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March 18, 2024

By Email Only

Marion County Attorney Matthew Guy Minter
601 SE 25th Avenue
Ocala, FL 34471

RE: Open Burning in Connection with PUD #s: 211008Z and 211009Z

Dear Guy:

This concerns the following applications:

- Final PUD Master Plan/Preliminary Plat for SW 100th Street West Planned Unit Development (211008Z) which was heard by the County Commission on February 20, 2024.

- Final PUD Master Plan/Preliminary Plat for SW 100th Street East Planned Unit Development (211009Z) which is scheduled to be heard by the County Commission on March 19, 2024 (i.e., tomorrow).

Although I did not represent my client, Ocala SW 100th, LLC, at the February 20 meeting, I was present and briefly spoke on an issue unrelated to this letter. At that meeting, the County Commission approved the PUD Master Plan / Preliminary Plat pursuant to a motion to approve "conditioned" upon no open burning.

My client has now contacted me and asked me to research the validity of the County's action at its prior meeting. I have done so and am of the opinion that the County Commission prohibition on burning was not permissible at the February 20 meeting and would not be permissible at tomorrow's meeting.

1. First, I note that the Commission's decision was inconsistent with Article III of Chapter 8 of the County Code, in that:

    1.1. Section 8-31 specifically provides that pile burning (which is defined as "burning of silvicultural, agricultural, or land clearing and tree cutting debris") is "only allowed with authorization by Florida Division of Forestry."

    1.2. Section 8-33 prohibits burning not specifically allowed by the County Code or by various provisions of the Florida Statutes including Chapter 590, Florida Statutes. This section is inapplicable since Chapter 590 expressly authorizes this type of burning.

    1.3. Section 8-35 entitled "Open Burning Allowed" states as follows:

> (d) Authorized permitted burns through state division of forestry. These fires are only allowed with daily authorization by the division of forestry (352) 955-2010. These types of fires are governed by F.S. Chs. 590, 823, 877, 403, 51-2, and 62-256. These fires include but are not limited to: pile burning, land clearing, agriculture, etc.

1.4. As set forth below, the type of burn in this case is expressly authorized by the Florida Forest Service and thus is allowed under the County Code.

1.5. Although there are other provisions in the County Code that permit additional regulation of open burning (e.g., hazard to air traffic or road visibility), none of those circumstances are alleged to exist here.

1.6. I believe the February 20 decision prohibited action expressly permitted by the County Code and was therefore improper.

2. More importantly (and clearly), however, I believe that any action by the County is inconsistent with State law and, therefore, unconstitutional.

2.1. Section 590.125, Florida Statutes, defines "pile burning" as follows:

> (h) "Pile burning" means the burning of silvicultural, agricultural, land-clearing, or tree-cutting debris originating onsite, which is stacked together in a round or linear fashion, including, but not limited to, a windrow. Pile burning authorized by the Florida Forest Service is a temporary procedure, which operates on the same site for 6 months or less.

2.2. Section 590.02, Florida Statutes, provides for the various powers, authorities and duties of the Florida Forest Service. Subsection (10) provides as follows:

> (10)(a) Notwithstanding the provisions of s. 252.38, the Florida Forest Service has exclusive authority to require and issue authorizations for broadcast burning and agricultural and silvicultural pile burning. An agency, commission, department, county, municipality, or other political subdivision of the state may not adopt or enforce laws, regulations, rules, or policies pertaining to broadcast burning or agricultural and silvicultural pile burning.
> (b) The Florida Forest Service may delegate to a county, municipality, or special district its authority:
> 1. As delegated by the Department of Environmental Protection pursuant to ss. 403.061(29) and 403.081, to manage and enforce regulations pertaining to the burning of yard trash in accordance with s. 590.125(6).
> 2. To manage the open burning of land clearing debris in accordance with s. 590.125.
> (Highlighting added)

2.2.1. I am aware of no delegation by the Florida Forest Service to Marion County under Subsection (10)(b).

2.2.2. Thus believe that the general prohibition in subsection (10)(a), on the adoption or enforcement of "laws, regulations, rules or policies pertaining to… agricultural and silvicultural pile burning," applies.

2.3. Section 590.125 also contains various provisions dealing with pile burning. Each of them provides that the Florida Forest Service may adopt rules concerning such burning.

2.4. The Florida Forest Service has done so pursuant to Rule 62-256.700, F.A.C., Subsection (3) of such Rule states as follows:

> (3) Open Burning of Land Clearing Debris.
>
> (a) Open burning of land clearing debris is allowed provided:
>
> 1. The open burning is restricted to the site where the land clearing debris was generated,
>
> 2. The fire is ignited after 8:00 a.m. Central time or 9:00 a.m. (Eastern Time) and shall have no visible flame one hour before sunset or anytime thereafter, except in smoke sensitive areas as determined by the Florida Forest Service, where the fire must be extinguished no later than one hour before sunset,
>
> 3. The fire is attended, and adequate fire extinguishing equipment is readily available at all times,
>
> 4. The moisture content and composition of material to be burned is favorable to good burning which will minimize smoke; and,
>
> 5. Prior to conducting the open burning, the person responsible for the burn contacts the Florida Forest Service regarding the planned burning activity.
>
> (b) Except as provided above, any other open burning of land clearing debris shall be conducted using an air curtain incinerator operated in compliance with the terms of the exemption from air permitting at Rule 62-210.300, F.A.C., if such exemption applies, or if such exemption does not apply, in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit.

2.5. Thus, the type of burning here is expressly authorized by state law.

2.6. In Phantom of Brevard, Inc. v. Brevard County, 3 So.3d 309 (Fla. 2008), the Florida Supreme Court held that there are two ways that a County Ordinance may be found to be inconsistent with state law and therefore unconstitutional:

2.6.1. First, if the subject area has been preempted to the State. It appears to me that Section 590.02(10)(a) – by providing the Forest Service with "exclusive authority" over authorizations for pile burning, and prohibiting local adoption or enforcement of laws or policies pertaining to pile burning – is such an express preemption.

2.6.2. Secondly, a local government cannot enact an ordinance that directly conflicts with the state law. Section 590.125 specifically allows open pile burning in certain circumstances as does Rule 62.256.700. By prohibiting such activities, the condition that the County Commission imposed at the February 20 decision prohibits actions specifically authorized by the State; thus, the County action is unlawful. See Rinzler v. Carson, 262 So.2d 661, 668 (Fla. 1972) ("a municipality cannot forbid what the legislature as expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden").

3. Therefore, it appears to me that the condition purportedly imposed by the County Commission at its February 20 meeting is inconsistent with both the County Code and state law, and attempts to deal with a subject that is preempted to the state. Therefore, it appears to me that it is impermissible.

The application scheduled for the March 19 meeting is currently on the Consent Agenda. It is possible that someone will show up to "pull" it. If it is pulled, I assume that the same issue may come up again. If it does, I will present my conclusions to the Board as well as discuss how to undo the February 20 action. If the matter is not pulled from the Consent Agenda, however, I may decide to do nothing in hopes that it is approved without the burning prohibition. While I could pull it and attempt to have the Board

readdress its February 20 decision, I am concerned that may not be effective, in that the motion to approve the plan at that meeting was expressly conditioned upon the burning prohibition; that is, they may need to rehear the matter and consider a different motion. Again, however, I am still looking into this.

Although I believe my analysis of the County's February 20 decison is correct, I do not expect you to have a final opinion by tomorrow's meeting. Nonetheless, I would appreciate your reviewing this so that you can be prepared to discuss it if it comes up.[1]

Please let me know if you have any questions,

Sincerely,

GOODING & BATSEL, PLLC

/s/ Jimmy Gooding /s/

W. James Gooding III

WJG/ban
Attachment: as stated
cc: Mr. Dawson Ransome
Mr. Mike Radcliffe
Mr. Chris Rison
Mr. Mounir Bouyounes
Ms. Tracy Straub
(By email only)

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[1] Mounir and Tracy discussed this issue at the February 20 hearing, and Chris Rison is presenting this item at tomorrow's meeting. Hence, I am providing them with a copy of this letter.

62-210.300 Permits Required.

(1) Air Construction Permits.

(a) Unless exempt from permitting pursuant to this rule or Rule 62-4.040, F.A.C., the owner or operator of any facility or emissions unit which emits or can reasonably be expected to emit any air pollutant shall obtain appropriate authorization from the Department prior to undertaking any activity at the facility or emissions unit for which such authorization is required. An air construction permit shall be obtained by the owner or operator of any proposed new, reconstructed, or modified facility or emissions unit, or any new pollution control equipment prior to the beginning of construction, reconstruction pursuant to 40 C.F.R. 60.15 or 63.2, or modification of the facility or emissions unit or addition of the air pollution control equipment; or to establish a PAL; in accordance with all applicable provisions of this chapter, Chapters 62-212, and 62-4, F.A.C. The construction permit shall be issued for a period of time sufficient to allow construction, reconstruction or modification of the facility or emissions unit or addition of the air pollution control equipment; and operation while the owner or operator of the new, reconstructed or modified facility or emissions unit or the new pollution control equipment is conducting tests or otherwise demonstrating initial compliance with the conditions of the construction permit. All emission limitations, controls, and other requirements imposed by any individual air permit shall be at least as stringent as any limitations and requirements contained in or enforceable under the State Implementation Plan (SIP) or Designated Facility Plan. Except as provided at Rule 62-213.460, F.A.C., being authorized to construct, operate, or undertake any other activity by individual air permit or air general permit does not relieve the owner or operator of a facility or emissions unit from complying with any emission limiting standards or other requirements of the air pollution rules of the Department or any other such requirements under federal, state, or local law.

