

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1518

SPONSOR: Natural Resources Committee and Senator Lawson

SUBJECT: Environment

DATE: April 19, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute authorizes the Department of Environmental Protection to cooperate with the Department of Agriculture and Consumer Services in the implementation of best management practices consistent with ss. 373.4595, (relating to Lake Okeechobee Protection Program), 403.067, (relating to the Total Maximum Daily Load Program), 576.045, (relating to nitrogen and phosphorus), and 597.004, F.S. (relating to aquaculture). Authorizes the DEP to enter into voluntary agreements with industry, business associations, other government agencies, and interested parties to address water resource issues throughout a watershed or basin. Any agreement entered into pursuant to s. 403.0613, F.S., constitutes an order of the department and is subject to chapter 120, F.S. Implementation of such agreements shall not interfere with the department's obligations under any delegated or approved federal program but may be used in conjunction with any of these federal programs. Any agreements entered into prior to the effective date of this act, including but not limited to, the Suwannee River Partnership Agreement of January 1999 and any subsequent dairy Administrative Agreements are authorized by ss. 403.061 and 403.0611, F.S., and are ratified.

This bill amends s. 403.061, F.S., and creates s. 403.0613, F.S.

II. Present Situation:

National Pollution Discharge Elimination System (NPDES)

As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program addresses discharges of pollution into surface waters of the United States. The Clean Water Act also provides that the authority to issue NPDES permits may be

delegated by the Environmental Protection Agency (EPA) to states which meet certain technical, administrative, and legal requirements which are described in Title 40, CFR, Part 124.

In 1991, ch. 91-305, Laws of Florida, directed the Department of Environmental Regulation¹ to conduct a study to determine the full cost of accepting delegation of the NPDES permitting program from the EPA including savings from elimination of duplicative permitting.

In 1995, the EPA authorized DEP to implement the NPDES to permit surface water discharges, predominately from industrial and domestic wastewater facilities. Facilities that do not discharge to surface waters do not require NPDES permits. In October 2000, EPA authorized the DEP to implement the NPDES stormwater permitting program to regulate point source discharges of stormwater into surface water from certain municipal, industrial and construction activities.²

Agriculture and Dairies

Agricultural activity includes the cultivation of soil to produce crops and the raising of livestock (animal husbandry) to produce meat, eggs and dairy products. The management of animal waste has become a priority in Florida and throughout the country. Any facility having a large quantity of animals in a confined area can produce enough waste to pose a threat to Florida's surface and groundwater if not properly treated. Agricultural facilities regulated under DEP's industrial wastewater permits include dairies, poultry farms, swine farms, alligator farms, etc.³

In February, 1998, the federal Clean Water Action Plan called for the U.S. Department of Agriculture and the EPA to develop a Unified National Strategy for Animal Feeding Operations. The main focus of the strategy is to identify animal feeding operations (AFO) considered to be concentrated animal feeding operations (CAFO), based on size and facility operation, that have a potential to impact water quality and public health. The strategy calls for these CAFOs to be in compliance with the federal NPDES regulations. Since Florida is a state delegated by EPA to administer the NPDES program, all inspections, permitting and compliance enforcement called for in the strategy would be done by DEP. DEP is working on a strategy to implement this program in Florida.⁴

The department has designed a comprehensive plan to reduce pollution from animal feeding operations and improve water quality. The department has ordered large dairies to obtain permits for their operations. Under its statutory authority in s. 403.0611, F.S., rather than using its traditional regulatory program, the department has developed a program to ensure dairies achieve compliance with environmental rules through voluntary cooperative administrative agreements between the department and individual dairies. The administrative agreements require the use of best management practices (BMPs) to control pollution from a variety of sources at dairies.⁵

¹ In 1993, the Department of Environmental Regulation was merged with the Department of Natural Resources to form the Department of Environmental Protection.

² www.dep.state.fl.us/secretary/news/2004/march/0318

³ www.dep.state.fl.us/water/wastewater/iw/agri.htm

⁴ Id.

⁵ http://www.dep.state.fl.us/secretary/news/2004/march/0318_epa.htm

Suwannee River Partnership Agreement

In addition to administrative agreements with individual dairies, under its statutory authority in s. 403.061, F.S., the department has entered into partnership agreements with other state agencies (including the Department of Agriculture and Consumer Services), federal agencies (including EPA), industry, business associations and interested parties to address a range of water pollution issues throughout a watershed. An example of such an agreement is the Suwannee River Partnership Agreement of 1999.

