:
  - The structure existed prior to the emergency.
  - Work is complete by September 2, 2017.
  - The repair is limited to a utility, road, or access ramp.

[\(Emergency Order, ¶ C.3.a. at page 18\)](#)

- To the extent the above listed entities conduct **fill activities** (i.e., returning sand to the beach and dune system that has been deposited upland by the hurricane and restoring damaged dune systems):
  - All hurricane-generated debris must first be removed
  - The fill material may not be obtained from the beach or below the mean high water line seaward of the CCCL without specific written authorization from DEP.
  - The fill material must be similar to the pre-Hurricane beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter.

[\(Emergency Order, ¶ C.3.a.\(3\) at page 18\)](#)

- **Authorizes Local Governments to issue permits** in lieu of Department permits for the following activities, provided that the work under these permits must be completed in 90 days of the expiration of the order (December 2, 2016):
  - **Temporary or remedial activities necessary to secure structures** in order to remove safety hazards and prevent further damage or collapse of foundations;
  - **Temporary armoring activities** including the installation of: (a) temporary wooden retaining walls; (b) temporary cantilever sheetpile walls (\*without concrete caps, tiebacks, or other reinforcement); (c) sandbags less than 100 lbs. filled bag; and (d) similar like structures;
    - For these activities, either the structures must be removed within sixty (60) days of installation, or the permittee must seek authorization from DEP within sixty (60) days of installation, in order to keep the temporary armoring in place.
  - **Repair or replacement of minor ancillary structures** (such as stairs, landings, and HVAC platforms) and services utilities that are associated with the existing habitable structure, so long as the repair does not exceed the size of the original structure or service utility damaged or destroyed by the Hurricane;
  - **Repair of surviving beach/dune walkovers** is authorized, so long as (1) the structure is substantially intact, and (2) the repair allows for adjustments to be made to the seaward terminus of the walkover if necessary to accommodate changes in the shoreline topography and native salt-resistant vegetation patterns resulting from the post-Hurricane recovery of the beach and dune system;
  - **Repair of foundations for buildings** that have not been substantially damaged;
  - **Replacement or repair of caps and anchoring systems** (or tiebacks) for seawalls or bulkheads;
  - **Restoration of a damaged dune system** using beach compatible sand from an upland source so long as (1) all fill material is sand that is similar to the pre-Hurricane beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter, and (2) no sand is obtained from the beach or below mean high water seaward of the CCCL without specific written authorization from DEP.
  - **Return of sand to the beach dune system** which has been deposited upland by the Hurricane so long as the recovered fill material is free of debris and does not cover any debris.

[\(Emergency Order, ¶ C.3.b at page 19-20\)](#)

- If any of these activities conducted pursuant to this part of the order occur during the marine turtle nesting season (March 1 through October 31 in Brevard, Indian River, St. Lucie, Martin, and Broward counties, May 1 through October 31 in all other coastal counties within the state), they must be coordinated with the Florida Fish and Wildlife Conservation Commission's Imperiled Species Management Section to ensure that all activities comply with state and federal requirements for the protection of sea turtles, their nests, hatchlings, and nesting habitat. This order does not authorize a take. [\(Emergency Order, ¶ C.6.d. at page 25\)](#)
- **The following activities ARE NOT AUTHORIZED:**
  - Local governments to permit geotextile containers as the core of a reconstructed dune for the purposes of temporary armoring.
  - Permanent repair of foundations of major structures which have been substantially damaged;
  - Rebuilding of, or substantial improvements to, major structures;
  - The repair or reconstruction of coastal or shore protection structures; or
  - Replacement of walkover structures, retaining walls, decks, gazebos, and other similar structures.