(b) Notwithstanding the expiration of an air construction permit, all limitations and requirements of such permit that are applicable to the design and operation of the permitted facility or emissions unit shall remain in effect until the facility or emissions unit is permanently shut down, except for any such limitation or requirement that is obsolete by its nature (such as a requirement for initial compliance testing) or any such limitation or requirement that is changed in accordance with the provisions of subparagraph 62-210.300(1)(b)1., F.A.C. Either the applicant or the Department can propose that certain conditions be considered obsolete. Any conditions or language in an air construction permit that are included for informational purposes only, if they are transferred to the air operation permit, shall be transferred for informational purposes only and shall not become enforceable conditions unless voluntarily agreed to by the permittee or otherwise required under Department rules.

1. Except for those limitations or requirements that are obsolete, all limitations and requirements of an air construction permit shall be included and identified in any air operation permit for the facility or emissions unit. The limitations and requirements included in the air operation permit can be changed, and thereby superseded, through the issuance of an air construction permit, federally enforceable state air operation permit, federally enforceable air general permit, or Title V air operation permit; provided, however, that:

a. Any change that would constitute an administrative correction may be made pursuant to Rule 62-210.360, F.A.C.,

b. Any change that would constitute a modification, as defined at Rule 62-210.200, F.A.C., shall be accomplished only through the issuance of an air construction permit; and,

c. Any change in a permit limitation or requirement that originates from a permit issued by the Environmental Protection Agency pursuant to 40 C.F.R. 52.21, or by the Department pursuant to subparagraph 62-204.800(11)(d)2., Rules 62-212.400, 62-212.500, F.A.C., or any former codification of Rule 62-212.400 or 62-212.500, F.A.C., shall be accomplished only through the issuance of a new or revised air construction permit under subparagraph 62-204.800(11)(d)2., Rule 62-212.400 or 62-212.500, F.A.C., as appropriate.

2. The force and effect of any change in a permit limitation or requirement made in accordance with the provisions of subparagraph 62-210.300(1)(b)1., F.A.C., shall be the same as if such change were made to the original air construction permit.

3. Nothing in paragraph 62-210.300(1)(b), F.A.C., shall be construed as to allow operation of a facility or emissions unit without a valid air operation permit.

(c) Notwithstanding the provisions of paragraph 62-210.200(1)(a), F.A.C., the owner or operator of any eligible facility who registers to use an air general permit under Rule 62-210.310 or 62-213.300, F.A.C., who is not denied use of the air general permit, and who constructs the facility in compliance with the terms and conditions of the air general permit shall not be required to obtain an air construction permit pursuant to this subsection, provided, however, that any proposed new major stationary source, major modification, or modification that would be a major modification but for the provisions of paragraph 62-212.400(2)(a), F.A.C., shall require authorization by air construction permit.

(2) Air Operation Permits. Unless exempted from permitting pursuant to this rule or Rule 62-4.040, F.A.C., the owner or operator of any facility or emissions unit which emits or can reasonably be expected to emit any air pollutant shall obtain appropriate authorization from the Department prior to undertaking any activity at the facility or emissions unit for which such authorization is required. Upon expiration of the air operation permit for any existing facility or emissions unit; subsequent to any construction, reconstruction or modification of a facility or emissions unit authorized by an air construction permit, and demonstration of compliance with the conditions of such air construction permit; subsequent to the establishment of a PAL by air construction permit; or as otherwise provided in this chapter or Chapter 62-213, F.A.C.; the owner or operator of such facility or emissions unit shall obtain a renewal air operation permit, an initial air operation permit, or revision of an existing air operation permit, whichever is appropriate, in accordance with all applicable provisions of this chapter, Chapters 62-213 (if the facility is a Title V source), and 62-4, F.A.C. All emission limitations, controls, and other requirements imposed by any individual air permit shall be at least as stringent as any limitations and requirements contained in or enforceable under the State Implementation Plan (SIP) or Designated Facility Plan. Except as provided at Rule 62-213.460, F.A.C., being authorized to construct, operate, or undertake any other activity by individual air permit or air general permit does not relieve the owner or operator of a facility or emissions unit from complying with any emission limiting standards or other requirements of the air pollution rules of the Department or any other such requirements under federal, state, or local law.

(a) Minimum Requirements for All Air Operation Permits. At a minimum, a permit issued pursuant to this subsection shall:

1. Specify the manner, nature, volume and frequency of the emissions permitted, and the applicable emission limiting standards or performance standards, if any.

2. Require proper operation and maintenance of any pollution control equipment by qualified personnel, where applicable in accordance with the provisions of any operation and maintenance plan required by the air pollution rules of the Department.

3. Contain an effective date stated in the permit which shall not be earlier than the date final action is taken on the application and be issued for a period, beginning on the effective date, as provided below.

a. The operation permit for an emissions unit which is in compliance with all applicable rules and in operational condition, and which the owner or operator intends to continue operating, shall be issued or renewed for a five-year period.

b. Except as provided in sub-subparagraph 62-210.300(2)(a)3.d., F.A.C., the operation permit for an emissions unit which has been shut down for six months or more prior to the expiration date of the current operation permit, shall be renewed for a period not to exceed five years from the date of shutdown, even if the emissions unit is not maintained in operational condition, provided:

(I) The owner or operator of the emissions unit demonstrates to the Department that the emissions unit may need to be reactivated and used, or that it is the owner's or operator's intent to apply to the Department for a permit to construct a new emissions unit at the facility before the end of the extension period; and,

(II) The owner or operator of the emissions unit agrees to and is legally prohibited from providing the allowable emission permitted by the renewed permit as an emissions offset to any other person under Rule 62-212.500, F.A.C.; and,

(III) The emissions unit was operating in compliance with all applicable rules as of the time the source was shut down.

c. Except as provided in sub-subparagraph 62-210.300(2)(a)3.d., F.A.C., the operation permit for an emissions unit which has been shut down for five years or more prior to the expiration date of the current operation permit shall be renewed for a maximum period not to exceed ten years from the date of shutdown, even if the emissions unit is not maintained in operational condition, provided the conditions given in sub-subparagraph 62-210.300(2)(a)3.b., F.A.C., are met and the owner or operator demonstrates to the Department that failure to renew the permit would constitute a hardship, which may include economic hardship.

d. The operation permit for an electric utility generating unit on cold standby or long-term reserve shutdown shall be renewed for a five-year period, and additional five-year periods, even if the unit is not maintained in operational condition, provided the conditions given in sub-sub-subparagraphs 62-210.300(2)(a)3.b.(I) through (III), F.A.C., are met.

4. In the case of an emissions unit permitted pursuant to sub-subparagraphs 62-210.300(2)(a)3.b., c., and d., F.A.C., include reasonable notification and compliance testing requirements for reactivation of such emissions unit and provide that the owner or operator demonstrate to the Department prior to reactivation that such reactivation would not constitute any modification or reconstruction pursuant to this chapter or any federal regulation adopted by reference at Rule 62-204.800, F.A.C.

(b) Additional Requirements for Federally Enforceable State Operation Permits (FESOPs) for Non-Title V Sources.

1. An operation permit for a non-Title V source, including a synthetic non-Title V source, shall be considered federally enforceable only if it is issued, renewed, or revised in accordance with the following provisions:

a. At the time of initial application for the permit, the applicant requests that the permit be made federally enforceable.

b. A notice of proposed agency action on the initial application, any renewal application involving material changes from the existing permit, and any application for permit revision is published in accordance with the provisions of subsections 62-210.350(1) and (4), F.A.C., except as provided in subparagraph 62-210.300(2)(b)3., F.A.C.

c. The permit is a facility-wide permit.

d. The permit is conditioned such that the owner or operator is legally obligated to adhere to the terms and limitations of such permit, including any condition or limitation assumed by the owner or operator upon acceptance of such permit.

e. The permit is conditioned such that any emissions limitation, control requirement, or other requirement assumed by the owner or operator upon acceptance of such permit shall be quantifiable and enforceable as a practical matter.

2. Once a synthetic non-Title V source has been issued a federally enforceable state operation permit (FESOP), it shall remain subject to the requirements of paragraph 62-210.300(2)(b), F.A.C., unless:

a. The owner or operator accepts a higher limit and the facility becomes a Title V source, or

b. The owner or operator demonstrates to the Department that it no longer needs a federally enforceable operation permit to be classified as a non-Title V source (i.e., the facility is naturally "minor" without any federally enforceable limits) and specifically requests exemption from these requirements.

3. If all of the permitted emissions units within a facility have been issued one or more air construction permits which have undergone public notice in accordance with procedures at least as stringent as those provided in subsection 62-210.350(4), F.A.C., and the applicant requests that the conditions of such construction permit(s) be transferred without material change to a federally enforceable state operation permit (FESOP), the Department shall waive the requirements of sub-subparagraph 62-210.300(2)(b)1.b. and subparagraph 62-210.350(4)(a)3., F.A.C., for publication of a notice of proposed agency action; provided, however, that the remaining provisions of subsection 62-210.350(4), F.A.C., shall apply, including the requirement that notice be given to the U.S. Environmental Protection Agency and any local air pollution control program.

