

Review of Environmental Compliance Process

Office of Ecosystem Projects

Report: A-1617DEP-040

Office of Inspector General

Internal Audit Section

Florida Department of Environmental Protection

May 2, 2018

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The Office of Inspector General (OIG) conducted a review of the Office of Ecosystem Projects (Office) environmental compliance process. This review was initiated as a result of the Fiscal Year (FY) 2016-2017 Annual Audit Plan.

Scope and Objectives

The scope of this review included compliance activities performed by the Office, including compliance inspections from July 1, 2016, through June 30, 2017. The objective was to evaluate management oversight of compliance activities.

Methodology

This review was conducted under the authority of section 20.055, Florida Statutes (F.S.), and in conformance with the *International Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors. Our procedures included interviews with Office staff and a review of Office compliance processes, project documentation, and compliance activities.

Background

The Office is responsible for implementing the Department of Environmental Protection's (Department) technical, planning, and regulatory responsibilities for restoration activities required under section 373, F.S., regarding the Everglades Forever Act (EFA), the Comprehensive Everglades Restoration Plan (CERP), and the Northern Everglades and Estuaries Protection Program (NEEPP). The Department's responsibilities involve close coordination with the United States Army Corps of Engineers (USACE) and the South Florida Water Management District (SFWMD), which are the lead agencies in Everglades restoration activities. For projects funded through the state, the SFWMD serves as the local sponsor for the majority of restoration

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efforts. The Department's role is to ensure the state's interest is represented through policy and program development, legislation, funding, project scheduling, permitting, and technical support. To implement state and federally funded projects, the Department also participates in technical advisory groups and committees. These projects involve the construction and operation of large scale civil works including reservoirs, impoundments, stormwater treatment areas, and other changes to the regional system of canals and control structures which improve the quality, timing, and distribution of water.

In accordance with section 373.1502, F.S., the Department issues permits for construction, operation, modification or maintenance of a project component. These permits *must contain reasonable conditions to ensure that water quality resulting from construction and operation of project components is adequately and accurately monitored*. Permits are issued primarily to the SFWMD and USACE. The Office's Compliance Section monitors projects to ensure permit compliance. This is done through site visits, communication with permittees, and tracking project objectives, status, and required reports.

The Office developed a Compliance Manual for use in facilitating a consistent process for overseeing permit compliance. The Compliance Manual was revised in December 2015, September 2016, and June 2017; however, due to time constraints and necessary input from a variety of program related staff, the manual has not been finalized or formally adopted. Permit requirements are tracked through the Compliance Section's internal tracking mechanisms. As of June 29, 2017, the Office's Compliance Section was responsible for oversight of 76 projects.

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Results

Oversight of Permit Conditions

To evaluate the Office’s oversight of permit compliance, we selected a sample of 41 permit conditions contained in five permits for review. These included the following:

Permit	Project	Phase	County	Date Issued	Date Expires	Number of Conditions Reviewed
0325949-001	Tamiami Trail Modifications	2.6 Mile Bridge (Phase 1)	Miami-Dade	3/13/2015	3/13/2020	5
0192879-017	Ten Mile Creek Water Preserve Area	Rehabilitation and Interim Operations	St. Lucie	5/9/2016	5/9/2021	10
0344004-001	Biscayne Bay Coastal Wetlands	L-31 E Culverts S-712A & S-712B	Miami-Dade	8/3/2016	8/3/2021	11
0288313-008	Picayune Strand Restoration Project	Merritt, Faka Union, and Miller Canal Pump Stations and Road Removal ¹	Collier	5/5/2015	5/5/2020	9
0234604-018	Herbert Hoover Dike Rehabilitation and Repair	Culverts 5A and 5 Replacement	Glades	6/14/2013	6/4/2018	6

These permits included both general and specific conditions with required dates and activities relating to permit coordination, construction schedules, monitoring, reports, plans, and notices. Of the 41 conditions reviewed, the Office could not provide documentation demonstrating that the requirement had been met in accordance with the permit for 10 conditions. These are outlined in Appendix A. In addition, the Office did not demonstrate that conditions had been met on a timely basis as required in the permit for seven conditions which are outlined in Appendix B.

