

Bill No. SB 2054

Barcode 134590

CHAMBER ACTION

Senate

House

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The Committee on Environmental Preservation and Conservation  
(Gaetz) recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 14, line 16, through  
page 16, line 3, delete those lines

and insert:

Section 8. Subsections (7) and (8) of section 403.067,  
Florida Statutes, are amended to read:

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

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND  
IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

(a) Basin management action plans.--

1. In developing and implementing the total maximum  
daily load for a water body, the department, or the department  
in conjunction with a water management district, may develop a  
basin management action plan that addresses some or all of the  
watersheds and basins tributary to the water body. Such a plan  
must ~~shall~~ integrate the appropriate management strategies

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1 available to the state through existing water quality  
 2 protection programs to achieve the total maximum daily loads  
 3 and may provide for phased implementation of these management  
 4 strategies to promote timely, cost-effective actions as  
 5 provided for in s. 403.151. The plan must ~~shall~~ establish a  
 6 schedule for implementing the management strategies, establish  
 7 a basis for evaluating the plan's effectiveness, and identify  
 8 feasible funding strategies for implementing the plan's  
 9 management strategies. The management strategies may include  
 10 regional treatment systems or other public works, where  
 11 appropriate, and voluntary trading of water quality credits in  
 12 areas that have adopted a basin management action plan to  
 13 achieve the needed pollutant load reductions.

14         2. A basin management action plan must ~~shall~~ equitably  
 15 allocate, pursuant to paragraph (6)(b), pollutant reductions  
 16 to individual basins, as a whole to all basins, or to each  
 17 identified point source or category of nonpoint sources, as  
 18 appropriate. For nonpoint sources for which best management  
 19 practices have been adopted, the initial requirement specified  
 20 by the plan must ~~shall~~ be those practices developed pursuant  
 21 to paragraph (c). In accordance with procedures adopted by  
 22 rule under paragraph (8)(c), the plan must allow point or  
 23 nonpoint sources that will achieve greater pollutant  
 24 reductions than required by an adopted total maximum load or  
 25 wasteload allocation to generate, register, and trade water  
 26 quality credits for the excess reductions to enable other  
 27 sources to achieve their allocation if the generation of water  
 28 quality credits does not remove the obligation of a source or  
 29 activity to meet applicable technology requirements or adopted  
 30 best-management practices. The plan must allow trading between  
 31 NPDES permittees and trading that may or may not involve NPDES

1 permittees, where the generation or use of the credits involve  
 2 an entity or activity not subject to department water  
 3 discharge permits whose owner voluntarily elects to become  
 4 subject to the requirements of this section. Where  
 5 appropriate, the plan may take into account the benefits of  
 6 ~~provide~~ pollutant load reduction achieved by point or nonpoint  
 7 sources ~~credits to dischargers~~ that have implemented  
 8 management strategies to reduce pollutant loads, including  
 9 best management practices, prior to the development of the  
 10 basin management action plan. The plan must ~~shall~~ also  
 11 identify the mechanisms that will address ~~by which~~ potential  
 12 future increases in pollutant loading ~~will be addressed~~.

13         3. The basin management action planning process is  
 14 intended to involve the broadest possible range of interested  
 15 parties, with the objective of encouraging the greatest amount  
 16 of cooperation and consensus possible. In developing a basin  
 17 management action plan, the department shall assure that key  
 18 stakeholders, including, but not limited to, applicable local  
 19 governments, water management districts, the Department of  
 20 Agriculture and Consumer Services, other appropriate state  
 21 agencies, local soil and water conservation districts,  
 22 environmental groups, regulated interests, and affected  
 23 pollution sources, are invited to participate in the process.  
 24 The department shall hold at least one public meeting in the  
 25 vicinity of the watershed or basin to discuss and receive  
 26 comments during the planning process and shall otherwise  
 27 encourage public participation to the greatest practicable  
 28 extent. Notice of the public meeting must ~~shall~~ be published  
 29 in a newspaper of general circulation in each county in which  
 30 the watershed or basin lies not less than 5 days nor more than  
 31 15 days before the public meeting. A basin management action

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1 plan may ~~shall~~ not supplant or otherwise alter any assessment  
2 made under subsection (3) or subsection (4) or any calculation  
3 or initial allocation.