4. If an applicant requests that existing, multiple air operation permits for a facility be consolidated into a single federally enforceable state operation permit (FESOP), the Department shall reduce the permit processing fee required pursuant to Rule 62-4.050, F.A.C., by an amount equal to the sum of the processing fees paid for the existing permits prorated by the number of years remaining until expiration of each such permit.

(c) Notwithstanding the provisions of subsection 62-210.300(2), F.A.C., the owner or operator of any eligible facility who registers to use an air general permit under Rule 62-210.310, F.A.C., or Rule 62-213.300, F.A.C., who is not denied use of the air general permit, and who operates the facility in compliance with the terms and conditions of the air general permit shall not be required to obtain an air operation permit pursuant to this subsection or Rule 62-213.400, F.A.C.

(3) Exemptions from Permitting. Except as otherwise provided herein, an owner or operator shall not be required to obtain an air construction permit or non-Title V air operation permit, or to use an air general permit pursuant to Rule 62-210.310, F.A.C., for any facility, emissions unit, or pollutant-emitting activity that satisfies the applicable permitting exemption criteria of paragraph 62-210.300(3)(a) or (b), F.A.C., or has been exempted from permitting pursuant to Rule 62-4.040, F.A.C. Failure of a facility, emissions unit, or activity to satisfy the exemption criteria of paragraph 62-210.300(3)(a) or (b), F.A.C., does not preclude such facility, emissions unit, or activity from being considered for exemption pursuant to Rule 62-4.040, F.A.C. Notwithstanding the above, no emissions unit or activity shall be exempt from the requirement to obtain an air construction permit or non-Title V air operation permit, or to use an air general permit pursuant to Rule 62-210.310, F.A.C., if it would be subject to any unit-specific limitation or requirement, unless compliance with such limitation or requirement is specifically listed as a condition of exemption. Furthermore, no new, reconstructed, or modified emissions unit or activity shall be exempt from the requirement to obtain an air construction permit if its emissions would contribute to a major modification or to any modification that would be a major modification but for the use, in whole or in part, of the baseline actual-to-projected actual applicability test in Rule 62-212.400, F.A.C. An emissions unit or pollutant-emitting activity exempt from the requirement to obtain an air construction permit shall not be exempt from the permitting requirements of Chapter 62-213, F.A.C., if it is contained within a Title V source or if its emissions, in combination with the emissions of other emission units and activities at the facility, would cause the facility to be classified as a Title V source. Exemption from the requirement to obtain an air construction permit or non-Title V air operation permit, or to use an air general permit pursuant to Rule 62-210.310, F.A.C., does not relieve the owner or operator of a facility or emissions unit from complying with any limitation or requirement applicable to such facility or emissions unit.

(a) Categorical and Conditional Exemptions. Except as otherwise provided at subsection 62-210.300(3), F.A.C., above, the following facilities, emissions units, and pollutant-emitting activities shall be exempt from any requirement to obtain an air

construction permit or non-Title V air operation permit, or to use an air general permit pursuant to Rule 62-210.310, F.A.C.

1. Home heating and comfort heating with a gross maximum heat output of less than one million Btu per hour.

2. Internal combustion engines in boats, aircraft and vehicles used for transportation of passengers or freight.

3. Incinerators in one or two family dwellings or in multi-family dwellings containing four or less family units, one of which is owner-occupied.

4. Noncommercial and nonindustrial vacuum cleaning systems used exclusively for residential housekeeping purposes.

5. Cold storage refrigeration equipment, except for any such equipment located at a Title V source using an ozone-depleting substance regulated under 40 C.F.R. Part 82.

6. Vacuum pumps in laboratory operations.

7. Equipment used for steam cleaning.

8. Belt or drum sanders having a total sanding surface of five square feet or less and other equipment used exclusively on wood or plastics or their products having a density of 20 pounds per cubic foot or more.

9. Equipment used exclusively for space heating, other than boilers.

10. Noncommercial smoke houses used exclusively for smoking food products.

11. Bakery ovens located at any retail bakery facility which derives at least fifty percent of its revenues from retail sales on premises. Also, bakery ovens located at any commercial bakery facility utilizing only non-conveyor belt ovens operating on a single baking cycle in which a determinate amount of product is cooked at one baking (i.e., batch ovens).

12. Laboratory equipment used exclusively for chemical or physical analyses.

13. Brazing, soldering or welding equipment.

14. Laundry dryers, extractors, or tumblers for fabrics cleaned with only water solutions of bleach or detergents.

15. Fire and safety equipment.

16. Petroleum lubrication systems.

17. Application of fungicide, herbicide, or pesticide.

18. Asbestos renovation and demolition activities.

19. Vehicle refueling operations and associated fuel storage.

20. Restaurants.

21. Incineration of drugs seized by law enforcement, agricultural food products that cannot be transported into the country or across state lines to prevent biocontamination, or animal carcasses may be conducted in an air-permitted incinerator regulated under 40 CFR Part 60, Subparts Cb, Eb, AAAA, BBBB, CCCC, or DDDD, adopted and incorporated by reference in Rule 62-204.800, F.A.C., or as follows:

a. A government agency may own and operate an incinerator that is designed for animal carcass disposal associated with the study, surveillance, or mitigation of animal disease spread, odor control, or related health impacts. An incinerator being used for these purposes shall be equipped with a secondary chamber to ensure complete combustion.

b. A government agency may own and operate an incinerator to dispose of drugs seized by law enforcement, agricultural food products that cannot be transported into the country or across state lines to prevent biocontamination. An incinerator being used for these purposes shall be equipped with a secondary chamber to ensure complete combustion or be a cyclonic burn barrel as defined in 40 CFR 60.2875, adopted and incorporated by reference in Rule 62-204.800, F.A.C.

c. A government agency using an incinerator under sub-subparagraphs 62-210.300(3)(a)21.a. or b., F.A.C., shall also meet the following requirements:

(I) The incinerator shall not exceed a charging rate of 300 pounds per hour of material;

(II) The owner or operator shall keep records of the amount and type of materials being combusted; and

(III) The incinerator shall comply with the opacity requirements of paragraph 62-296.401(1)(a), F.A.C.

22. Phosphogypsum cooling ponds and inactive phosphogypsum stacks which have demonstrated compliance with the requirements of 40 CFR Part 61, Subpart R, adopted and incorporated by reference at Rule 62-204.800, F.A.C.

23. Degreasing units using heavier-than-air vapors exclusively, provided that such units shall not use any substance containing any hazardous air pollutant.

24. Non-halogenated solvent storage and cleaning operations, provided that such operations shall not use any solvent containing any hazardous air pollutant and the operation is not subject to the requirements of Rule 62-296.511, F.A.C.

25. Petroleum dry cleaning facilities, provided the solvent consumption shall be less than 3,250 gallons per year.

26. Portable air curtain incinerators, provided the following conditions are met.

a. Except as provided at sub-subparagraph c., only land clearing debris and appropriate starting fuel shall be burned in the air curtain incinerator. The air curtain incinerator shall not be used to burn any material prohibited to be open-burned as set forth at subsection 62-256.300(3), F.A.C. Only kerosene, diesel fuel, drip torch fuel (as used to ignite prescribed fires), untreated wood, virgin oil, natural gas or liquefied petroleum gas shall be used to start the fire in the air curtain incinerator. The use of used oil, chemicals, gasoline, or tires to start the fire is prohibited.

b. The air curtain incinerator, alone or in combination with any other air curtain incinerator(s) claiming this exemption from air permitting, shall not be located at a single site for more than six (6) months in any consecutive twelve (12) months and, except as provided at sub-subparagraph c., shall not burn any material other than land clearing debris generated at the site or at any other site under control of the same person (or persons under common control). For purposes of this provision, a site is any and all locations on one (1) or more contiguous or adjacent properties which are under the control of the same person (or persons under common control), except that, in the case of a linear right-of-way, a site is any and all locations within any one-mile span of right-of-way. Any deployment of one (1) or more air curtain incinerators at a single site for more than six (6) months in any consecutive twelve (12) months, and, except as provided at sub-subparagraph c., any use of an air curtain incinerator at a site to burn material other than land clearing debris generated at the site or any other site under control of the same person (or persons under common control), shall require an appropriate air permit.

c. Notwithstanding the provisions of sub-subparagraphs a. and b., the air curtain incinerator may be used for up to six (6) months in any consecutive twelve (12) months at any location for the destruction of animal carcasses in accordance with the provisions of subsection 62-256.700(6), F.A.C., or the destruction of insect or disease-infested vegetation in accordance with the provisions of subsection 62-256.700(9), F.A.C. When using an air curtain incinerator to burn animal carcasses, untreated wood may also be burned to maintain good combustion. An air curtain incinerator may be used for burning of storm-generated vegetative debris in accordance with the provisions of subsection 62-256.700(8), F.A.C., so long as:

(I) The air curtain incinerator is used in a disaster declaration area;

(II) The air curtain incinerator is used for a period not to exceed eight (8) weeks from the date the unit began operation. If the unit will operate for more than eight (8) weeks, the operator must notify the Department by the end of the eighth week and the notification must identify the start date, a description of the material being burned, a description of the size and design of the unit, and the reasons why the incinerator must be operated for more than eight weeks.

