

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
3301 Gun Club Road
West Palm Beach, Florida**

IN THE MATTER OF:

SFWMD ORDER NO. 2022-063-DAO

**EMERGENCY AUTHORIZATION FOR
PUMPING AND OTHER MEASURES
TO ADDRESS FLOODING CAUSED
BY SUBTROPICAL STORM NICOLE**

**RECEIVED
DISTRICT CLERK'S OFFICE**

12:09 pm Nov 8, 2022

**SOUTH FLORIDA
WATER MANAGEMENT DISTRICT**



EMERGENCY FINAL ORDER

Under the authority of the State of Florida Executive Order No. 22-253, incorporated herein by reference, and section 120.569(2)(n), Florida Statutes, the South Florida Water Management District ("SFWMD"), enters this Order authorizing pumping and other emergency measures to address impacts associated with Subtropical Storm Nicole ("the Storm").

FINDINGS OF FACT

1. On November 7, 2022, the Governor of Florida issued Executive Order 22-253 ("the Executive Order") declaring a state of emergency based upon the serious threat to the public health, safety, and welfare posed by the Storm. The following areas within the SFWMD's jurisdiction are included in the Executive Order: Lee, Collier, Charlotte, Orange, Osceola, Polk, Highlands, Okeechobee, Glades, Hendry, St. Lucie, Martin, Palm Beach, Broward, and Miami-Dade counties ("Emergency Areas").

2. The Storm has the potential to cause widespread damage and poses an immediate danger to the lives and property of persons throughout the Emergency Areas.

3. The Executive Order found that the special duties and responsibilities of some agencies, including the SFWMD, in responding to disasters may require them to deviate from the statutes and rules they administer. Moreover, the Executive Order permits agencies, including the SFWMD, to suspend the provisions of any regulatory statute prescribing the procedures for conducting state business, or the orders or rules of the 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 Storm and its effects.

4. The SFWMD finds that the actions authorized under this Order are narrowly tailored to address the immediate need for action and are procedurally fair under the circumstances.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

5. The SFWMD issues this Order to carry out the directives in the Executive Order. Additionally, the SFWMD has authority to issue this Order under Sections 120.569(2)(n), 252.46, 373.119(2), and 373.439, Florida Statutes.

6. Based on the above findings of fact, and in order to protect the public's immediate health, safety, and welfare, it is both reasonable and appropriate that the suspension of statutes and rules described herein is required in order not to prevent, hinder, or delay necessary action in coping with the Storm and its effects.

ORDER

THEREFORE, IT IS ORDERED that the following activities may be undertaken to address emergency flooding situations resulting from the Storm that require immediate action, subject to the limitations in this Order:

1. *On-Site Discharges – No Notice Required*

Internal movement of water from flooded areas within a project site to other areas within the same project site shall be allowed in the Emergency Areas during the course of this Order. No notice to the SFWMD is required. Examples of activities authorized by this paragraph include moving water from internal roadways, parking lots, swales, or other on-site areas to on-site surface water management ponds or lakes, or other areas on-site that would not directly discharge off-site. This Order does not authorize pumping or discharging of flood waters to off-site property, canals, or water bodies not completely on-site other than through permitted facilities, subject to permit requirement.

2. *Off-Site Discharges – Field Authorization Required*

Moving water from flooded project areas to areas off-site may be temporarily allowed only if approved by the SFWMD after a field inspection. Field authorizations shall be granted only if:

a. The off-site discharge is necessary to relieve flooding resulting from the Storm that poses an immediate threat to public health, safety, or welfare. Minor inconvenience flooding, such as standing water in roads, swales or yards, is not considered an immediate threat.

b. Field authorizations may be requested by providing a notice to the local office of the SFWMD containing a description of the discharge requested, the facilities and the water stages, the rate of discharge and the discharge location of the flooded areas and receiving body, the location of the discharge, and the name, address, and telephone number of the owner or representative of the owner who may be contacted concerning the

discharge. SFWMD staff may also issue field authorizations without prior notice. SFWMD staff shall create and maintain written records of all field authorizations.

3. *Operational Changes by Local Governments or 298 Districts – Notice Required*

Water Control Districts authorized under Chapter 298 of the Florida Statutes and local governments may, during the course of this Order, discharge water on-site or off-site in excess of SFWMD-permitted operational schedules to prepare for the impacts of the Storm and to mitigate flooding impacts resulting from the Storm if:

a. Notice is provided to the SFWMD's Emergency Operations Center. The notice shall:

(1) identify a responsive and responsible representative of the water control district or local government, including title and emergency contact information; and

(2) describe the facilities and the water stages, rate of discharge, and the discharge location of the flooded areas and receiving body.

b. Authorization for the excess discharges is granted, either orally or in writing, by SFWMD staff assigned by the SFWMD Emergency Operations Center to this function.

Local governments or 298 Districts operating under the emergency provisions of this Order shall immediately cease the excess discharge upon notification by the SFWMD to do so.

4. *General Conditions*

All activities authorized under paragraphs 1, 2, and 3 shall be conducted in accordance with the following conditions and requirements:

a. All activities shall be performed in a manner which minimizes adverse water quality and water quantity impacts. This includes properly installed and maintained

erosion and turbidity control devices to prevent erosion and shoaling and to control turbidity, nutrient loading, and sedimentation in off-site receiving waters.

b. Entities operating under this Order shall immediately correct any erosion, shoaling, or water quality problems that result from the activities authorized under this Order.

c. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

d. This Order serves as relief for the duration of the Order from the specified regulatory requirements of the SFWMD only, 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 property owner to obtain any other required permits or authorizations, nor does it negate the need to comply with all the requirements of those permits.

5. *General Limitations*

The SFWMD issues this Order solely to address the emergency created by the Storm. This Order shall not be construed to authorize any activity within the jurisdiction of the SFWMD except in accordance with the express terms of this Order.

6. *Suspension of Statutes and Rules*

The following provisions of statutes and rules are hereby suspended for the activities authorized by this Order for the duration of this Order:

a. All requirements for permits, leases, consent of uses or other authorizations, including, but not limited to, provisions in chapters 120, 161, 253, 258, 373, 376 and 403, Florida Statutes, and Rules adopted thereunder; and

b. All notice requirements, including, but not limited to, provisions in chapters 120, 161, 253, and 373, Florida Statutes, and chapters 18-18, 18-20, 18-21, 40E-0, 40E-1, 40E-6, and 62-330, Florida Administrative Code.

7. Expiration Date

This Order shall take effect immediately upon execution by the Executive Director of the SFWMD, and shall expire on January 6, 2023, unless otherwise extended or terminated by the Executive Director or Governing Board.

8. Violation of Conditions of Emergency Final Order

Failure to comply with any condition set forth in this Order shall constitute a violation of chapters 120, 161, 253, 258, 373, 376, and 403, Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or other judicial forum.

DONE AND ORDERED on this 8th day of November, 2022, in West Palm Beach, Florida.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT

By: _____


Drew Bartlett
Executive Director

NOTICE OF RIGHTS

Any party substantially affected by this Order has the right to seek judicial review under section 120.68, Florida Statutes, by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the SFWMD at 3301 Gun Club Road, West Palm Beach, Florida 33406, 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 SFWMD.