[\(Emergency Order, ¶ C.3.c. at page 20\)](#)

**3. Joint Coastal Permit Activities (i.e., activities seaward of the mean high water line and are likely to have a material physical effect on the coastal system or natural beach and inlet processes)**

- **Emergency Authorizations.** If an activity that would require a **JCP** must be conducted to alleviate hazardous conditions resulting from the Hurricane that pose an immediate danger to life or limb, including sudden and unpredictable hazards to navigation, an applicant can apply for an emergency authorization that expires in 90 days after issuance.
  - The emergency authorization is limited to the minimum amount of activities necessary to alleviate the hazardous conditions by temporarily stabilizing the structure or clearing the channel, until a JCP application can be processed to address the long-term repair.
  - The emergency authorization cannot authorize fill material to extend seaward of the MHWL that existed immediately before the Hurricane unless the applicant provides proof at the riparian owner(s) has obtained a disclaimer from the Department's Division of State Lands and the Division writes a concurrence memorandum. Any filling authorized must be to temporarily stabilize an upland structure, if that structure is in danger of imminent collapse and that structure was located behind the primary dune line prior to the Hurricane. The fill must be "beach quality sand as defined by DEP rule.
  - The emergency authorization cannot authorize dredging to exceed channel depths that existed immediately before the Hurricane.
  - The emergency authorization cannot authorize reconstruction of non-water dependent structures on sovereign submerged lands.
  - Activities performed under the emergency authorization may not violate water quality standards.

[\(Emergency Order, ¶ C.4. at page 21-23\)](#)

- **Activities that require a JCP, but don't qualify for an emergency authorization,** may still qualify for expedited processing of the JCP if the applicant can demonstrate that expeditious processing of the JCP application is necessary to meet state or federal recovery efforts, including funding deadlines. [\(Emergency Order, ¶ C.4.d. at page 23\)](#)

**4. ALL Activities allowed under 1-3 above must abide by the following general conditions:**

- Parties conducting the activities must adhere to Best management practices in accordance with the guidelines and specifications in Chapter 6 of the *Florida Land Development Manual: A Guide to*

*Sound Land and Water Management*, Florida Department of Environmental Regulation (1988). ([Emergency Order, ¶ C.6.a. at page 25](#))

- Activities must shall be done in a manner so 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. Nothing herein authorizes a taking, attempted taking, pursuing, harassing, capturing, or killing of any species (or the nests or eggs of any species) listed under Rule 68A-27, Florida Administrative Code. ([Emergency Order, ¶ C.6.d-e. at page 25](#))
- All structures that are rebuilt should be rebuilt in accordance with all applicable local, state, and federal building standards and requirements of the Federal Emergency Management Agency. ([Emergency Order, ¶ C.6.f. at page 25-26](#))
- 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 DEP if requested to do so. ([Emergency Order, ¶ C.6.g. at page 26](#))

#### 5. NPDES Stormwater Generic Construction Permit:

- Activities subject to the **NPDES Stormwater Construction Generic Permits** can be conducted without notice, so long as the intent to use the permit is submitted in 30 days of initiating construction. ([Emergency Order, ¶ C. 5. at page 24](#))

#### 6. Authorization to Use State Owned Submerged Lands:

- The Emergency Order grants **authorization to use state owned submerged lands** for the following:
  - Activities authorized under this Order involving the repair, replacement, or restoration of the activities and structures, and the removal of debris located on submerged lands owned by the state that do not qualify for consent by rule under Florida Administrative Code Rule 18-21.005(1)(b), under certain conditions listed in the order. ([Emergency Order, ¶ C. 7. at page 30](#))
  - **Non-water dependent structures**, grandfathered, are not authorized to be repaired, restored, or replaced when more than 50 percent of the structure or activity is lost (based on the cost to repair, restore, or replace the structure or activity). ([Emergency Order, ¶ C. 7. at page 30](#))
  - **Water dependent structures** that were legally existing immediately before the Hurricane but not in conformance with the current criteria of Chapters 18-18, 18-20, or 18-21, Florida Administrative Code, as applicable, may be repaired, restored, or replaced to the footprint that existed immediately before the Hurricane, but shall, to the greatest extent practicable, be repaired, restored, or replaced to meet the current criteria of Chapters 18-18, 18-20, and 18-21, Florida Administrative Code. ([Emergency Order, ¶ C. 7. at page 30](#))

#### 7. Water and Wastewater Plants and Collection and Distribution Systems

- Owners and operators of **water and wastewater plants and collection and distribution systems** are authorized to make all necessary repairs to restore essential services and repair or replace all structures, equipment, and appurtenances of the plants and systems to their pre-Hurricane permitted or registered condition without prior notice to DEP. ([Emergency Order, ¶ C. 8. a. at page 30](#))
- Owners and operators of **underground injection control Class V Group 6 stormwater and lake level control wells** in existence and functioning immediately before the Hurricane are authorized, without prior permission by DEP, to lower the intake structure to allow a greater volume of lake water to flow down to prevent immediate flooding of structures. ([Emergency Order, ¶ C. 8. b. at page 30](#))

#### 8. Suspension of Fees

- The Emergency Order suspends the following fees:
  - Lease fees for certain activities under the Emergency Order provided a request is sent to the Division of State Lands.