(III) If the operator of the unit submits the required notification as specified in sub-sub-subparagraph 62-210.300(3)(a)26.c.(II), F.A.C., the unit may be operated for an additional eight (8) weeks, for a total of sixteen (16) weeks.

(IV) If the Department has approved in writing an operator's request to continue operation beyond sixteen (16) weeks, then the operator may continue to operate the incinerator or air curtain incinerator until the date specified in the written approval.

d. If the air curtain incinerator employs an earthen trench, the pit walls (width and length) shall be vertical, and maintained as such, so that combustion of the waste within the pit is maintained at an adequate temperature and with sufficient air recirculation to provide enough residence time and mixing for proper combustion and control of emissions. Pit width shall not exceed twelve (12) feet.

e. Material shall not be loaded into the air curtain incinerator such that it protrudes above the level of the air curtain in the pit.

f. Ash shall not be allowed to build up in the pit of the air curtain incinerator to higher than 1/3 the pit depth or to the point where the ash begins to impede combustion, whichever occurs first.

g. Visible emissions from the air curtain incinerator shall not exceed ten percent (10%) opacity, six (6) minute average, except for up to thirty (30) minutes during periods of startup when visible emissions up to thirty-five percent (35) opacity, six (6) minute average, shall be allowed. For purposes of this exemption, these visible emissions limitations shall not be considered unit-specific applicable requirements.

h. The air curtain incinerator shall be attended at all times while materials are being burned or flames are visible within the incinerator.

i. The air curtain incinerator shall be located at least 50 feet away from any wildlands, brush, combustible structure, or paved public roadway and 300 feet away from any occupied building.

j. If the air curtain incinerator is equipped with refractory-lined walls, charging shall begin no earlier than sunrise and must end no later than one hour after sunset. If the air curtain incinerator is not equipped with refractory-lined walls, charging shall begin no earlier than 8:00 a.m. (Central Time) or 9:00 a.m. (Eastern Time), and must end no later than one hour after sunset. After charging

ceases, air flow shall be maintained until all material within the air curtain incinerator has been reduced to coals, and flames are no longer visible. A log shall be maintained onsite that documents daily beginning and ending times of charging.

k. Prior to any period of operation of the air curtain incinerator, the owner or operator shall contact the Florida Forest Service regarding the planned burning activity.

l. If the owner of the air curtain incinerator, by lease or other means, grants authority to operate the incinerator to a person not in the employ of the owner, the owner shall provide such person with a copy of the conditions of this exemption.

m. If the air curtain incinerator is operated in compliance with all conditions of this exemption, it shall not be subject to the requirements of subsection 62-296.401(7), F.A.C.

27. Surface coating operations within a single facility, provided all the following conditions are met.

a. The surface coating operation shall use only coatings containing 5.0 percent or less VOC, by volume, or the total quantity of coatings containing greater than 5.0 percent VOC, by volume, used at the facility shall not exceed 6.0 gallons per day, averaged monthly, where the quantity of coatings used includes all solvents and thinners used in the process or for cleanup.

b. Such operations are not subject to any unit-specific limitation or requirement.

c. The surface coating operation is not subject to any of the requirements of Rules 62-296.501 through 62-296.515, F.A.C.

28. Volume reduction processes as defined in Rule 62-296.417, F.A.C., provided the owner or operator shall manage only spent mercury-containing lamps removed from the facility where the volume reduction process is located.

29. Mercury recovery processes as defined in Rule 62-296.417, F.A.C., provided the owner or operator shall manage only spent mercury-containing devices temporarily or permanently removed from service from the owner or operator's own facilities or installations.

30. Bulk gasoline plants, provided all the following conditions are met.

a. The facility receives and distributes only petroleum-based lubricants, gasoline, diesel fuel, mineral spirits and kerosene.

b. The total storage capacity for gasoline at the facility does not exceed 100,000 gallons.

c. The facility shall not distribute more than 1.3 million gallons of gasoline in any consecutive twelve (12) months.

d. The facility is not subject to Rule 62-296.418, F.A.C.

e. The facility is not subject to any of the requirements of Rule 62-296.510 or 62-296.516, F.A.C.

31. Relocatable wet screening-only operations, provided:

a. The screening operation is not connected to a nonmetallic mineral processing plant subject to 40 CFR Part 60, Subpart OOO, adopted and incorporated by reference at Rule 62-204.800, F.A.C.,

b. No hazardous waste, as defined in Section 403.703, F.S., shall be processed; and,

c. The operation shall not operate at a single site for more than six (6) months in any consecutive twelve (12) months. For purposes of this provision, a site is any and all locations on one or more contiguous or adjacent properties which are under the control of the same person (or persons under common control).

32. Brownfield site remediation, as described at Rule 62-780.700, F.A.C., provided that the total volatile organic compounds in the air emissions from all onsite remediation equipment shall not exceed 13.7 pounds per day.

33. Fossil fuel steam generators, hot water generators, and other external combustion heating units with heat input capacity equal to or less than 10 million Btu per hour, provided all the following conditions are met with respect to each such unit.

a. The unit is not subject to the Acid Rain Program or any other unit-specific limitation or requirement.

b. The rated heat input capacity of the unit is equal to or less than 10 million Btu per hour and, collectively, the total rated heat input capacity of all units claiming this exemption at the same facility is less than 10 million Btu per hour.

c. The unit is a gas-fired boiler, which, for the purposes of this exemption, is defined as any boiler that burns gaseous fuels not combined with any solid fuels and burns liquid fuel only during periods of gas curtailment, gas supply interruption, startups, or periodic testing of liquid fuel. Periodic testing of liquid fuel shall not exceed a combined total of 48 hours during any calendar year.

34. Fossil fuel steam generators, hot water generators, and other external combustion heating units with heat input capacity less than 100 million Btu per hour, provided all the following conditions are met with respect to each such unit.

a. The unit is not subject to the Acid Rain Program, or any other unit-specific limitation or requirement other than any such limitation or requirement that may apply pursuant to 40 C.F.R. Part 63, Subparts DDDDD and JJJJJJ, adopted and incorporated by reference at Rule 62-204.800, F.A.C.

b. The rated heat input capacity of the unit is less than 100 million Btu per hour and, collectively, the total rated heat input capacity of all units claiming this exemption at the same facility is less than 250 million Btu per hour.

c. The unit shall not burn more than the maximum annual amount of a single fuel, as given in sub-subparagraph e., or equivalent maximum annual amounts of multiple fuels, as addressed in sub-subparagraph f.

d. Collectively, all units claiming this exemption at the same facility shall not burn more than the collective maximum annual amount of a single fuel, as given in sub-subparagraph g., or equivalent collective maximum annual amounts of multiple fuels, as addressed in sub-subparagraph h.

e. If burning only one (1) type of fuel, the annual amount of fuel burned by the unit shall not exceed 150 million standard cubic feet of natural gas, one million gallons of propane, one million gallons of fuel oil with a sulfur content not exceeding 0.05 percent, by weight, 290,000 gallons of fuel oil with a sulfur content not exceeding 0.5 percent, by weight, or 145,000 gallons of fuel oil with a sulfur content not exceeding 1.0 percent, by weight.

f. If burning more than one (1) type of fuel, the equivalent annual amount of each fuel burned by the unit shall not exceed the maximum annual amount of such fuel, as given in sub-subparagraph e., multiplied by a fuel percentage. The fuel percentage is the percentage ratio of the total annual amount of the fuel burned by the unit to the total annual amount of such fuel allowed to be burned by the unit pursuant to sub-subparagraph e. The sum of the fuel percentages for all fuels burned by the unit must be less than or equal to 100 percent.

g. If burning only one (1) type of fuel, the collective annual amount of fuel burned by all units claiming this exemption at the same facility shall not exceed 375 million standard cubic feet of natural gas, 2.5 million gallons of propane, 2.5 million gallons of fuel oil with a sulfur content not exceeding 0.05 percent, by weight, 290,000 gallons of fuel oil with a sulfur content not exceeding 0.5 percent, by weight, or 145,000 gallons of fuel oil with a sulfur content not exceeding 1.0 percent, by weight.

h. If burning more than one (1) type of fuel, the equivalent collective annual amount of each fuel burned by the units claiming this exemption at the same facility shall not exceed the collective maximum annual amount of such fuel, as given in sub-subparagraph g., multiplied by a fuel percentage. The fuel percentage is the percentage ratio of the total annual amount of the fuel burned by all units claiming this exemption at the same facility to the total annual amount of such fuel allowed to be burned by all units claiming this exemption at the same facility pursuant to sub-subparagraph g. The sum of the fuel percentages for all fuels burned by the units claiming this exemption at the same facility must be less than or equal to 100 percent.

i. If the unit is subject to 40 C.F.R. Part 63, Subpart DDDDD or JJJJJJ, the owner shall comply with all limitations and requirements of Subpart DDDDD or JJJJJJ that apply to the unit.

