

# FLORIDA

## *Enforceable Provisions Applicable to Nonpoint Source Water Pollution*

### DISCHARGE PROHIBITIONS

#### Water Pollution Control Law

Florida's water pollution control laws include provisions that may be used to take enforcement action against nonpoint source discharges resulting in pollution that harms human health or welfare or biological resources or property; and against certain unpermitted nonpoint source discharges that contribute to violation of water quality standards.

- Florida's water pollution control law, administered by the Department of Environmental Protection (DEP) has a general prohibition on pollution that is applicable to nonpoint sources: "It shall be a violation of this chapter, and it shall be prohibited for any person...[t]o cause pollution, except as otherwise provided in this chapter, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property."<sup>1</sup>

- It is also a violation "[t]o fail to obtain any permit required by this chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, permit or certification adopted or issued by the department pursuant to its lawful authority..."<sup>2</sup> This provision may apply to some nonpoint source discharges because permits are required for discharges of materials that contribute to violations of water quality standards: "No person, without written authorization of the department, shall discharge into waters within the state any waste which, by itself or in combination with the wastes of other sources, reduces the quality of the receiving waters below the classification established for them...."<sup>3</sup> "Waste" means "sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state."<sup>4</sup> This permit requirement is not limited to point sources. However, agricultural activities (including all "normal and customary" farming and forestry operations) and agricultural water management systems do not require permits.<sup>5</sup>

- A separate law defines violations and provides similar enforcement authorities for Florida's five water management districts (WMDs).<sup>6</sup> Like the law referenced above, the law they administer defines a violation as "To cause pollution, as defined in [the law referenced above], except as otherwise provided in this part, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property", and another violation failure to obtain a required permit or to comply with rules or orders.<sup>7</sup>

The Department of Environmental Protection (DEP) has "the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules and regulations adopted and promulgated by it, and for this purpose, to:...(8) Issue such orders as are necessary...and enforce the same by all appropriate administrative and judicial proceedings....(28) Perform any other act necessary to control and prohibit air

and water pollution, and to delegate any of its responsibilities, authority, and powers, other than rulemaking powers, to any state agency now or hereinafter established."<sup>8</sup> Counties and municipalities may also be delegated functions, with oversight and backup enforcement by DEP. Local programs have access to both their own enforcement processes and those provided to DEP.<sup>9</sup> DEP enforcement powers include civil actions for damages; actions for civil penalties up to \$10,000 per day; administrative actions for damages; and administrative orders for abatement or other corrective action, subject to administrative hearings.<sup>10</sup> The law also provides for injunctions,<sup>11</sup> and for criminal prosecution for violations committed with intent.<sup>12</sup> The state's Environmental Protection Act also allows the attorney general, any political subdivision, or any citizen to enforce laws and regulations for the protection of the air, water, and other natural resources of the state in court.<sup>13</sup>

Water pollution laws are administered by the DEP and the WMDs;<sup>14</sup> areas within WMDs may be further divided into basins with basin boards.<sup>15</sup> Each WMD establishes a list, updated every 3 years, prioritizing water bodies of regional or statewide significance using criteria "based on their need for protection and restoration"; then WMDs develop plans, including identification of land uses, "point and nonpoint sources of pollution" and lists of sources operating without permit and sources presently violating effluent limits or water quality standards, recommendations and schedules for compliance, measures needed to restore and maintain water quality.<sup>16</sup> The proposed plans must be reviewed by DEP, Dept. of Ag and Consumer Services, Game and Freshwater Fish Commission, Dept. of Community Affairs, and local governments.<sup>17</sup> Plans adopted by the WMD are then reviewed by DEP for "consistency" with the state water plan and state comprehensive plan.<sup>18</sup> While the plans are not themselves enforceable mechanisms, they can serve to identify where such mechanisms may be used.

## **Other Discharge Limitations**

- It is unlawful to "dump litter in any manner or amount...(b) In or on any freshwater lake, river, canal, or stream or tidal or coastal water of the state, including canals"<sup>19</sup> Litter is defined as any "garbage; rubbish; trash; refuse:...sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations."<sup>20</sup> The statute provides for civil penalties of \$50 to \$5,000 based on the amount and purpose of the dumping; and criminal prosecution.<sup>21</sup>