4 4. The department shall adopt all or any part of a  
5 basin management action plan and any amendment to such plan by  
6 secretarial order pursuant to chapter 120 to implement the  
7 provisions of this section.

8 5. The basin management action plan must ~~shall~~ include  
9 milestones for implementation and water quality improvement,  
10 and an associated water quality monitoring component  
11 sufficient to evaluate whether reasonable progress in  
12 pollutant load reductions is being achieved over time. An  
13 assessment of progress toward these milestones must ~~shall~~ be  
14 conducted every 5 years, and revisions to the plan must ~~shall~~  
15 be made as appropriate. Revisions to the basin management  
16 action plan shall be made by the department in cooperation  
17 with basin stakeholders. Revisions to the management  
18 strategies required for nonpoint sources must ~~shall~~ follow the  
19 procedures set forth in subparagraph (c)4. Revised basin  
20 management action plans must ~~shall~~ be adopted pursuant to  
21 subparagraph 4.

22 6. The provisions of the department's rule relating to  
23 the equitable abatement of pollutants into surface waters may  
24 not be applied to water bodies or water body segments for  
25 which a basin management plan that takes into account future  
26 new or expanded activities or discharges has been adopted  
27 pursuant to this section.

28 (b) Total maximum daily load implementation.--

29 1. The department shall be the lead agency in  
30 coordinating the implementation of the total maximum daily  
31 loads through existing water quality protection programs.

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1 Application of a total maximum daily load by a water  
 2 management district must ~~shall~~ be consistent with this section  
 3 and may ~~shall~~ not require the issuance of an order or a  
 4 separate action pursuant to s. 120.536(1) or s. 120.54 for the  
 5 adoption of the calculation and allocation previously  
 6 established by the department. Such programs may include, but  
 7 are not limited to:

8       a. Permitting and other existing regulatory programs,  
 9 including water-quality-based effluent limitations;

10       b. Nonregulatory and incentive-based programs,  
 11 including best management practices, cost sharing, waste  
 12 minimization, pollution prevention, agreements established  
 13 pursuant to s. 403.061(21), and public education;

14       c. Other water quality management and restoration  
 15 activities, for example surface water improvement and  
 16 management plans approved by water management districts or  
 17 basin management action plans developed pursuant to this  
 18 subsection;

19       d. Trading of water quality credits ~~Pollutant trading~~  
 20 or other equitable economically based agreements;

21       e. Public works including capital facilities; or

22       f. Land acquisition.

23       2. For a basin management action plan adopted pursuant  
 24 to paragraph (a) ~~subparagraph (a)4.~~, any management strategies  
 25 and pollutant reduction requirements associated with a  
 26 pollutant of concern for which a total maximum daily load has  
 27 been developed, including effluent limits set forth for a  
 28 discharger subject to NPDES permitting, if any, must ~~shall~~ be  
 29 included in a timely manner in subsequent NPDES permits or  
 30 permit modifications for that discharger. The department may  
 31 ~~shall~~ not impose limits or conditions implementing an adopted

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1 total maximum daily load in an NPDES permit until the permit  
2 expires, the discharge is modified, or the permit is reopened  
3 pursuant to an adopted basin management action plan.

4 a. Absent a detailed allocation, total maximum daily  
5 loads must ~~shall~~ be implemented through NPDES permit  
6 conditions that provide for ~~afford~~ a compliance schedule. In  
7 such instances, a facility's NPDES permit must ~~shall~~ allow  
8 time for the issuance of an order adopting the basin  
9 management action plan. The time allowed for the issuance of  
10 an order adopting the plan must ~~shall~~ not exceed 5 years. Upon  
11 issuance of an order adopting the plan, the permit must ~~shall~~  
12 be reopened, as necessary, and permit conditions consistent  
13 with the plan must ~~shall~~ be established. Notwithstanding ~~the~~  
14 other provisions of this subparagraph, upon request by a NPDES  
15 permittee, the department as part of a permit issuance,  
16 renewal, or modification may establish individual allocations  
17 prior to the adoption of a basin management action plan.