35. Stationary Reciprocating Internal Combustion Engines, provided all the following conditions are met with respect to each such engine.

a. The engine is not subject to the Acid Rain Program, CAIR Program, or any other unit-specific limitation or requirement other than any such limitation or requirement that may apply pursuant to 40 C.F.R. Part 60, Subpart IIII or JJJJ, or 40 C.F.R Part 63, Subpart ZZZZ, all adopted and incorporated by reference at Rule 62-204.800, F.A.C.

b. The engine shall not burn used oil or any fuels other than natural gas, propane, gasoline, and diesel fuel.

c. Collectively, all engines claiming this exemption at the same facility shall not burn more than the collective maximum annual amount of a single fuel, as given in sub-subparagraph d., or equivalent collective maximum annual amounts of multiple fuels, as addressed in sub-subparagraph e.

d. If burning only one type of fuel, the collective annual amount of fuel burned by all engines claiming this exemption at the same facility shall not exceed 53,000 gallons of gasoline, 64,000 gallons of diesel fuel, 288,000 gallons of propane, or 8.8 million standard cubic feet of natural gas.

e. If burning more than one type of fuel, the equivalent collective annual amount of each fuel burned by the engines claiming this exemption at the same facility shall not exceed the collective maximum annual amount of such fuel, as given in sub-subparagraph d., multiplied by a fuel percentage. The fuel percentage is the percentage ratio of the total amount of the fuel burned by all engines claiming this exemption at the same facility to the total amount of such fuel allowed to be burned by all engines claiming this exemption at the same facility pursuant to sub-subparagraph d. The sum of the fuel percentages for all fuels burned by the engines claiming this exemption at the same facility must be less than or equal to 100 percent.

f. If the engine is a stationary compression ignition reciprocating internal combustion engine that is subject to 40 C.F.R. Part 60, Subpart IIII, adopted and incorporated by reference at Rule 62-204.800, F.A.C., or by virtue of modification or reconstruction becomes subject to such subpart, the owner or operator shall comply with all limitations and requirements of Subpart IIII that apply to the engine.

g. If the engine is a stationary spark ignition reciprocating internal combustion engine that is subject to 40 C.F.R. Part 60,

Subpart JJJJ, adopted and incorporated by reference at Rule 62-204.800, F.A.C., or by virtue of modification or reconstruction becomes subject to such subpart, the owner or operator shall comply with all limitations and requirements of Subpart JJJJ that apply to the engine.

h. If the engine is a stationary reciprocating internal combustion engine subject to 40 C.F.R. Part 63, Subpart ZZZZ, adopted and incorporated by reference at Rule 62-204.800, F.A.C., the owner or operator shall comply with all limitations and requirements of Subpart ZZZZ that apply to the engine. If emissions testing is required pursuant to Subpart ZZZZ, all reports and notifications, including notifications of upcoming tests, shall be submitted to the Department in accordance with the provisions of Subpart ZZZZ.

36. Printing operations, provided:

a. The facility is not subject to any unit-specific limitation or requirement,

b. The printing operation is not subject to any of the requirements of Rule 62-296.515, F.A.C.

c. The facility shall use less than 667 gallons of materials containing any hazardous air pollutants in any consecutive twelve (12) months; and,

d. The facility shall:

(I) Operate only heatset offset lithographic printing lines and use less than 20,000 pounds, combined, of inks, cleaning solvents, fountain solution concentrate and fountain solution additives in any consecutive twelve (12) months,

(II) Operate only non-heatset offset lithographic printing lines and use less than 2,850 gallons, combined of cleaning solvents, fountain solution concentrate and fountain solution additives in any consecutive twelve (12) months,

(III) Operate only digital printing lines and use less than 2,425 gallons, combined, of solvent based inks, clean-up solutions, and other solvent-containing materials in any consecutive twelve (12) months,

(IV) Operate only screen or letterpress printing lines and use less than 2,850 gallons, combined, of solvent based inks, clean-up solutions, and other solvent-containing materials in any consecutive twelve (12) months,

(V) Operate only water-based or ultraviolet-cured-material flexographic or rotogravure printing lines and use less than 80,000 pounds, combined, of water-based inks, coatings, and adhesives in any consecutive twelve (12) months, or

(VI) Operate only solvent-based material flexographic or rotogravure printing lines and use less than 20,000 pounds, combined, of inks, dilution solvents, coatings, cleaning solutions, and adhesives in any consecutive twelve (12) months.

37. Yard Trash Processing and Recycling facilities, provided that:

a. The facility maintains its Registration and Annual Report for a Yard Trash Transfer Station or Solid Waste Recycling Facility pursuant to Chapter 62-709, F.A.C.;

b. The facility complies with the general particulate emissions limiting standards pursuant to subsection 62-296.320(4), F.A.C.; and

c. Open burning is prohibited at the facility.

(b) Generic Exemptions.

1. Generic Emissions Unit or Activity Exemption. Except as otherwise provided at subsection 62-210.300(3), F.A.C., above, an emissions unit or pollutant-emitting activity that is not entitled to a categorical or conditional exemption pursuant to paragraph 62-210.300(3)(a), F.A.C., shall be exempt from any requirement to obtain an air construction permit or non-Title V air operation permit, or to use an air general permit pursuant to Rule 62-210.310, F.A.C., if it meets all of the following criteria.

a. It would not be subject to any unit-specific limitation or requirement.

b. Its emissions, in combination with the emissions of other units and activities at the facility, would not cause the facility to emit or have the potential to emit any pollutant in such amount as to create a Title V source.

c. It would neither emit nor have the potential to emit 500 pounds per year or more of lead and lead compounds expressed as lead, 1,000 pounds per year or more of any hazardous air pollutant, 2,500 pounds per year or more of total hazardous air pollutants, or 5.0 tons per year or more of any other regulated air pollutant as defined at Rule 62-210.200, F.A.C.

d. In the case of a proposed new emissions unit at an existing facility, the emissions of such unit, in combination with the emissions of any other proposed new or modified units and activities at the facility, would not result in a modification subject to the preconstruction review requirements of subparagraph 62-204.800(11)(d)2., Rule 62-212.400 or 62-212.500, F.A.C.

e. In the case of a proposed new pollutant-emitting activity, such activity would not constitute a modification of any existing non-exempt emissions unit at a non-Title V source or any existing non-insignificant emissions unit at a Title V source.

2. Generic Facility Exemption. Except as otherwise provided at subsection 62-210.300(3), F.A.C., a facility that is not entitled to a categorical or conditional exemption pursuant to paragraph 62-210.300(3)(a), F.A.C., shall be exempt from any requirement to

obtain an air construction permit or non-Title V air operation permit, or to use an air general permit pursuant to Rule 62-210.310, F.A.C., if all of the emissions units and pollutant-emitting activities within the facility, including any proposed new emissions units and activities, individually meet the exemption criteria of paragraph 62-210.300(3)(a), F.A.C., or subparagraph 62-210.300(3)(b)1., F.A.C., or if none of the emissions units and pollutant-emitting activities within the facility, including any proposed new emissions units and activities, is subject to any unit-specific limitation or requirement and the facility meets all of the following criteria.

a. The facility would neither emit nor have the potential to emit 1,000 pounds per year or more of lead and lead compounds expressed as lead, 1.0 ton per year or more of any hazardous air pollutant, 2.5 tons per year or more of total hazardous air pollutants, 25 tons per year or more of carbon monoxide, nitrogen oxides and sulfur dioxide, or 10 tons per year or more of any other regulated air pollutant as defined at Rule 62-210.200, F.A.C.

b. The facility would neither emit nor have the potential to emit any pollutant in such amount as to create a Title V source, nor would the facility be a Title V source for any other reason.

c. A unit that does not qualify for the Generic Emissions Unit or Activity Exemption in subparagraph 62-210.300(3)(b)1., F.A.C., may still be eligble for the Generic Facility Exemption if it meets the criteria specified in sub-subparagraphs 62-210.300(3)(b)2.a., and 62-210.300(3)(b)2.b., F.A.C.

3. Temporary Phosphogypsum Exemption. Until permitted pursuant to Chapter 62-213, F.A.C., phosphogypsum disposal areas are exempt from the requirement to obtain an air operation permit.

(c) Conditional Exemptions from Title V Air Permitting. Except as otherwise provided herein, the following facilities shall be exempt from the requirement to obtain a Title V air operation permit under the provisions of Chapter 62-213, F.A.C., provided the conditions of exemption for each such facility are met. Facilities exempt from Title V air permitting pursuant to subparagraph 62-210.300(3)(c)2., F.A.C., are not exempt from the requirement to obtain an air construction permit or non-Title V air operation permit. A facility shall not be entitled to an exemption from Title V air permitting under this rule if it is a Title V source pursuant to paragraph (f), (g), or (h) of the definition of "major source of air pollution" or the facility would be classified as a Title V source as a result of the combined potential to emit regulated pollutants of all emissions units at the facility.

