



1           403.031 Definitions.--In construing this chapter, or  
2 rules and regulations adopted pursuant hereto, the following  
3 words, phrases, or terms, unless the context otherwise  
4 indicates, have the following meanings:

5           (21) "Total maximum daily load" is defined as the sum  
6 of the individual wasteload allocations for point sources and  
7 the load allocations for nonpoint sources and natural  
8 background. Prior to determining individual wasteload  
9 allocations and load allocations, the maximum amount of a  
10 pollutant that a water body or water segment can assimilate  
11 from all sources without exceeding water quality standards  
12 must first be calculated.

13           Section 3. Section 403.067, Florida Statutes, is  
14 created to read:

15           403.067 Establishment and implementation of total  
16 maximum daily loads.--

17           (1) LEGISLATIVE FINDINGS AND INTENT.--In furtherance  
18 of public policy established in s. 403.021, the Legislature  
19 declares that the waters of the state are among its most basic  
20 resources and that the development of a total maximum daily  
21 load program for state waters as required by ss. 303(d) of the  
22 Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et  
23 seq. will promote improvements in water quality throughout the  
24 state through the coordinated control of point and nonpoint  
25 source pollution. The Legislature finds that, while point and  
26 nonpoint sources of pollution have been managed through  
27 numerous programs, better coordination among these efforts and  
28 additional management measures may be needed in order to  
29 achieve improvements in water quality and restoration of  
30 impaired water bodies. The scientifically based total maximum  
31 daily load program is necessary to fairly and equitably

1 allocate pollution loads to both nonpoint and point sources.  
2 Implementation of the allocation shall include consideration  
3 of a cost-effective approach coordinated between contributing  
4 point and nonpoint sources of pollution for a given water body  
5 or water body segment. The Legislature further declares that  
6 the Department of Environmental Protection shall be the lead  
7 agency in administering this program and shall coordinate with  
8 local governments, water management districts, the Department  
9 of Agriculture and Consumer Services, local soil and water  
10 conservation districts, environmental groups, regulated  
11 interests, other state agencies, and affected pollution  
12 sources in developing and executing the total maximum load  
13 program.

14 (2) LIST OF SURFACE WATERS OR SEGMENTS.--In accordance  
15 with ss. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33  
16 U.S.C. ss. 1251 et seq., the department must submit  
17 periodically to the United States Environmental Protection  
18 Agency a list of surface waters or segments for which total  
19 maximum daily load assessments will be conducted. The  
20 assessments shall evaluate the water quality conditions of the  
21 listed waters and, if such waters are determined not to meet  
22 water quality standards, total maximum daily loads shall be  
23 established, subject to the provisions of s. 403.067(4). The  
24 department shall establish a priority ranking and schedule for  
25 analyzing such waters.

26 (a) The list, priority ranking, and schedule cannot be  
27 used in the administration or implementation of any regulatory  
28 program. However, this paragraph does not prohibit the  
29 department from employing the data or other information used  
30 to establish the list, priority ranking, or schedule in  
31 administering any program.

1           (b) The list, priority ranking, and schedule prepared  
2 under this subsection shall be made available for public  
3 comment, but shall not be subject to challenge under ss.  
4 120.569 and 120.57, and shall not be adopted by rule under s.  
5 120.54.

6           (3) ASSESSMENT.--

7           (a) Based on the priority ranking and schedule for a  
8 particular listed water body or water segment, the department  
9 shall conduct a total maximum daily load assessment of the  
10 basin in which the water body or segment is located using  
11 methodology developed pursuant to paragraph (b) of this  
12 subsection. In conducting this assessment, the department  
13 shall coordinate with the local water management district, the  
14 Department of Agriculture and Consumer Services, other  
15 appropriate state agencies, soil and water conservation  
16 districts, environmental groups, regulated interests, and  
17 other interested parties.

18           (b) The department shall adopt by rule a methodology  
19 for determining those waters which are impaired. The rule  
20 shall provide for consideration as to whether water quality  
21 standards codified in chapter 62-302, Florida Administrative  
22 Code, are being exceeded, based on objective, quantitative and  
23 credible data, studies and reports, including surface water  
24 improvement and management plans approved by water management  
25 districts under s. 373.456 and pollutant load reduction goals  
26 developed according to department rule. Such rule also shall  
27 set forth:

28           1. Water quality sample collection and analysis  
29 requirements, accounting for ambient background conditions,  
30 seasonal and other natural variations;

31           2. Approved methodologies;

- 1           3. Quality assurance and quality control protocols;  
2           4. Data modeling; and  
3           5. Other appropriate water quality assessment  
4 measures.