18 b. For holders of NPDES municipal separate storm sewer  
19 system permits and other stormwater sources, implementation of  
20 a total maximum daily load or basin management action plan  
21 must ~~shall~~ be achieved, to the maximum extent practicable,  
22 through the use of best management practices or other  
23 management measures.

24 c. The basin management action plan does not relieve  
25 the discharger from any requirement to obtain, renew, or  
26 modify an NPDES permit or to abide by other requirements of  
27 the permit.

28 d. Management strategies set forth in a basin  
29 management action plan to be implemented by a discharger  
30 subject to permitting by the department must ~~shall~~ be  
31 completed pursuant to the schedule set forth in the basin

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1 management action plan. This implementation schedule may  
2 extend beyond the 5-year term of an NPDES permit.

3 e. Management strategies and pollution reduction  
4 requirements set forth in a basin management action plan for a  
5 specific pollutant of concern may ~~shall~~ not be subject to  
6 challenge under chapter 120 at the time they are incorporated,  
7 in an identical form, into a subsequent NPDES permit or permit  
8 modification.

9 f. For nonagricultural pollutant sources not subject  
10 to NPDES permitting but permitted pursuant to other state,  
11 regional, or local water quality programs, the pollutant  
12 reduction actions adopted in a basin management action plan  
13 must ~~shall~~ be implemented to the maximum extent practicable as  
14 part of those permitting programs.

15 g. A nonpoint source discharger included in a basin  
16 management action plan must ~~shall~~ demonstrate compliance with  
17 the pollutant reductions established under ~~pursuant to~~  
18 subsection (6) by either implementing the appropriate best  
19 management practices established pursuant to paragraph (c) or  
20 conducting water quality monitoring prescribed by the  
21 department or a water management district.

22 h. A nonpoint source discharger included in a basin  
23 management action plan may be subject to enforcement action by  
24 the department or a water management district based upon a  
25 failure to implement the responsibilities set forth in  
26 sub-subparagraph g.

27 i. A landowner, discharger, or other responsible  
28 person who is implementing applicable management strategies  
29 specified in an adopted basin management action plan may ~~shall~~  
30 not be required by permit, enforcement action, or otherwise to  
31 implement additional management strategies to reduce pollutant

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1 loads to attain the pollutant reductions established pursuant  
2 to subsection (6) and must ~~shall~~ be deemed to be in compliance  
3 with this section. This subparagraph does not limit the  
4 authority of the department to amend a basin management action  
5 plan as specified in subparagraph (a)5.

6 (c) Best management practices.--

7 1. The department, in cooperation with the water  
8 management districts and other interested parties, as  
9 appropriate, may develop suitable interim measures, best  
10 management practices, or other measures necessary to achieve  
11 the level of pollution reduction established by the department  
12 for nonagricultural nonpoint pollutant sources in allocations  
13 developed pursuant to subsection (6) and this subsection.  
14 These practices and measures may be adopted by rule by the  
15 department and the water management districts ~~pursuant to ss.~~  
16 ~~120.536(1) and 120.54~~, and, where adopted by rule, shall be  
17 implemented by those parties responsible for nonagricultural  
18 nonpoint source pollution.

19 2. The Department of Agriculture and Consumer Services  
20 may develop and adopt by rule pursuant to ss. 120.536(1) and  
21 120.54 suitable interim measures, best management practices,  
22 or other measures necessary to achieve the level of pollution  
23 reduction established by the department for agricultural  
24 pollutant sources in allocations developed pursuant to  
25 subsection (6) and this subsection or for programs implemented  
26 pursuant to paragraph (11)(b). These practices and measures  
27 may be implemented by those parties responsible for  
28 agricultural pollutant sources and the department, the water  
29 management districts, and the Department of Agriculture and  
30 Consumer Services must ~~shall~~ assist with implementation. In  
31 the process of developing and adopting rules for interim



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1 measures, best management practices, or other measures, the  
 2 Department of Agriculture and Consumer Services shall consult  
 3 with the department, the Department of Health, the water  
 4 management districts, representatives from affected farming  
 5 groups, and environmental group representatives. Such rules  
 6 must ~~shall~~ also incorporate provisions for a notice of intent  
 7 to implement the practices and a system to assure the  
 8 implementation of the practices, including recordkeeping  
 9 requirements.