¹ Within this review, we focused exclusively on deliverables and compliance inspections for the Miller Canal Pump Station.

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The Compliance Section maintains permit project files on a common drive where project correspondence and related documents are organized. A database is used to track dates when project elements are received, in order to facilitate required actions and levels of performance internally by the Compliance Section. However, there was no consistent administrative mechanism in place to monitor the permittees' complete and timely compliance with required permit conditions. According to the Compliance Section Administrator, the program does not use due dates to prompt an automatic response or enforcement actions. The program operates in collaboration and cooperation with permittees and stakeholders to promote project success.

Each of the permits contained language indicating that the activities authorized by the permit must be conducted in conformance with all the provisions of the permit. Each permit stated, *Failure to comply with all permit conditions and documents referenced herein shall constitute grounds for revocation of the permit and appropriate enforcement action.* For the circumstances noted above, no enforcement measures had been taken. The Compliance Manual indicates that the Compliance Section Administrative Compliance Coordinator is responsible for maintaining compliance files, monitoring incoming correspondence, and coordinating annual reviews of administrative files to notify permittees of satisfactory and timely submission of deliverables. According to the Compliance Section Administrator, the specified annual review is not conducted. Processes have evolved more to reviews of annual project reports. Project progress is tracked primarily through ongoing communication, reports, and interagency meetings.

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Compliance Inspections

According to the Compliance Manual, *the majority of site visits are conducted during the construction phase of a project to verify construction progress, effective implementation of erosion and stormwater management controls, turbidity control and monitoring, wildlife monitoring and wetland protection or restoration as applicable.* Site visits are conducted on a scheduled or as-needed basis by the Field Compliance Coordinator. According to documentation provided by the Office and discussions with management, scheduled site visits within a year for each construction site are determined by assigning a risk-based annual target frequency. Compliance Inspection Reports with permit requirement deficiencies are sent to the permittee for resolution.

We reviewed documentation associated with 10 compliance inspections conducted with respect to the five sampled permits for the first two quarters of 2017. These inspections generally aligned with the established frequencies for the projects. The reports included requirements or recommendations for deficiencies noted in the field. The Office Compliance Manual states *during a site visit the Field Compliance Coordinator (FCC) will record observations made during the inspection in the field notes and photo documentation.* Of the 10 compliance inspections, three contained recommendations regarding observed areas of non-compliance. These recommendations were related to requirements contained in the permittee's Best Management Practices Plans for mitigating adverse environmental impacts. The recommendations made by the Office to the permittees in these reports included proper silt fencing, proper stockpiling of materials, concrete containment, discharge prevention of harmful fluids, and implementation of Stormwater Pollution Prevention Plan inspections. For the three

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inspections which contained recommendations, all contained documentation of follow-up activity to ensure necessary corrections had been implemented. Although compliance inspections were being conducted and had demonstrated positive results, none contained field notes to support the required permit elements being evaluated or the Field Compliance Coordinator's observations of these elements while on site.

Based on discussions with the Office's Environmental Administrator subsequent to our review of the sampled permits, the Office was now using field notes to document compliance inspection observations. A recent field notes example was provided which contained general observations regarding the site, but did not specify the required permit conditions with respect to observations on site.

Conclusion

Based on our review, the Office's Compliance Section maintains an organized system of permit project documents that demonstrate the Department's participation and coordination with permittees and multiple project participants. Compliance inspections are completed consistent with established frequencies and demonstrate positive results with respect to addressing permit conditions. However, the current processes in place do not provide a consistent mechanism to effectively track the timely and complete submission of deliverables. In addition, the results of compliance inspections do not provide a clear description of required permit expectations for use as the foundation of inspection observations. While the unique nature, magnitude, and scale of which everglades restoration projects are implemented is dependent on cooperation among a variety of agencies, stakeholders and participants, the Department as the permitting agency

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maintains oversight responsibility to ensure permittees are meeting their permit compliance obligations.