1. Facilities authorized to operate under any of the air general permits provided at subsection 62-210.310(4), F.A.C.

2. Facilities comprising asphalt concrete plants, provided the following conditions are met.

a. The production rate of asphaltic concrete shall not exceed 500,000 tons in any consecutive twelve-month period.

b. Fuel oil consumption shall not exceed 1.2 million gallons in any consecutive twelve-month period.

c. Fuel oil shall not exceed 1.0 percent sulfur content, by weight. The owner shall maintain records to demonstrate that each shipment of fuel oil has 1.0 percent or less.

d. Particulate matter (PM) emissions shall not exceed 0.04 grains per dry standard cubic foot averaged over a three-hour period, if the facility is subject to 40 C.F.R. 60.90, Subpart I. If the facility is not subject to Subpart I, it shall not exceed the applicable particulate emission limiting standard pursuant to paragraph 62-296.320(4)(a), F.A.C., and its hours of operation shall not exceed 4,000 hours in any consecutive twelve-month period.

e. Fugitive PM emissions shall be controlled in accordance with the requirements of paragraph 62-296.320(4)(c), F.A.C.

f. Visible emissions (VE) shall not be equal to or greater than 20 percent opacity.

g. The owner or operator shall maintain records to document the monthly and the twelve-month rolling totals of tons of asphaltic concrete produced, the gallons of fuel oil consumed, and the hours of operation. Such records shall be retained for five years.

h. The owner or operator shall submit an Annual Operating Report for Air Pollutant Emitting Facility (DEP Form No. 62-210.900(5)) to the Department annually pursuant to subsection 62-210.370(3), F.A.C.

i. The owner or operator shall submit a stack test using EPA Reference Method 5 or 5A and a visible emission (VE) test using EPA Reference Method 9, incorporated and adopted by reference in Rule 62-204.800, F.A.C., that demonstrate compliance with the applicable PM and VE standards, respectively, to the Department annually during each calendar year (January 1 – December 31).

j. The owner or operator of any facility claiming this exemption must have authorization to operate by a non-Title V air operation permit that implements the requirements of sub-subparagraphs 62-210.300(3)(c)2.a. through j., F.A.C.

(4) Authorization by Air General Permit. At the option of the owner or operator, certain facilities may use an air general permit pursuant to the procedures and conditions of Rule 62-210.310, F.A.C., Air General Permits, or Rule 62-213.300, F.A.C., Title V Air General Permits. The owner or operator of any eligible facility who registers to use an air general permit under either of these rules, and who has not been notified by the department of ineligibility to use the air general permit, shall not be required to obtain an air

construction permit pursuant to subsection 62-210.300(1), F.A.C., or an air operation permit pursuant to subsection 62-210.300(2), F.A.C., or Rule 62-213.400, F.A.C., as applicable.

(5) Notification of Startup. The owners or operator of any emissions unit or facility which has a valid air operation permit which has been shut down more than one year, shall notify the Department in writing of the intent to start up such emissions unit or facility, a minimum of 60 days prior to the intended startup date.

(a) The notification shall include information as to the startup date, anticipated emission rates or pollutants released, changes to processes or control devices which will result in changes to emission rates, and any other conditions which may differ from the valid outstanding operation permit.

(b) If, due to an emergency, a startup date is not known 60 days prior thereto, the owner shall notify the Department as soon as possible after the date of such startup is ascertained.

(6) Emissions Unit Reclassification.

(a) Any emissions unit whose operation permit has been revoked as provided for in Chapter 62-4, F.A.C., shall be deemed permanently shut down for purposes of Rule 62-212.500, F.A.C. Any emissions unit whose permit to operate has expired without timely renewal or transfer may be deemed permanently shut down, provided, however, that no such emissions unit shall be deemed permanently shut down if, within 20 days after receipt of written notice from the Department, the emissions unit owner or operator demonstrates that the permit expiration resulted from inadvertent failure to comply with the requirements of Rule 62-4.090, F.A.C., and that the owner or operator intends to continue the emissions unit in operation, and either submits an application for an air operation permit or complies with permit transfer requirements, if applicable.

(b) If the owner or operator of an emissions unit which is so permanently shut down, applies to the Department for a permit to reactivate or operate such emissions unit, the emissions unit will be reviewed and permitted as a new emissions unit.

(7) Transfer of Air Permits.

(a) An air permit is transferable only after submission of an Application for Transfer of Air Permit (DEP Form 62-210.900(7)) and Department approval in accordance with Rule 62-4.120, F.A.C. For Title V permit transfers only, a complete application for transfer of air permit shall include the requirements of 40 CFR 70.7(d)(1)(iv), adopted and incorporated by reference at Rule 62-204.800, F.A.C. Within 30 days after approval of the transfer of permit, the Department shall update the permit by an administrative permit correction pursuant to Rule 62-210.360, F.A.C.

(b) For an air general permit, the provisions of paragraph 62-210.300(7)(a) and Rule 62-4.120, F.A.C., do not apply. Thirty (30) days before using an air general permit, the new owner must submit a registration to the Department in accordance with subsection 62-210.310(2), F.A.C.

Rulemaking Authority 403.061 FS. Law Implemented 403.031, 403.061, 403.087, 403.814 FS. History–Formerly 17-2.210, Amended 11-28-93, Formerly 17-210.300, Amended 11-23-94, 4-2-95, 4-18-95, 10-16-95, 1-2-96, 3-13-96, 3-21-96, 5-13-96, 8-15-96, 10-7-96, 5-20-97, 11-13-97, 2-5-98, 2-11-99, 4-16-01, 6-21-01, 7-6-05, 2-2-06, 1-10-07, 5-9-07, 3-16-08, 10-12-08, 6-29-11, 4-26-17, 7-3-18, 9-29-20, 6-16-21, 6-1-23.

Rule 62-256.700, F.A.C.
Fla. Admin. Code r. 62-256.700

62-256.700. Open Burning Allowed.

Currentness

(1) Open Burning of Yard Waste.

(a) Open burning of yard waste is allowed provided:

1. The yard waste was generated on residential premises of not more than two family units,

2. The open burning is conducted on the premises where the material was generated,

3. The fire is ignited after 8:00 a.m. Central time or 9:00 a.m. Eastern time and extinguished no later than one hour before sunset, provided however that no burning shall be conducted during windy conditions,

4. The fire is enclosed in a noncombustible container or is restricted to a pile no greater than eight feet in diameter built upon ground cleared of all combustible material,

5. The fire is set back at least 25 feet from any wildlands, brush, or combustible structure, 50 feet from any paved public roadway, and 150 feet from any occupied building other than that owned or leased by the individual doing the burning,

6. The fire is attended and adequate fire extinguishing equipment is readily available at all times; and,

7. The moisture content and composition of material to be burned is favorable to good burning which will minimize smoke.

(b) Except as provided above and at subsections 62-256.700(8) and (9), F.A.C., any other open burning of yard waste is allowed only if such burning is conducted using a Department-permitted air curtain incinerator operated in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit.

(2) Open Burning of Tree Cutting Debris.

(a) Open burning of tree cutting debris is allowed provided:

1. The tree cutting debris was generated on residential premises of not more than two family units,

2. The open burning is restricted to the site where the tree cutting debris was generated,

3. The fire is ignited after 8:00 a.m. Central time or 9:00 a.m. Eastern time and shall have no visible flame one hour before sunset or anytime thereafter, except in smoke sensitive areas as determined by the Florida Forest Service, where the fire must be extinguished no later than one hour before sunset,

4. The fire is attended, and adequate fire extinguishing equipment is readily available at all times,

5. The moisture content and composition of material to be burned is favorable to good burning which will minimize

smoke; and,

6. Prior to conducting the open burning, the person responsible for the burn contacts the Florida Forest Service regarding the planned burning activity.

(b) Except as provided above and at subsections 62-256.700(8) and (9), F.A.C., any other open burning of tree cutting debris shall be conducted using a Department-permitted air curtain incinerator operated in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit.

(3) Open Burning of Land Clearing Debris.

(a) Open burning of land clearing debris is allowed provided:

1. The open burning is restricted to the site where the land clearing debris was generated,

2. The fire is ignited after 8:00 a.m. Central time or 9:00 a.m. (Eastern Time) and shall have no visible flame one hour before sunset or anytime thereafter, except in smoke sensitive areas as determined by the Florida Forest Service, where the fire must be extinguished no later than one hour before sunset,

3. The fire is attended, and adequate fire extinguishing equipment is readily available at all times,

4. The moisture content and composition of material to be burned is favorable to good burning which will minimize smoke; and,

5. Prior to conducting the open burning, the person responsible for the burn contacts the Florida Forest Service regarding the planned burning activity.

(b) Except as provided above, any other open burning of land clearing debris shall be conducted using an air curtain incinerator operated in compliance with the terms of the exemption from air permitting at Rule 62-210.300, F.A.C., if such exemption applies, or if such exemption does not apply, in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit.

(4) Open Burning for the Training of Firefighters.

(a) Except as provided at paragraph 62-256.700(4)(b), F.A.C., open burning is allowed for the instruction and training of organized firefighters or industrial employees under the supervision of the appropriate public fire control official provided that all such burning is conducted at a fire training center certified by the Department of Financial Services, Division of State Fire Marshal, and does not involve the burning of any asbestos-containing materials, mercury-containing devices, or hazardous waste.

(b) A structure not on the premises of a certified fire training center may be burned for the instruction and training of organized firefighters provided the following conditions are met.

1. The burning activities shall be conducted under the auspices of a certified training center or by an organized fire department recognized by the Division of State Fire Marshal. Said activities shall be supervised by a fire training instructor certified by the Division of State Fire Marshal,

2. The burning shall be conducted in accordance with the National Fire Protection Association document, "Standard on Live Fire Training Evolutions, 2002 Edition (NFPA 1403)," hereby adopted and incorporated by reference, and available from the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101,

3. The burning of the structure and disposal of the waste products shall be conducted in compliance with all applicable provisions of 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos, adopted and incorporated by reference at Rule 62-204.800, F.A.C.,

4. Prior to the structure being burned, all hazardous waste, mercury-containing devices, and vinyl siding shall be removed; and,

5. The Florida Forest Service and the Department shall be notified at least 10 business days in advance of the time and place of the burning exercise.