10           3. Where interim measures, best management practices,  
 11 or other measures are adopted by rule, the effectiveness of  
 12 such practices in achieving the levels of pollution reduction  
 13 established in allocations developed by the department  
 14 pursuant to subsection (6) and this subsection or in programs  
 15 implemented pursuant to paragraph (11)(b) must ~~shall~~ be  
 16 verified at representative sites by the department. The  
 17 department must ~~shall~~ use best professional judgment in making  
 18 the initial verification that the best management practices  
 19 are reasonably expected to be effective and, where applicable,  
 20 must ~~shall~~ notify the appropriate water management district or  
 21 the Department of Agriculture and Consumer Services of its  
 22 initial verification prior to the adoption of a rule proposed  
 23 pursuant to this paragraph. Implementation, in accordance with  
 24 rules adopted under this paragraph, of practices that have  
 25 been initially verified to be effective, or verified to be  
 26 effective by monitoring at representative sites, by the  
 27 department, shall provide a presumption of compliance with  
 28 state water quality standards and release from the provisions  
 29 of s. 376.307(5) for those pollutants addressed by the  
 30 practices, and the department is not authorized to institute  
 31 proceedings against the owner of the source of pollution to

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1 recover costs or damages associated with the contamination of  
2 surface water or groundwater caused by those pollutants.  
3 Research projects funded by the department, a water management  
4 district, or the Department of Agriculture and Consumer  
5 Services to develop or demonstrate interim measures or best  
6 management practices shall be granted a presumption of  
7 compliance with state water quality standards and a release  
8 from the provisions of s. 376.307(5). The presumption of  
9 compliance and release is ~~shall be~~ limited to the research  
10 site and only for those pollutants addressed by the interim  
11 measures or best management practices. Eligibility for the  
12 presumption of compliance and release is ~~shall be~~ limited to  
13 research projects on sites where the owner or operator of the  
14 research site and the department, a water management district,  
15 or the Department of Agriculture and Consumer Services have  
16 entered into a contract or other agreement that, at a minimum,  
17 specifies the research objectives, the cost-share  
18 responsibilities of the parties, and a schedule that details  
19 the beginning and ending dates of the project.

20           4. Where water quality problems are demonstrated,  
21 despite the appropriate implementation, operation, and  
22 maintenance of best management practices and other measures  
23 required by ~~according to~~ rules adopted under this paragraph,  
24 the department, a water management district, or the Department  
25 of Agriculture and Consumer Services, in consultation with the  
26 department, shall institute a reevaluation of the best  
27 management practice or other measure. Should the reevaluation  
28 determine that the best management practice or other measure  
29 requires modification, the department, a water management  
30 district, or the Department of Agriculture and Consumer  
31 Services, as appropriate, shall revise the rule to require

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1 implementation of the modified practice within a reasonable  
2 time period as specified in the rule.

3           5. Agricultural records relating to processes or  
4 methods of production, costs of production, profits, or other  
5 financial information held by the Department of Agriculture  
6 and Consumer Services pursuant to subparagraphs 3. and 4. or  
7 pursuant to any rule adopted pursuant to subparagraph 2. are  
8 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
9 of the State Constitution. Upon request, records made  
10 confidential and exempt pursuant to this subparagraph shall be  
11 released to the department or any water management district if  
12 ~~provided that~~ the confidentiality specified by this  
13 subparagraph for such records is maintained.