The Suwannee River Partnership was formed in 1999 as a coalition of state, federal and regional agencies, local governments, and private industry representatives working together to reduce nitrate levels in the surface waters and groundwater within the basins or watersheds of the Suwannee River and the Santa Fe River.⁶ The mission of the partnership is to encourage voluntary incentive-based programs that will reduce nutrient loadings to the Suwannee and Santa Fe Rivers, thus providing better protection to the environment and public health.⁷

Save Our Suwannee, Inc. et al v. Department of Environmental Protection

On March 5, 2004, an order was entered in the case of Save Our Suwannee, Inc. et al v. Department of Environmental Protection (Case No. 2001-CA-001266) which, among other things:

- Required DEP to administer a NPDES permitting program for dairy CAFOs in the state and immediately require all dairy agricultural feeding operations in the state maintaining more than 700 mature cattle to apply for NPDES permits or demonstrate that the facility is exempt;
- Enjoined DEP from relying on the Suwannee River Basin Partnership Agreement⁸ in lieu of permits to control pollution from any and all dairies that may be a source of groundwater pollution; and
- Enjoined DEP from using s. 403.0611, F.S. as authority to use an alternative scheme to traditional regulatory permitting for dairies and any other industrial operations throughout the state that are required to be regulated pursuant to the NPDES permitting program.

III. Effect of Proposed Changes:

This bill amends s. 403.061, F.S., to authorize the Department of Environmental Protection to cooperate with the Department of Agriculture and Consumer Services in the implementation of best management practices consistent with ss. 373.4595 (relating to Lake Okeechobee Protection Program), 403.067 (relating to the Total Maximum Daily Load Program), 576.045 (relating to nitrogen and phosphorus), and 597.004, F.S., (relating to aquaculture).

Section 403.0613, F.S., is created to authorize the DEP to enter into voluntary agreements with industry, business associations, other government agencies, and interested parties to address water resource issues throughout a watershed or basin. Any agreement entered into pursuant to

⁶ mysuwanneeriver.com/features/suwannee+river+partnership

⁷ Suwannee River Partnership Pamphlet

⁸ The actual name of the Partnership is the Suwannee River Partnership.

this section constitutes an order of the department and is subject to chapter 120, F.S. Implementation of such agreements shall not interfere with the department's obligations under any delegated or approved federal program but may be used in conjunction with any of these federal programs.

The department must post any agreement entered into under s. 403.0613, F.S., on its internet site and make available any public records upon request.

The bill further provides that any agreements entered into prior to the effective date of this act, including but not limited to, the Suwannee River Partnership Agreement of January 1999 and any subsequent dairy Administrative Agreements are authorized by ss. 403.061 and 403.0611, F.S., and are ratified.

The bill takes effect upon becoming a law.

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:

None.

B. Private Sector Impact:

This bill will allow those agreements entered into by the Department of Environmental Protection with dairies in the Suwannee River Basin to implement best management practices on a basin-wide basis to remain in effect.

Under the NPDES program, large dairies, those maintaining 700 or more mature cows, are subject to permitting unless they can demonstrate that they are exempt. DEP's dairy rules, ch. 62-670, F.A.C., provide that "concentrated animal feeding operations" or CAFOs that discharge or propose to discharge pollutants from their operations must file for a permit with the department. The DEP has no authority to alter or suspend the requirements for NPDES permits.

Under the Suwannee River Partnership Agreement, only one of the dairy farms involved is large enough to qualify for an NPDES permit. The other entities are generally not required to be permitted at either the state or the federal level. Under the agreement, these entities have voluntarily agreed to institute best management practices to provide protection for the water resources in the Suwannee River Basin. The partnership agreement has been considered to be a model for incentive-based resource protection not only in Florida, but nationally.

C. Government Sector Impact:

The DEP has appealed the circuit court's ruling. If allowed to stand, DEP would no longer be able to enter into agreements such as the Suwannee River Partnership Agreement. The ruling impacts not only dairies, but also other sources of industrial discharges.

The circuit court's ruling seemed to indicate that the DEP was not implementing the NPDES program and therefore was not protecting the groundwater. The DEP cannot interfere with the implementation of the NPDES program. This is a federal program for which authority to administer has been delegated to the DEP from the EPA. It should be noted, however, that the NPDES program pertains to discharges to **surface water** and not groundwater as the ruling seemed to imply.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.