Findings and Recommendations

Finding 1: Permit Compliance Tracking and Monitoring

Based on review of 41 conditions included in our sample of five permits, the Office did not provide documentation demonstrating that the requirement had been met in accordance with the permit for 10 conditions, and did not demonstrate the requirement had been met in a timely manner for seven conditions. As a result, the Office does not have assurance that the permittee has fully met the required obligations under the permit. Untimely submission of required information, notices, reports, or scheduled meetings by permittees diminishes the Office's contribution to the project and the effective oversight of project progress. Documentation of field compliance inspections did not provide an outline of the required permit conditions evaluated or the results of the Field Compliance Coordinator's observations of these conditions while on site.

The Compliance Manual developed by the Compliance Section, which remains in draft form, includes guidance which would facilitate a consistent and comprehensive process of permit oversight. However, use of guidance contained in the manual has not been formally established.

Recommendation:

To ensure the Department is obtaining timely and complete information necessary for effective oversight, we recommend the Office establish a consistent tracking mechanism to monitor the specific conditions of each permit. We also recommend the Office develop a Field Compliance Inspection report process to document observations as applicable to permit

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expectations. These processes should include documentation of appropriate follow-up to address corrective actions or justification for circumstances that support necessary exceptions.

In addition, we recommend the Office finalize the Compliance Manual to implement consistent processes program-wide.

To promote accountability, integrity, and efficiency in state government, the OIG completes audits and reviews of agency programs, activities, and functions. Our audit was conducted under the authority of Section 20.055, F.S., and in conformance with the International Standards for the Professional Practice of Internal Auditing, published by the Institute of Internal Auditors, and Principles and Standards for Offices of Inspector General, published by the Association of Inspectors General. The audit was conducted by Patrick Tebo and supervised by Valerie J. Peacock.

Please address inquiries regarding this report to the OIG's Audit Director by telephone at (850) 245-3151. Copies of final reports may be viewed and downloaded via the internet at <https://floridadep.gov/oig/internal-audit/content/final-audit-reports>. Copies may also be obtained by telephone (850) 245-3151, by fax (850)245-2994, in person or by mail at Department of Environmental Protection, Office of Inspector General, 3900 Commonwealth Boulevard, Mail Station #41, Tallahassee, FL 32399.

*Valerie J. Peacock,
Director of Auditing*

*Candie M. Fuller,
Inspector General*

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Appendix A

Permit Conditions Not Met as Required

Permit	Condition Number	Condition	Condition Description	Review Comment
0192879-017 Ten Mile Creek	Specific - 5	Preconstruction Meeting	Permittee was required to schedule a pre-construction meeting for attendance by the Department with two-weeks notice.	Documentation of notice or meeting was not provided.
0344004-001 Biscayne Bay	General - 12	Statement of Completion	Permittee was required to submit a written statement of project completion as authorized with a description of work completed.	Required statement of completion was not provided.
0344004-001 Biscayne Bay	Specific - 30	Notification of Substantial Completion	Permittee was required to provide notification to the Department at least 30 days prior to substantial project completion.	Notification as required was not provided.
0288313-008 Picayune Strand	Specific - 9	Preconstruction Meeting	Permittee was required to schedule a pre-construction meeting for attendance by the Department with two-weeks notice.	Documentation of a pre-construction meeting or schedule was not provided.
0288313-008 Picayune Strand	Specific - 10	Environmental Protection Plan	Permittee was required to submit an Environmental Protection Plan to the Department within 30 days prior to commencement of any construction activities.	A copy of the plan was not on file. An e-mail regarding the plan was submitted to the Department seven months after construction commencement.
0288313-008 Picayune Strand	Specific - 21.C	Turbidity Monitoring Results	Permittee was required to submit quarterly monitoring results. If no activities occur that generate turbidity during a portion of the monitoring period, it should be noted.	Turbidity reports for one quarter in 2014 and four quarters in 2016 were provided. However, no information was available to indicate construction activities did not impact turbidity during the remaining periods.
0288313-008 Picayune Strand	Specific - 36	Annual Report	Permittee was required to submit an annual report detailing the construction and interim operations no later than March 1 st of each year.	Annual reports for 2016 and 2017 were not provided.
0234604-018 Herbert Hoover Dike	Specific - 15.G	Turbidity Monitoring Results	Permittee was required to submit quarterly monitoring results. If no activities occur that generate turbidity during a portion of the monitoring period, it should be noted.	Turbidity reports for two quarters in 2014, two quarters in 2015, and one quarter in 2016 were provided. However, no information was available to indicate construction activities did not impact turbidity during the remaining periods.
0234604-018 Herbert Hoover Dike	Specific - 4	Construction Schedule	Permittee was required to provide the proposed construction schedule within 30 days of the notice to proceed.	Construction schedule was not provided.
0234604-018 Herbert Hoover Dike	Specific - 21	Annual Report	Permittee was required to submit an annual report detailing the construction activities no later than March 1st of each year.	Bi-weekly meetings were held in lieu of the required annual reports.