14           6. The provisions of subparagraphs 1. and 2. do shall  
15 not preclude the department or water management district from  
16 requiring compliance with water quality standards or with  
17 current best management practice requirements set forth in any  
18 applicable regulatory program authorized by law to protect for  
19 ~~the purpose of protecting~~ water quality. Additionally,  
20 subparagraphs 1. and 2. are applicable only to the extent that  
21 they do not conflict with any rules adopted by the department  
22 which that are necessary to maintain a federally delegated or  
23 approved program.

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

26           (a) Delisting water bodies or water body segments from  
27 the list developed under subsection (4) pursuant to the  
28 guidance under subsection (5).†

29           (b) Administering ~~Administration of~~ funds to implement  
30 the total maximum daily load and basin management action  
31 planning programs.†

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1           (c) Water quality credit ~~Procedures for pollutant~~  
2 trading among the pollutant sources to a water body or water  
3 body segment. By July 1, 2007, rulemaking shall be initiated  
4 which provides for the following:~~including a mechanism for~~  
5 ~~the issuance and tracking of pollutant credits. Such~~  
6 ~~procedures may be implemented through permits or other~~  
7 ~~authorizations and must be legally binding. Prior to adopting~~  
8 ~~rules for pollutant trading under this paragraph, and no later~~  
9 ~~than November 30, 2006, the Department of Environmental~~  
10 ~~Protection shall submit a report to the Governor, the~~  
11 ~~President of the Senate, and the Speaker of the House of~~  
12 ~~Representatives containing recommendations on such rules,~~  
13 ~~including the proposed basis for equitable economically based~~  
14 ~~agreements and the tracking and accounting of pollution~~  
15 ~~credits or other similar mechanisms. Such recommendations~~  
16 ~~shall be developed in cooperation with a technical advisory~~  
17 ~~committee that includes experts in pollutant trading and~~  
18 ~~representatives of potentially affected parties;~~

19           1. The process to be used to determine how credits are  
20 generated, quantified, and validated;

21           2. A publicly accessible water quality credit trading  
22 registry that tracks water quality credits and trades and  
23 lists the prices paid for such credits and that does not allow  
24 the department to participate in the establishment of such  
25 prices;

26           3. Limitations on the availability and use of water  
27 quality credits, including a list of eligible pollutants or  
28 parameters and minimum water quality requirements and, where  
29 appropriate, adjustments to reflect best-management practice  
30 performance uncertainties and water-segment-specific location  
31 factors;

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1           4. The timing and duration of credits and allowance  
2 for credit transferability; and

3           5. Mechanisms for determining and ensuring compliance  
4 with trading procedures, including recordkeeping, monitoring,  
5 reporting, and inspections. Generators of traded credits are  
6 responsible for achieving the load reductions upon which the  
7 credits are based.

8           (d) The total maximum daily load calculation in  
9 accordance with paragraph (6)(a) immediately upon the  
10 effective date of this act, for those eight water segments  
11 within Lake Okeechobee proper as submitted to the United  
12 States Environmental Protection Agency pursuant to subsection  
13 (2), ~~7~~ and

14           (e) Implementation of other specific provisions.

15           Section 9. Subsection (1) of 403.0872, Florida  
16 Statutes, is amended to read:

17           403.0872 Operation permits for major sources of air  
18 pollution; annual operation license fee.--Provided that  
19 program approval pursuant to 42 U.S.C. s. 7661a has been  
20 received from the United States Environmental Protection  
21 Agency, beginning January 2, 1995, each major source of air  
22 pollution, including electrical power plants certified under  
23 s. 403.511, must obtain from the department an operation  
24 permit for a major source of air pollution under this section.  
25 This ~~operation~~ permit is the only department operation permit  
26 for a major source of air pollution required for such source;  
27 however provided, at the applicant's request, the department  
28 shall issue a separate acid rain permit for a major source of  
29 air pollution that is an affected source within the meaning of  
30 42 U.S.C. s. 7651a(1). Operation permits for major sources of  
31 air pollution, except general permits issued pursuant to s.