- Lease fees when a field authorization is issued for the restoration or replacement of individual structures (such as a dock or pier) or entire facilities (such as marinas) on state owned submerged lands that are completely destroyed.
  - Lease fees will only be waived for the duration of the Emergency Order or as provided in a field authorization.
- Processing fees may also be waived for emergency authorizations for JCP activities.

[\(Emergency Order, ¶ C. 9. at page 30\)](#)



## D. GENERAL PROVISIONS

### (General Limitations, Suspension of Statutes and Rules, Review of Requests for Field Authorizations, Other Authorizations, Extensions of Time, Deadlines for Agency Action, Expiration Date, Violation, & Applicability to Delegated Programs)

1. **General Limitations:** The Emergency Order is solely to address the emergency created by the Hurricane and does not authorize any illegal structure or convey any property rights. ([Emergency Order, ¶ D. 1. at page 31](#))
2. **Suspension of Statutes and Rules:** The Emergency Order suspends any rules or statutes which conflict with the Emergency Order including any procedural requirements to obtain permits or authorizations. ([Emergency Order, ¶ D. 2. at page 32](#))
3. **Review of Requests for Field Authorizations:** The Emergency Order provides that DEP will act on requests for field authorizations in a timely manner and may require the submission of additional information. ([Emergency Order, ¶ D. 3. at page 32](#))
4. **Other Authorizations Required:** The Emergency Order does not provide relief from the requirements of other federal, state, water management districts, and local agencies. ([Emergency Order, ¶ D. 4. at page 32](#))
5. **Extension of time to comply with specified deadlines:**
  - The Emergency Order provides a 30-day extension for facilities and activities regulated by DEP in the Emergency Area, the time to comply with the following specified deadlines:
    - The time deadlines to conduct or report periodic monitoring or any other similar monitoring that is required by a DEP permit, lease, easement, consent of use, letter of consent, consent order, consent agreement, administrative order, or other authorization.
    - The time deadlines to file an application for an extension of permit duration or renewal of an existing DEP permit, lease, easement, consent of use, letter of consent, or other authorization.
    - The time deadlines to file an application for a DEP operation permit.
    - The expiration date for a DEP existing permit, lease, consent of use, or other authorization.
    - The time deadlines to obtain a permit for and commence construction of the initial phase of a system for which a ERP conceptual permit. ([Emergency Order, ¶ D. 5. at page 33](#))
6. **Permit Extensions During States of Emergency:** The Emergency Order provides notice that Section 252.363, Florida Statutes, provides for tolling and extending the expiration dates of permits and other authorizations issued under Part IV, of Chapter 373, Florida Statutes, following the declaration of a state of emergency. ([Emergency Order, ¶ D. 6. at page 34](#))
7. **Deadlines for Agency Actions:** The Emergency Order suspends and tolls for 7 days any deadline of DEP to take agency action if DEP's failure would have resulted in default action. This applies to each Department office or local program that: sustains any significant damage from the Hurricane in its geographic borders or that was not impacted but provided staff to assist in an impacted area. ([Emergency Order, ¶ D. 7. at page 35](#))
8. **Expiration Date:** The Emergency Order expires on September 30, 2016. ([Emergency Order, ¶ D. 8. at page 36](#))

- 9. Violation of Conditions of Emergency Final Order:** The Emergency Order provides that failure to comply with the Emergency Order is a violation and could result in enforcement actions. ([Emergency Order, ¶ D. 9. at page 36](#))
- 10. Applicability to Delegated Programs:** The Emergency Order also applies where another entity is acting for DEP in accordance with a delegation agreement, operating agreement, or contract. That entity shall comply with the Emergency Order to the extent that it is acting as an agent of DEP. ([Emergency Order, ¶ D. 10. at page 36](#))