5           (4) ADOPTED LIST.--If the department determines, based  
6 on the total maximum daily load assessment methodology  
7 described in subsection (3), that water quality standards are  
8 not being achieved on account of discharges of pollutants into  
9 such waters or segments from point or nonpoint sources, and  
10 that technology-based effluent limitations and other pollution  
11 control programs under local, state, or federal authority  
12 designed to restore such waters for the pollutant of concern  
13 are not sufficient to result in attainment of applicable  
14 surface water quality standards, it shall confirm that  
15 determination by adopting a second list of those water bodies  
16 or segments for which total maximum daily loads will be  
17 calculated. In association with this list the department shall  
18 establish priority rankings and schedules by which water  
19 bodies or segments will be subjected to total maximum daily  
20 load calculations. If a surface water or water segment is to  
21 be listed under this subsection, the department must specify  
22 the particular pollutants causing the impairment and the  
23 concentration of those pollutants causing the impairment  
24 relative to the water quality standard. If the department has  
25 adopted a rule establishing a numerical criterion for a  
26 particular pollutant, a narrative or biological criterion may  
27 not be the basis for determining an impairment in connection  
28 with that pollutant unless the department identifies specific  
29 factors as to why the numerical criterion is not adequate to  
30 protect water quality. If water quality nonattainment is based  
31 on narrative or biological criteria, the factors concerning

1 specific pollutants shall be identified prior to a total  
2 maximum daily load being developed for those criteria for that  
3 surface water or water segment. This list shall be adopted and  
4 amended by order of the department subsequent to completion of  
5 each basin assessment, and submitted to the United States  
6 Environmental Protection Agency. These orders shall be subject  
7 to challenge under ss. 120.569 and 120.57.

8 (5) REMOVAL FROM LIST.--At any time throughout the  
9 total maximum daily load process, surface waters or segments  
10 evaluated or listed under this section shall be removed from  
11 the lists described in subsections (2) or (4) upon  
12 demonstration that water quality criteria are being attained,  
13 based on an equivalent quantity and quality of data required  
14 by rule under subsection (3).

15 (6) CALCULATION AND ALLOCATION.--

16 (a) Calculation of total maximum daily load.

17 1. Prior to developing a total maximum daily load  
18 calculation for each water body or water body segment on the  
19 list specified in subsection (4), the department shall  
20 coordinate with applicable local governments, water management  
21 districts, the Department of Agriculture and Consumer  
22 Services, other appropriate state agencies, local soil and  
23 water conservation districts, environmental groups, regulated  
24 interests, and affected pollution sources to determine the  
25 information required, accepted methods of data collection and  
26 analysis, and quality control/quality assurance requirements.  
27 The analysis may include mathematical water quality modeling  
28 using approved procedures and methods.

29 2. The department shall develop total maximum daily  
30 load calculations for each water body or water body segment on  
31 the list described in subsection (4) according to the priority

1 ranking and schedule. The total maximum daily load calculation  
2 shall establish the amount of a pollutant that a water body or  
3 water body segment can assimilate without exceeding water  
4 quality standards, and shall account for seasonal variations  
5 with a margin of safety that takes into account any lack of  
6 knowledge concerning the relationship between effluent  
7 limitations and water quality. Where the Environmental  
8 Regulation Commission has approved under s. 403.804 a numeric  
9 criterion for a particular pollutant or the department has  
10 listed a water body segment for a narrative criterion in  
11 accordance with subsection (4), the department may apply the  
12 criterion for a specific water body or water body segment by  
13 establishing the pollutant's total maximum daily load. The  
14 total maximum daily load may be based on a pollutant load  
15 reduction goal established by a water management district and  
16 approved under this subsection.

17 (b) Allocation of total maximum daily loads. The total  
18 maximum daily loads shall include establishment of reasonable  
19 and equitable allocations of the total maximum daily load  
20 among point and nonpoint sources that will alone, or in  
21 conjunction with other management and restoration activities,  
22 provide for the attainment of water quality standards and the  
23 restoration of impaired waters. The allocations shall  
24 establish the maximum amount of the water pollutant from a  
25 given source or category of sources that may be discharged or  
26 released into the water body or water body segment in  
27 combination with other discharges or releases. Such  
28 allocations shall be based upon the following:

- 29 1. Existing treatment levels and management practices;
- 30 2. Differing impacts pollutant sources may have on  
31 water quality;

1           3. The availability of treatment technologies,  
2 management practices, or other pollutant reduction measures;

3           4. Environmental, economic, and technological  
4 feasibility of achieving the allocation;

5           5. The cost benefit associated with achieving the  
6 allocation;

7           6. Reasonable timeframes for implementation;

8           7. Potential applicability of any moderating  
9 provisions; and

10           8. The extent to which nonattainment of water quality  
11 standards is caused by pollution sources outside of Florida,  
12 discharges that have ceased, or alterations to water bodies  
13 prior to the date of this act.

