

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1180

SPONSOR: Natural Resources Committee and Senators Bronson and Forman

SUBJECT: National Pollutant Discharge Elimination System

DATE: March 8, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gee	Voigt	NR	Favorable/CS
2.				
3.				
4.				
5.				

I. Summary:

This bill provides that a National Pollutant Discharge Elimination System permit may require compliance with an accompanying administrative order. The bill also creates an administrative process that is applicable only to facilities that are part of the Everglades Program.

This bill substantially amends s. 403.088, F.S.

II. Present Situation:

The U. S. Environmental Protection Agency (EPA) is authorized under the federal Clean Water Act to implement the National Pollutant Discharge Elimination System (NPDES) Program, and may authorize a state to implement all or part of the program. In May 1995, Florida was authorized to implement portions of the program, including regulation of wastewater facilities, the pretreatment and general permit programs, and stormwater regulation associated with a NPDES wastewater facility.

There has been considerable debate as to whether the Stormwater Treatment Areas (STAs) being constructed as part of the Everglades Construction Project require NPDES permits. Generally speaking, facilities that discharge pollutants from any point source into waters of the U. S. must obtain a NPDES permit. The EPA has asserted that because the STAs will be discharging "pollutants" to "waters of the U.S." and are essentially "treatment systems," NPDES permits are required.

In April 1998, the Department of Environmental Protection (DEP) and the EPA agreed that a NPDES permit would be issued by the Department for STA-1 West. In addition, the DEP and the EPA also agreed that the NPDES permit would be accompanied by an administrative order providing a compliance schedule for meeting water quality standards for phosphorus and dissolved oxygen. However, when the DEP issued a draft NPDES permit for STA-1 West in July 1998, the EPA challenged the permit. The EPA objected to incorporation of the administrative

order into the permit pursuant to s. 403.088(2)(f), F.S., basing that objection upon a determination that the compliance schedule contained in the order did not comply with federal requirements for compliance schedules. The federal requirements not met by the draft permit and administrative order are that a compliance schedule cannot exceed five years in duration and can only be for water quality parameters adopted or modified in the last five years.

The DEP and the EPA have continued to work together to develop a permit that is consistent with both federal and state requirements. In addition to negotiating permit conditions, they have also wrestled with the issue of which agency should issue the permit. This was initially resolved by deciding that the EPA would issue the permit. To some degree, this decision was based upon the fact that federal administrative procedures would allow for interim operation of STA-1 West while any administrative challenge to the permit was being resolved. Current state administrative law procedures do not allow for such interim operation. Additionally, current state law requires that a permit require compliance with an accompanying order when the order establishes a compliance schedule to meet permit conditions.

On December 31, 1998, the EPA issued a draft permit for STA-1 West which established an effluent limitation for total phosphorus of 10 parts per billion (ppb), but did not require compliance before December 31, 2006, which is consistent with the Everglades Forever Act (EFA). The state agreed to accept the permit. However, on February 26, 1999, Governor Bush wrote the EPA, withdrawing the state's concurrence to the permit, indicating his desire that the state issue the permit. In the letter, he stated that the "state's capability to ensure a successful program will be enhanced by a few tightly worded amendments to state law to remove potential obstacles..." SB 1180 is intended to make the changes needed for the state to issue the permit.

III. Effect of Proposed Changes:

The bill amends s. 403.088, F.S., in two ways. Both provisions are intended to facilitate the state's ability to maintain jurisdiction for permitting facilities that are constructed, operated, and maintained as part of the Everglades Program established in s. 373.4592, F.S.

First, the provision that a permit must require compliance with an accompanying administrative order is made discretionary. This change would apply not only to Everglades Program facilities, but to any other permits issued under s. 403.088, F.S. The DEP would continue to be able to incorporate administrative orders specifying compliance schedules into NPDES permits if such schedules are consistent with federal requirements. In addition, the DEP's ability to enforce administrative orders not specifically incorporated into the accompanying permit will not be compromised because such orders are separately enforceable.

Second, it creates an administrative process that is applicable only to facilities that are part of the Everglades Program. If the issuance of an initial permit for any such facility is administratively challenged, an administrative law judge (ALJ) may, upon motion by the permittee, issue an order allowing construction, operation, and maintenance of the facility until the administrative challenge is resolved.

If no party opposes issuance of the order, it will be issued without further proceedings. However, if a party to the challenge opposes the order, issuance of the order is contingent upon findings by

the ALJ that the facility is likely to receive the permit and that the environment will not be irreparably harmed by interim construction, operation, or maintenance. When the order is contested, the ALJ must conduct summary hearing proceedings, as defined in s. 120.574, F.S., beginning no later than 30 days following the permittee's motion. Within 15 days following the conclusion of summary hearing proceedings, the ALJ must issue an order denying or approving interim construction, operation, or maintenance. Any such order would remain in effect until final agency action is taken on the permit.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill does not impact the current NPDES permit fees.

B. Private Sector Impact:

This bill will allow the restoration efforts of the Everglades to continue in a timely manner by allowing the necessary permits to be issued by the state. If an objection is raised to the issuance of a permit, the cleanup efforts may continue even if the permit is subsequently involved in litigation.

C. Government Sector Impact:

There is no change in the fees charged for issuing NPDES permits, and therefore these provisions will not impact the issuing agency.

No additional staff would be required by the DEP to issue such permits.

The nature of the permit conditions in a permit issued pursuant to these provisions may be controversial. If there is a challenge, there would be costs associated with the administrative challenge incurred by the Department of Environmental Protection and the Division of Administrative Hearings. It is not possible to estimate these costs at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