(5) Open Burning of Waste Pesticide Containers. Subject to all of the following conditions, waste pesticide containers may be burned in open fields by the owner of the crops, the owner's authorized employee or caretaker, or by commercial pesticide applicators hired by the owner or caretaker.

(a) Plastic containers must be the original container provided by the pesticide manufacturer or formulator as end user conveyance for the specific product, and not reused containers designed for other products.

(b) Containers must be classified as Group I Containers and bear label instructions stating that small quantities of the containers may be burned in open fields by the user of the pesticide when such open burning is permitted by State and local regulations.

(c) The quantity of containers to be burned each day per parcel treated shall not exceed the amount accumulated during one day's use of pesticide. No more than 500 pounds of pesticide containers shall be burned per day at any specific location. If more than one fire is to be set in any area each specific burning location shall be at least 1,000 yards from each other location at which burning will occur concurrently.

(d) All Group I Containers which are to be disposed by open burning shall be completely empty and free of residual material pursuant to the following criteria:

1. Plastic containers including inner liners shall be triple rinsed with the same kind of solvent used to dilute the spray mixture in the field. The rinse liquids from the containers shall be added to the spray mixture in the field.

2. Paper containers shall be emptied by a final shaking and tapping of the sides and bottom to remove clinging particles. All loosened particles shall be added to the spray mixture or application in the field.

(e) The open burning shall meet the following conditions:

1. The open burning is two hundred feet or more away from any farm workers or occupied buildings and is one hundred feet or more away from any public road.

2. The fire is ignited after 9:00 a.m. and is extinguished one hour before sunset of the same day.

3. The person responsible for the burning is in attendance at an upwind location from the fire for the entire period of the burn (until all flame and smoke have dissipated).

4. The open burning is enclosed in a noncombustible container or ground excavation covered by a metal grill.

(6) Open Burning of Animal Carcasses. Open burning of animal carcasses is allowed provided:

(a) The Department of Agriculture and Consumer Services has determined that the need for destruction of such carcasses constitutes an emergency requiring the use of open burning; and,

(b) Such burning is conducted using an air curtain incinerator operated in compliance with the terms of the exemption from air permitting at Rule 62-210.300, F.A.C., if such exemption applies, or if such exemption does not apply, in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit.

(7) Open Burning Related to Agricultural Operations.

(a) Open burning of the following materials used in agricultural operations related to the growing, harvesting or maintenance of crops is allowed provided such burning is conducted in accordance with the provisions of Section 403.707(2)(e), F.S.

1. Polyethylene agricultural plastic,

2. Damaged, nonsalvageable, untreated wood pallets; and,

3. Packing material that cannot feasibly be recycled.

(b) Agricultural burning conducted under the authority of the Department of Agriculture and Consumer Services is not regulated under this chapter.

(8) Open Burning of Storm-Generated Debris. Open burning of storm-generated debris consisting only of vegetative debris and untreated wood is allowed provided:

(a) The open burning is conducted by or under the authority of the municipal or county government responsible for clean-up activities following a storm;

(b) Such burning is conducted using an air curtain incinerator operated in compliance with the terms of the exemption from air permitting at Rule 62-210.300, F.A.C., if such exemption applies, or if such exemption does not apply, in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit; or such burning is pile burning conducted under the authority of the Florida Forest Service; and,

(c) By no later than 10 days after the start of the open burning, the local government or its agent provides a written notice to the Department describing the general nature of the materials being burned, the location of the burning activity, the method of burning being used, and the name, address, and telephone number of the local government representative to contact regarding the burning activity.

(9) Open Burning of Insect or Disease-Infested Vegetation. Open burning of insect or disease-infested vegetation is allowed provided:

(a) The Director of the Florida Forest Service has determined that the need for destruction of such vegetation constitutes an emergency requiring the use of open burning; and,

(b) Such burning is conducted using an air curtain incinerator operated in compliance with the terms of the exemption from air permitting at Rule 62-210.300, F.A.C., if such exemption applies, or if such exemption does not apply, in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit; or such burning is pile burning conducted under the authority of the Florida Forest Service.

(10) Recreational Open Burning. Nothing in this chapter shall be construed to prohibit the open burning of vegetative debris and untreated wood in a campfire, ceremonial bonfire, outdoor fireplace, or other contained outdoor heating or cooking device, or on cold days for warming of outdoor workers.

Credits
Adopted July 1, 1971; Amended Jan. 11, 1982, Oct. 10, 1982, July 30, 1985; Transferred from 17-5.09; Amended Oct. 20, 1986, Aug. 26, 1987, Nov. 23, 1988; Transferred from 17-5.090, 17-256.700; Amended Nov. 30, 1994, July 6, 2005, Oct. 6, 2008.
Authority: 403.061 FS. Law Implemented 403.031, 403.061, 403.707 FS.

Current with amendments available through January 29, 2024. Some sections may be more current, see credits for details.

Rule 62-256.700, F.A.C., 62 FL ADC 62-256.700

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Title XXXV
AGRICULTURE, HORTICULTURE, AND ANIMAL INDUSTRY

Chapter 590
FOREST PROTECTION

View Entire Chapter

590.125 Open burning authorized by the Florida Forest Service.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Certified pile burner" means an individual who successfully completes the pile burning certification program of the Florida Forest Service and possesses a valid pile burner certification number.

(b) "Certified pile burning" means a pile burn conducted in accordance with a written pile burning plan by a certified pile burner.

(c) "Certified prescribed burn manager" means an individual who successfully completes the certified prescribed burning program of the Florida Forest Service and possesses a valid certification number.

(d) "Certified prescribed burning" means prescribed burning in accordance with a written prescription conducted by a certified prescribed burn manager.

(e) "Contained" means that fire and smoldering exist entirely within established or natural firebreaks.

(f) "Completed" means that for:

1. Broadcast burning, no continued lateral movement of fire across the authorized area into entirely unburned fuels within the authorized area.

2. Certified pile burning or pile burning, no visible flames exist.

3. Certified pile burning or pile burning in an area designated as smoke sensitive by the Florida Forest Service, no visible flames, smoke, or emissions exist.

(g) "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

(h) "Pile burning" means the burning of silvicultural, agricultural, land-clearing, or tree-cutting debris originating onsite, which is stacked together in a round or linear fashion, including, but not limited to, a windrow. Pile burning authorized by the Florida Forest Service is a temporary procedure, which operates on the same site for 6 months or less.

(i) "Pile burn plan" means a written plan establishing the method of conducting a certified pile burn.

(j) "Prescribed burning" means the application of fire by broadcast burning for vegetative fuels under specified environmental conditions, while following appropriate measures to guard against the spread of fire beyond the predetermined area to accomplish the planned fire or land management objectives.

(k) "Prescription" means a written plan establishing the conditions and methods for conducting a certified prescribed burn.

(l) "Smoldering" means the continued consumption of fuels, which may emit flames and smoke, after a fire is contained.

(m) "Yard trash" means vegetative matter resulting from landscaping and yard maintenance operations and other such routine property cleanup activities. The term includes materials such as leaves, shrub trimmings, grass clippings, brush, and palm fronds.

(2) NONCERTIFIED BURNING.—

(a) Persons may be authorized to broadcast burn or pile burn pursuant to this subsection if:

1. There is specific consent of the landowner or his or her designee;

2. Authorization has been obtained from the Florida Forest Service or its designated agent before starting the burn;

3. There are adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the containment of the fire;

4. The fire remains within the boundary of the authorized area;

5. The person named responsible in the burn authorization or a designee is present at the burn site until the fire is completed;

6. The Florida Forest Service does not cancel the authorization; and

7. The Florida Forest Service determines that air quality and fire danger are favorable for safe burning.

(b) A new authorization is not required for smoldering that occurs within the authorized burn area unless new ignitions are conducted by the person named responsible in the burn authorization or a designee.

(c) Monitoring the smoldering activity of a burn does not require an additional authorization even if flames begin to spread within the authorized burn area due to ongoing smoldering.

(d) A person who broadcast burns or pile burns in a manner that violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) CERTIFIED PRESCRIBED BURNING; LEGISLATIVE FINDINGS AND PURPOSE.—

(a) The application of prescribed burning is a land management tool that benefits the safety of the public, the environment, and the economy of the state. The Legislature finds that:

1. Prescribed burning reduces vegetative fuels within wild land areas. Reduction of the fuel load reduces the risk and severity of wildfire, thereby reducing the threat of loss of life and property, particularly in urban areas.

2. Most of Florida's natural communities require periodic fire for maintenance of their ecological integrity. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Significant loss of the state's biological diversity will occur if fire is excluded from fire-dependent systems.

3. Forestland and rangeland constitute significant economic, biological, and aesthetic resources of statewide importance. Prescribed burning on forestland prepares sites for reforestation, removes undesirable competing vegetation, expedites nutrient cycling, and controls or eliminates certain forest pathogens. On rangeland, prescribed burning improves the quality and quantity of herbaceous vegetation necessary for livestock production.