14           (c) Not later than February 1, 2000, the department  
15 shall submit a report to the Governor, the President of the  
16 Senate, and the Speaker of the House of Representatives  
17 containing recommendations, including draft legislation, for  
18 any modifications to the process for allocating total maximum  
19 daily loads. Such recommendations shall be developed by the  
20 department in cooperation with a technical advisory committee  
21 which includes representatives of affected parties,  
22 environmental organizations, water management districts, and  
23 other appropriate local, state, and federal government  
24 agencies. The technical advisory committee shall also include  
25 such members as may be designated by the President of the  
26 Senate and the Speaker of the House of Representatives.

27           (d) The total maximum daily load calculations and  
28 allocations shall be adopted by rule pursuant to ss. 120.54  
29 and 120.536(1). As part of the rule development process, the  
30 department shall hold at least one public workshop in the  
31 vicinity of the water body or water body segment for which the



1 total maximum daily load is being developed. Notice of the  
2 public workshop shall be published not less than 5 days nor  
3 more than 15 days before the public workshop in a newspaper of  
4 general circulation in the county or counties where the water  
5 bodies or water body segments for which the total maximum  
6 daily load calculation and allocation are being developed.

7 (7) IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

8 (a) The department shall be the lead agency in  
9 coordinating and implementing the total maximum daily load  
10 allocation through water quality protection programs. Such  
11 programs may include, but are not limited to:

12 1. Permitting and other existing regulatory programs;

13 2. Nonregulatory and incentive-based programs,  
14 including best management practices, cost sharing, waste  
15 minimization, pollution prevention, and public education;

16 3. Other water quality management and restoration  
17 activities, for example surface water improvement and  
18 management plans approved by water management districts under  
19 s. 373.456;

20 4. Pollutant trading or other equitable economically  
21 based agreements;

22 5. Public works including capital facilities; or

23 6. Land acquisition.

24 (b) In coordinating and implementing the total maximum  
25 daily load allocation, the department may develop a basin  
26 plan. The basin plan will serve to fully integrate all the  
27 management strategies available to the state for the purpose  
28 of achieving water quality restoration. The basin planning  
29 process is intended to involve the broadest possible range of  
30 interested parties, with the objective of encouraging the  
31 greatest amount of cooperation and consensus possible. The

1 department shall hold at least one public meeting in the  
2 vicinity of the basin to discuss and receive comments during  
3 the basin planning process and shall otherwise encourage  
4 public participation to the greatest practical extent. Notice  
5 of the public meeting shall be published in a newspaper of  
6 general circulation in each county in which the basin lies not  
7 less than 5 days nor more than 15 days before the public  
8 meeting.

9 (c) Pollutant sources which are not subject to  
10 permitting under this chapter or chapter 373 shall have the  
11 opportunity to implement the total maximum daily load through  
12 nonregulatory and incentive-based programs, including best  
13 management practices or other preventive measures.

14 (d) The department, the water management district, and  
15 other interested parties, as appropriate, cooperatively shall  
16 develop suitable interim measures, best management practices,  
17 or other measures necessary to achieve the pollution reduction  
18 targets established by the department for nonagricultural  
19 nonpoint pollutant sources. These practices and measures may  
20 be adopted by rule by the department and the water management  
21 districts, and may be implemented by those parties responsible  
22 for nonagricultural nonpoint pollutant sources pursuant to  
23 subsection (7)(c) and, to the greatest extent possible, the  
24 department and the water management districts shall assist  
25 with implementation. Implementation of these practices in  
26 accordance with applicable rules shall provide a presumption  
27 of compliance with state water quality standards and release  
28 from the provisions of s. 376.307(5) for those pollutants  
29 addressed by the practices, and the department is not  
30 authorized to institute proceedings against the owner of the  
31 source of pollution to recover costs or damages associated

1 with the contamination of surface or ground water. Such rules  
2 shall also incorporate provisions for a notice of intent to  
3 implement the practices and a system to assure the  
4 implementation of the practices, including recordkeeping  
5 requirements. Where water quality problems are detected  
6 despite the appropriate implementation of best management  
7 practices and other measures according to rules adopted under  
8 this paragraph, the department or the water management  
9 districts shall institute a reevaluation of the best  
10 management practice or other measures.