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Appendix B

Permit Conditions Not Met within Required Timeframes

Permit	Condition Number	Condition	Condition Description	Review Comment
0325949-001 Tamiami Trail	Specific - 6	Permit Coordination Meeting	Prior to execution of a construction contract, Permittee was required to schedule a permit coordination meeting with attendance by the Department.	Construction contract was executed on 5/23/2016. Permit coordination meeting was held 7/6/2016.
0325949-001 Tamiami Trail	Specific - 6	Construction Schedule	Permittee was required to provide timely notice of proposed construction schedules or modifications.	Timely is not defined in the condition. However, construction began 10/6/2016. The schedule was provided by the contractor, rather than the permittee, on 3/14/2017.
0325949-001 Tamiami Trail	Specific - 10	Best Management Practices Plan	Permittee was required to submit a Best Management Practices Plan to the Department for review and approval 30 days prior to the permit coordination meeting and prior to construction of each feature or phase of the contract.	The plan was submitted on 8/2/2016, which was after the permit coordination meeting was held 7/6/2016.
0344004-001 Biscayne Bay	Specific - 5	Final Plans and Technical Specifications	Permittee was required to submit final plans and technical specifications at least 60 days prior to initiating construction activities.	Per the notice of commencement, construction activities began 1/9/2017. Final plans and technical specifications were obtained 2/17/2017.
0344004-001 Biscayne Bay	Specific - 10	Best Management Practices Plan	Permittee was required to submit a Best Management Practices Plan to the Department for review and approval 30 days prior to the pre-construction meeting and prior to construction of each feature or phase of the contract.	The plan was submitted on 12/20/2016, which was after the pre-construction meeting was held on 11/2/2016.
0344004-001 Biscayne Bay	Specific- 20	Turbidity Control Plan	Permittee was required to submit a turbidity control plan for review and approval at least 30 days prior to initiation of construction.	Turbidity control plan was received 2/2/2017, which was after construction activities began 1/9/2017.
0234604-018 Herbert Hoover Dike	General - 10	Notice of Commencement	Permittee was required to submit a written notice of commencement of activities at least 48 hours in advance.	A letter of commencement was provided by the contractor on 5/6/2014 indicating that construction had commenced on 1/1/2014.



Florida Department of Environmental Protection

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Memorandum

TO: Valerie Peacock, Audit Director, Office of Inspector General
FROM: Edward C. Smith, Director, Office of Ecosystem Projects *ECS*
SUBJECT: Review of Environmental Compliance Process — Office of Ecosystem Projects
(Preliminary Report A-1718DEP-040)
DATE: April 30, 2018

Thank you for the opportunity to review the preliminary report. Based upon our review, we agree with the findings of the report.

In response to the findings in the subject-referenced report, Office of Ecosystem Projects staff have developed an action report to address each issue identified. Our corrective actions include updating our Field Compliance Investigative Process and finalizing our Compliance Manual by June 1, 2018.

In addition, the Office of Ecosystem Projects will update our database to provide a more consistent monitoring of document compliance with permit conditions by June 1, 2018. To ensure consistency and keep procedures current, we will revisit the Compliance Manual annually to make any necessary updates. Each version will be presented to OEP leadership and be formally adopted each June, beginning with June 1, 2018.

As part of our Compliance Program process, we will provide meeting opportunities for our customers to inform them of our process improvements. Upon completion of these activities, we will provide the Office of Inspector General the appropriate notification and verification.