4. The state purchased hundreds of thousands of acres of land for parks, preserves, wildlife management areas, forests, and other public purposes. The use of prescribed burning for management of public lands is essential to maintain the specific resource values for which these lands were acquired.

5. A public education program is necessary to make citizens and visitors aware of the public safety, resource, and economic benefits of prescribed burning.

6. Proper training in the use of prescribed burning is necessary to ensure maximum benefits and protection for the public.

7. As Florida's population continues to grow, pressures from liability issues and nuisance complaints inhibit the use of prescribed burning. Therefore, the Florida Forest Service is urged to maximize the opportunities for prescribed burning conducted during its daytime and nighttime authorization process.

(b) Certified prescribed burning pertains only to broadcast burning for purposes of silviculture, wildland fire hazard reduction, wildlife management, ecological maintenance and restoration, and agriculture. It must be conducted in accordance with this subsection and:

1. May be accomplished only when a certified prescribed burn manager is present on site with a copy of the prescription and directly supervises the certified prescribed burn until the burn is completed, after which the certified prescribed burn manager is not required to be present.

2. Requires that a written prescription be prepared before receiving authorization to burn from the Florida Forest Service.

a. A new prescription or authorization is not required for smoldering that occurs within the authorized burn area unless new ignitions are conducted by the certified prescribed burn manager.

b. Monitoring the smoldering activity of a certified prescribed burn does not require a prescription or an additional authorization even if flames begin to spread within the authorized burn area due to ongoing smoldering.

3. Requires that the specific consent of the landowner or his or her designee be obtained before requesting an authorization.

4. Requires that an authorization to burn be obtained from the Florida Forest Service before igniting the burn.

5. Requires that there be adequate firebreaks at the burn site and sufficient personnel and firefighting equipment to contain the fire within the authorized burn area.

a. Fire spreading outside the authorized burn area on the day of the certified prescribed burn ignition does not constitute conclusive proof of inadequate firebreaks, insufficient personnel, or a lack of firefighting equipment.

b. If the certified prescribed burn is contained within the authorized burn area during the authorized period, a strong rebuttable presumption shall exist that adequate firebreaks, sufficient personnel, and sufficient firefighting equipment were present.

c. Continued smoldering of a certified prescribed burn resulting in a subsequent wildfire does not by itself constitute evidence of gross negligence under this section.

6. Is considered to be in the public interest and does not constitute a public or private nuisance when conducted under applicable state air pollution statutes and rules.

7. Is considered to be a property right of the property owner if vegetative fuels are burned as required in this subsection.

(c) A property owner or leaseholder or his or her agent, contractor, or legally authorized designee is not liable pursuant to s. 590.13 for damage or injury caused by the fire, including the reignition of a smoldering, previously contained burn, or resulting smoke or considered to be in violation of subsection (2) for burns conducted in accordance with this subsection, unless gross negligence is proven. The Florida Forest Service is not liable for burns for which it issues authorizations.

(d) Any certified burner who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(e) The Florida Forest Service shall adopt rules for the use of prescribed burning and for certifying and decertifying certified prescribed burn managers based on their past experience, training, and record of compliance with this section.

(4) CERTIFIED PILE BURNING.—

(a) Certified pile burning pertains to the disposal of piled, naturally occurring debris from agricultural, silvicultural, land-clearing, or tree-cutting debris originating onsite. Certified pile burning must be conducted in accordance with the following:

1. A certified pile burner must ensure, before ignition, that the piles are properly placed and that the content of the piles is conducive to efficient burning.

2. A certified pile burner must ensure that the authorized burn is completed no later than 1 hour after sunset. If the burn is conducted in an area designated by the Florida Forest Service as smoke sensitive, a certified pile burner must ensure that the authorized burn is completed at least 1 hour before sunset.

3. A written pile burning plan must be prepared before receiving authorization from the Florida Forest Service to burn and must be onsite and available for inspection by a department representative.

4. The specific consent of the landowner or his or her agent must be obtained before requesting authorization to burn.

5. An authorization to burn must be obtained from the Florida Forest Service or its designated agent before igniting the burn.

6. There must be adequate firebreaks and sufficient personnel and firefighting equipment at the burn site to contain the burn to the piles authorized.

(b) If a burn is conducted in accordance with paragraph (a), the property owner and his or her agent are not liable under s. 590.13 for damage or injury caused by the fire or resulting smoke, and are not in violation of subsection (2), unless gross negligence is proven.

(c) A certified pile burner who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) The Florida Forest Service shall adopt rules regulating certified pile burning. The rules shall include procedures and criteria for certifying and decertifying certified pile burn managers based on past experience, training, and record of compliance with this section.

(5) WILDFIRE HAZARD REDUCTION TREATMENT BY THE FLORIDA FOREST SERVICE.—The Florida Forest Service may conduct fuel reduction initiatives, including, but not limited to, burning and mechanical and chemical treatment, on any area of wild land within the state which is reasonably determined to be in danger of wildfire in accordance with the following procedures:

(a) Describe the areas that will receive fuels treatment to the affected local governmental entity.

(b) Publish a treatment notice, including a description of the area to be treated, in a conspicuous manner in at least one newspaper of general circulation in the area of the treatment not less than 10 days before the treatment.

(c) Prepare and send a notice to all landowners in each area designated by the Florida Forest Service as a wildfire hazard area. The notice must describe particularly the area to be treated and the tentative date or dates of the treatment and must list the reasons for and the expected benefits from the wildfire hazard reduction.

(d) Consider any landowner objections to the fuels treatment of his or her property. The landowner may apply to the director of the Florida Forest Service for a review of alternative methods of fuel reduction on the property. If the director or his or her designee does not resolve the landowner objection, the director shall convene a panel made up of the local forestry unit manager, the fire chief of the jurisdiction, and the affected county or city manager, or any of their designees. If the panel's recommendation is not acceptable to the landowner, the landowner may request further consideration by the Commissioner of Agriculture or his or her designee and shall thereafter be entitled to an administrative hearing pursuant to the provisions of chapter 120.

(6) FLORIDA FOREST SERVICE APPROVAL OF LOCAL GOVERNMENT OPEN BURNING AUTHORIZATION PROGRAMS.—

(a) A county or municipality may exercise the authority of the Florida Forest Service, if delegated by the Florida Forest Service under this subsection, to issue authorizations for the burning of yard trash or debris from land-clearing operations. A county's or municipality's existing or proposed open burning authorization program must:

1. Be approved by the Florida Forest Service. The Florida Forest Service may not approve a program if it fails to meet the requirements of subsections (2) and (4) and any rules adopted under those subsections.

2. Provide by ordinance or local law the requirements for obtaining and performing a burn authorization that complies with subsections (2) and (4) and any rules adopted under those subsections.

3. Provide for the enforcement of the program's requirements.

4. Provide financial, personnel, and other resources needed to carry out the program.

(b) If the Florida Forest Service determines that a county's or municipality's open burning authorization program does not comply with subsections (2) and (4) and any rules adopted under those subsections, the Florida Forest Service shall require the county or municipality to take necessary corrective actions within 90 days after receiving notice from the Florida Forest Service of its determination.

1. If the county or municipality fails to take the necessary corrective actions within the required period, the Florida Forest Service shall resume administration of the open burning authorization program in the county or municipality and the county or municipality shall cease administration of its program.

2. Each county and municipality administering an open burning authorization program must cooperate with and assist the Florida Forest Service in carrying out the powers, duties, and functions of the Florida Forest Service.

3. A person who violates the requirements of a county's or municipality's open burning authorization program, as provided by ordinance or local law enacted pursuant to this subsection, commits a violation of this chapter, punishable as provided in s. 590.14.

(7) DUTIES OF AGENCIES.—The Department of Education shall incorporate, where feasible and appropriate, the issues of fuels treatment, including prescribed burning, into its educational materials.

History.—s. 9, ch. 99-292; s. 41, ch. 2002-295; s. 21, ch. 2005-210; s. 56, ch. 2011-206; s. 61, ch. 2012-7; s. 25, ch. 2013-226; s. 150, ch. 2014-150.

Steps to get a prescribed burning authorization in Florida:

1. Contact your local Florida Forest Service office by clicking HERE– the best time to set up a new account is between 10:00 AM and 2:00 PM. We recommend you do this before you want to burn.

2. Let the Duty Officer know that you want to get a customer number and that you are a new customer. Your customer number can be used to get an authorization at any of our offices.

3. The Duty Officer will ask you for the following information:
   - Your Name
   - Mailing Address
   - Telephone number – (in case we need to call you about your burn)

4. The Duty Officer will then give you a customer number. Please write this down and keep it in a convenient place.

5. On the day you want to burn, contact the local Florida Forest Service office and request a burn authorization. The Duty Officer will ask for your customer number and the location of your burn. We will plot your burn on a map and generate a smoke plume for your burn to make sure there are no potential problems with the smoke. Your property deed should have a section, township and range listed on it. If you do not have that a latitude and longitude will also work.

6. Depending on your location, the first time you burn someone from one of our field units may come to the location where you want to burn and do an on-site inspection.

7. If you need additional information concerning prescribed burning, please give us a call or look under our tools and information resources link HERE.

The Florida Forest Service manages over 1.1 million acres of public land while protecting more than 26 million acres of homes, forestland, and natural resources from the devastating effects of wildfire.