11 (e) The Department of Agriculture and Consumer  
12 Services shall develop and may adopt by rule pursuant to ss.  
13 120.54 and 120.536(1) suitable interim measures, best  
14 management practices, or other measures necessary to achieve  
15 the pollution reduction targets established by the department  
16 for agricultural pollutant sources. These practices and  
17 measures may be implemented by those parties responsible for  
18 agricultural pollutant sources pursuant to subsection (7)(c)  
19 and, to the greatest extent possible, the department and the  
20 Department of Agriculture and Consumer Services shall assist  
21 with implementation. Where interim measures, best management  
22 practices, or other measures are adopted by rule, the  
23 effectiveness of such practices shall be verified by the  
24 department. Implementation of these practices in accordance  
25 with applicable rules shall provide a presumption of  
26 compliance with state water quality standards and release from  
27 the provisions of s. 376.307(5) for those pollutants addressed  
28 by the practices, and the department is not authorized to  
29 institute proceedings against the owner of the source of  
30 pollution to recover costs or damages associated with the  
31 contamination of surface or ground waters. In the process of

1 developing and adopting rules for interim measures, best  
2 management practices, or other measures, the Department of  
3 Agriculture and Consumer Services shall consult with the  
4 department, the Department of Health, the water management  
5 districts, representatives from affected farming groups, and  
6 environmental group representatives. Such rules shall also  
7 incorporate provisions for a notice of intent to implement the  
8 practices and a system to assure the implementation of the  
9 practices, including recordkeeping requirements. Where water  
10 quality problems are detected despite the appropriate  
11 implementation of best management practices and other measures  
12 according to rules adopted under this paragraph, the  
13 Department of Agriculture and Consumer Services shall  
14 institute a reevaluation of the best management practice or  
15 other measure.

16 (8) RULES.--The department is authorized to adopt  
17 rules pursuant to ss. 120.54 and 120.536(1) for:

18 (a) Delisting water bodies or water body segments from  
19 the list developed under subsection (4) pursuant to the  
20 guidance under subsection (5);

21 (b) Administration of funds to implement the total  
22 maximum daily load program; and

23 (c) Procedures for pollutant trading among the  
24 pollutant sources to a water body or water body segment,  
25 including a mechanism for the issuance and tracking of  
26 pollutant credits. Such procedures may be implemented through  
27 permits or other authorizations and must be legally binding.  
28 No rule implementing a pollutant trading program shall become  
29 effective prior to review and ratification by the Legislature.

30 (9) APPLICATION.--Nothing in this section shall be  
31 construed as altering any applicable state water quality

1 standards or as restricting the authority otherwise granted to  
2 the department or a water management district under this  
3 chapter or chapter 373.

4 (10) CONSTRUCTION.--Nothing in this section shall be  
5 construed as limiting the applicability or consideration of  
6 any mixing zone, variance, exemption, site specific  
7 alternative criteria, or other moderating provision.

8 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--The  
9 department shall not implement, without prior legislative  
10 approval, any additional regulatory authority pursuant to the  
11 Clean Water Act ss. 303(d) or 40 CFR Part 130, if such  
12 implementation would result in water quality discharge  
13 regulation of activities not currently subject to regulation.

14 Section 4. The department, coordinating with the water  
15 management districts and the Department of Agriculture and  
16 Consumer Services, shall evaluate the effectiveness of the  
17 implementation of total maximum daily loads for a period of 5  
18 years from the effective date of this act. The department  
19 shall document that effectiveness, using all data and  
20 information at its disposal, in a report to the Governor, the  
21 President of the Senate, and the Speaker of the House of  
22 Representatives by January 1, 2005. The report shall provide  
23 specific recommendations for statutory changes necessary to  
24 implement total maximum daily loads more effectively,  
25 including the development or expansion of pollution prevention  
26 and pollutant trading opportunities, and best management  
27 practices. The report shall also provide recommendations for  
28 statutory changes relating to pollutant sources which are not  
29 subject to permitting under chapter 403, Florida Statutes, or  
30 chapter 373, Florida Statutes, and which do not implement the  
31 nonregulatory practices or other measures outlined in the