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1 403.814, must be issued in accordance with the procedures  
 2 contained in this section and in accordance with chapter 120;  
 3 however, to the extent that chapter 120 is inconsistent with  
 4 the provisions of this section, the procedures contained in  
 5 this section prevail.

6 (1) For purposes of this section, a major source of  
 7 air pollution means a stationary source of air pollution, or  
 8 any group of stationary sources within a contiguous area and  
 9 under common control, which emits any regulated air pollutant  
 10 and which is ~~any of the following~~:

11 (a) A major source within the meaning of 42 U.S.C. s.  
 12 7412(a)(1);

13 (b) A major stationary source or major emitting  
 14 facility within the meaning of 42 U.S.C. s. 7602(j) or 42  
 15 U.S.C. subchapter I, part C or part D;

16 (c) An affected source within the meaning of 42 U.S.C.  
 17 s. 7651a(1);

18 (d) An air pollution source subject to standards or  
 19 regulations under 42 U.S.C. s. 7411 or s. 7412; provided that  
 20 a source is not a major source solely because of its  
 21 regulation under 42 U.S.C. s. 7412(r); or

22 (e) A stationary air pollution source belonging to a  
 23 category designated as a 40 C.F.R. part 70 source by  
 24 regulations adopted by the administrator of the United States  
 25 Environmental Protection Agency under 42 U.S.C. ss. 7661 et  
 26 seq.

27  
 28 The department shall exempt those facilities that are subject  
 29 to this section solely because they are subject to  
 30 requirements under 42 U.S.C. s. 7411 or s. 7412 ~~s. 7411~~ or  
 31 solely because they are subject to reporting requirements

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1 under 42 U.S.C. s. 7412 for as long as the exemption is  
2 available under federal law.

3 Section 10. Paragraphs (e) and (f) of subsection (2)  
4 of section 403.088, Florida Statutes, are amended to read:

5 403.088 Water pollution operation permits;  
6 conditions.--

7 (2)

8 (e) However, if the discharge will not meet permit  
9 conditions or applicable statutes and rules, the department  
10 may issue, renew, revise, or reissue the operation permit if:

11 1. The applicant is constructing, installing, or  
12 placing into operation, or has submitted plans and a  
13 reasonable schedule for constructing, installing, or placing  
14 into operation, an approved pollution abatement facility or  
15 alternative waste disposal system;

16 2. The applicant needs permission to pollute the  
17 waters within the state for a period of time necessary to  
18 complete research, planning, construction, installation, or  
19 operation of an approved and acceptable pollution abatement  
20 facility or alternative waste disposal system;

21 3. There is no present, reasonable, alternative means  
22 of disposing of the waste other than by discharging it into  
23 the waters of the state;

24 4. The granting of an operation permit will be in the  
25 public interest; ~~or~~

26 5. The discharge will not be unreasonably destructive  
27 to the quality of the receiving waters; ~~or~~.

28 6. A water quality credit trade that meets the  
29 requirements of a total maximum daily load allocation has been  
30 approved in a final order issued under s. 403.067(7)(a)1.4.

31 (f) A permit issued, renewed, revised, or reissued

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1 pursuant to paragraph (e) shall be accompanied by an order  
 2 establishing a schedule for achieving compliance with all  
 3 permit conditions. Such permit may require compliance with  
 4 the accompanying order.

5  
 6 (Redesignate subsequent sections.)

7  
 8

9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 On page 1, lines 24-28, delete those lines

12

13 and insert:

14 Air act; amending s. 403.067, F.S.; providing  
 15 for the trading of water quality credits in the  
 16 total maximum daily load program in areas that  
 17 have adopted a basin action plan; providing for  
 18 rules and specifying what the rules must  
 19 address; amending s. 403.0872, F.S.; conforming  
 20 the requirements for air operation permits to  
 21 changes made to Title V of the Clean Air Act to  
 22 delete certain minor sources from the Title V  
 23 permitting requirements; amending s. 403.088,  
 24 F.S.; providing for the revision of water  
 25 pollution operation permits; amending s.  
 26 403.50663,

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