- State law protects water supplies, and provides that "in coordination with the Department of Health and Rehabilitative Services, the department [of Environmental Protection], upon receipt of information that a contaminant which is present in, or is likely to enter, public or private water supplies may present an imminent and substantial danger to the public health, may take such actions as it may deem necessary in order to protect the public health..." including corrective action orders and injunctions.<sup>22</sup> Criminal prosecution is available for willfully or maliciously corrupting a spring or reservoir.<sup>23</sup>

- "Any person...who shall deposit, or who shall permit or allow any person or persons in their employ or under their control, management, or direction to deposit in any of the waters of the lakes, rivers, streams, and ditches in this state, any rubbish, filth, or poisonous or deleterious substance or substances, liable to affect the health of persons, fish, or livestock, or place or deposit any such deleterious substance or substances in any place where the same may be washed or infiltrated into any of the waters herein named, shall be guilty of a misdemeanor of the second degree" punishable by a fine of up to \$500 and/or 60 days imprisonment.<sup>24</sup>

- "A sanitary nuisance is the commission of any act...or the keeping, maintaining, propagation, existence, or permission of anything...by which the health or life of an individual, or...individuals, may be threatened or impaired, or by which or through which, directly or indirectly, disease may be caused."<sup>25</sup> "The following conditions..shall constitute prima facie evidence of maintaining a nuisance injurious to health: (a) Untreated or improperly treated human waste, garbage, offal, dead animals, or dangerous waste materials from manufacturing processes harmful to human or animal life....(f)Any other condition determined to be a sanitary nuisance...."<sup>26</sup> Nuisances may be enjoined, abated by the Dept. of Health and Rehabilitative Services, and/or prosecuted as misdemeanors of the second degree.<sup>27</sup> Farm operations in existence for one or more years are not nuisances if they conform to "generally accepted agricultural and management practices."<sup>28</sup>

## **Fish/Fisheries Laws**

- State law provides that "No person, except as provided herein, shall take...freshwater fish...within this state without first having obtained a license, permit, or authorization..."<sup>29</sup> "Take" is defined as "taking, attempting to take, pursuing, hunting, molesting, capturing, or killing any...freshwater fish... whether or not such actions result in obtaining possession..."<sup>30</sup>

- The law also provides that "No person may throw or place, or cause to be thrown or places any dynamite....acids, filtration discharge, debris from mines, Indian berries, sawdust, green walnuts, walnut leaves, creosote, oil, or other explosives or deleterious substance or force into the freshwaters of this state whereby fish therein are or may be injured..."<sup>31</sup>

- "It shall be unlawful for any person..to cause any dyestuff, coal tar, oil, sawdust, poison or deleterious substances to be thrown, run or drained into any of the fresh running waters of this state in quantities sufficient to injure, stupefy, or kill fish..."<sup>32</sup>

Violations of these pollution provisions are misdemeanors of the second degree punishable by fine of up to \$500 and/or 60 days imprisonment.

- State law also provides for recovery of money damages for injury to "air, waters, or property, including animal, plant, and aquatic life...and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition" as well

as for a civil penalty of up to \$10,000 per day. It also provides for a table of dollar amounts recoverable per fish killed.<sup>33</sup>

## **OPERATIONAL REQUIREMENTS**

### **Forestry Requirements**

The state relies on voluntary BMPs; enforcement, if necessary, is under the water pollution discharge laws identified above. Forest harvest operations also must file a "notice of general permit" with a Water Management District, where applicable.

### **Agriculture Requirements**

Agricultural operations are not required to obtain permits under the water pollution law for nonpoint source activities. CAFOs are regulated as point sources.

- Florida has a program that operates collectively to reduce phosphorous loading in the Everglades watershed. The law provides for a scheduled phased-in increase in agricultural taxes over the course of a long period, but if the collective loadings are reduced by certain targets, agricultural operators do not have to pay the scheduled increases. In addition part of the program provides individual credits against these taxes for operators that take actions themselves on identified parcels. Sanctions in the form of higher taxes are imposed automatically on identified entities where prescribed results are not achieved.<sup>34</sup>

- Florida imposes special requirements on dairy farms in the Lake Okechobee drainage basin. These include enforceable requirements to fence all dairy cattle out of watercourses, requirements for setbacks, and the regulation of the land application of manure.<sup>35</sup>

- The state provides for certifications and licensing with respect to pesticide dealers and applicators.<sup>36</sup> "Prohibited acts" include "apply[ing] any pesticide directly to, or in any manner cause any pesticide to drift onto, any person or area not intended to receive the pesticide", as well as handling, distributing, etc in a manner "as to endanger human beings or the environment"<sup>37</sup> Violations are addressed by orders, license revocation or suspension, administrative fines and misdemeanor prosecution.<sup>38</sup>

### **Development and Other Earth-Disturbing Activities**

- There are regional and state comprehensive planning requirements.<sup>39</sup> Local governments are required to do local plans and land regulation consistent with these: "comprehensive plans or elements thereof shall be implemented...by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area."<sup>40</sup>

- State law also provides for designation of "areas of critical state concern" which, if designated, must be taken into account and protected by state and local agency regulations and decisions.<sup>41</sup> Such areas must include, or have a significant impact upon, "environmental or natural resources of regional or statewide importance."

Local land use regulations must be conformed to the designation. Developments of regional impact must be evaluated under these standards as well if located in an area of critical state concern.<sup>42</sup>

- Stormwater permitting requires permitting of facilities by DEP or as delegated to local governments or by the Water Management District; it includes general permits for certain types of facilities.<sup>43</sup> State law sets out provisions for stormwater and wetlands permitting (environmental resource permitting) under jurisdiction of water management districts.<sup>44</sup> Stormwater plans are required from water management districts; local governments must cover in comprehensive plans.<sup>45</sup> Sedimentation and erosion controls are covered under Water Management District regulations. Enforceable mechanisms are those available to DEP under the water pollution law, to Water Management Districts, or to local governments under local authorities.

## Endnotes

<sup>1</sup> Fla. Stat. 403.161(1)(a). "Pollution" is broadly defined. Fla. Stat. 403.031(7).

<sup>2</sup> Fla. Stat. 403.161(1)(b).

<sup>3</sup> Fla. Stat. 403.088.

<sup>4</sup> Fla. Stat. 403.031(12).

<sup>5</sup> Fla. Stat. 403.927.

<sup>6</sup> Fla. Stat. §§ 373.083, 373.103.

<sup>7</sup> Fla. Stat. §§ 373.430(1)(a), (b).

<sup>8</sup> Fla. Stat. 403.061.

<sup>9</sup> Fla. Stat. 403.182.

<sup>10</sup> Fla. Stat. §§ 403.121, 403.161.

<sup>11</sup> Fla. Stat. § 403.131.

<sup>12</sup> Fla. Stat. § 403.161.

<sup>13</sup> Fla. Stat. § 403.412.

<sup>14</sup> Fla. Stat. § 373.069.

<sup>15</sup> Fla. Stat. § 373.0693.

<sup>16</sup> Fla. Stat. § 373.453.

<sup>17</sup> Fla. Stat. § 373.455.

<sup>18</sup> Fla. Stat. § 373.456.

<sup>19</sup> Fla. Stat. § 403.413(4).

<sup>20</sup> Fla. Stat. § 403.413(2)(a).

<sup>21</sup> Fla. Stat. § 403.413.

<sup>22</sup> Fla. Stat. § 403.855.

<sup>23</sup> Fla. Stat. § 387.07.

<sup>24</sup> Fla. Stat. § 387.08.

<sup>25</sup> Fla. Stat. § 386.01.

<sup>26</sup> Fla. Stat. § 386.041(1).

<sup>27</sup> Fla. Stat. §§ 60.05, 373.433, 386.02, 386.03, 823.01.

<sup>28</sup> Fla. Stat. § 823.14(4).

<sup>29</sup> Fla. Stat. § 372.57.

<sup>30</sup> Fla. Stat. § 372.001(10).

<sup>31</sup> Fla. Stat. § 372.75.

<sup>32</sup> Fla. Stat. § 372.85(1).

- <sup>33</sup> Fla. Stat. § 403.141.
- <sup>34</sup> Fla. Stat. § 373.4592.
- <sup>35</sup> Fla. Admin. Code r. 62-670.500.
- <sup>36</sup> Fla. Stat. Ch. 487.
- <sup>37</sup> Fla. Stat. § 487.031.
- <sup>38</sup> Fla. Stat. §§ 487.101, 487.159, 487.175.
- <sup>39</sup> Fla. Stat. Ch. 186, 187.
- <sup>40</sup> Fla. Stat. § 163.3201.
- <sup>41</sup> Fla. Stat. § 380.05.
- <sup>42</sup> Fla. Stat. 380.06(5)(a)(2); see also 380.06(13), compare (14).
- <sup>43</sup> Fla. Stat. Chap. 403; Regulations at FAC 62-25.
- <sup>44</sup> Fla. Stat 373.400 series (Part 4).
- <sup>45</sup> Fla. Stat. § 403.0891.