

By the Committee on Environmental Preservation and Conservation;
and Senator Gaetz

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1 A bill to be entitled

2 An act relating to water pollution control; amending s.
3 403.067, F.S.; providing requirements for basin management
4 action plans; allowing such plans to take into account the
5 benefits of pollutant load reduction achieved by point or
6 nonpoint sources, where appropriate; requiring that the
7 Department of Environmental Protection adopt all or part
8 of any such plan, or any amendment thereto, by secretarial
9 order as provided by state law; providing that the
10 provisions of the department's rule relating to the
11 equitable abatement of pollutants into surface waters may
12 not be applied to water bodies or water body segments for
13 which a basin management plan that takes into account
14 future or new expanded activities or discharges has been
15 adopted; authorizing water quality protection programs to
16 include the trading of water quality credits; authorizing
17 the department to adopt rules related to the trading of
18 water quality credits; requiring that such rulemaking
19 include certain provisions; specifying that a water
20 quality credit trading pilot project be limited to the
21 Lower St. Johns River Basin as a pilot project; requiring
22 that the department provide the Legislature with an annual
23 report regarding the effectiveness of the pilot project;
24 providing report requirements; providing that the
25 department may authorize and establish specific
26 requirements for water quality credit trading as part of
27 the Lower St. Johns River Basin adopted basin management
28 action plan; correcting cross-references to conform to
29 changes made by the act; amending s. 403.088, F.S.;

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30 authorizing the department to revise a water pollution
31 operation permit under certain circumstances; authorizing
32 the department to issue, renew, or reissue such a permit
33 if a water quality credit trade meets the requirements of
34 403.067, F.S.; requiring that revised permits be
35 accompanied by an order establishing a schedule for
36 achieving compliance with all permit conditions; providing
37 an effective date.

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Subsections (7) and (8) of section 403.067,
42 Florida Statutes, are amended, present subsections (9) through
43 (12) are renumbered as sections (11) through (14), respectively,
44 and new subsections (8) and (10) are added to that section, to
45 read:

46 403.067 Establishment and implementation of total maximum
47 daily loads.--

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

50 (a) Basin management action plans.--

51 1. In developing and implementing the total maximum daily
52 load for a water body, the department, or the department in
53 conjunction with a water management district, may develop a basin
54 management action plan that addresses some or all of the
55 watersheds and basins tributary to the water body. Such a plan
56 must ~~shall~~ integrate the appropriate management strategies
57 available to the state through existing water quality protection
58 programs to achieve the total maximum daily loads and may provide

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59 | for phased implementation of these management strategies to
60 | promote timely, cost-effective actions as provided for in s.
61 | 403.151. The plan must ~~shall~~ establish a schedule for
62 | implementing the management strategies, establish a basis for
63 | evaluating the plan's effectiveness, and identify feasible
64 | funding strategies for implementing the plan's management
65 | strategies. The management strategies may include regional
66 | treatment systems or other public works, where appropriate, and,
67 | in the basin listed in subsection (10) for which a basin
68 | management action plan has been adopted, voluntary trading of
69 | water quality credits to achieve the needed pollutant load
70 | reductions.

71 | 2. A basin management action plan must ~~shall~~ equitably
72 | allocate, pursuant to paragraph (6)(b), pollutant reductions to
73 | individual basins, as a whole to all basins, or to each
74 | identified point source or category of nonpoint sources, as
75 | appropriate. For nonpoint sources for which best management
76 | practices have been adopted, the initial requirement specified by
77 | the plan must ~~shall~~ be those practices developed pursuant to
78 | paragraph (c). Where appropriate, the plan may take into account
79 | the benefits of ~~provide~~ pollutant load reduction achieved by
80 | point or nonpoint sources ~~credits to dischargers~~ that have
81 | implemented management strategies to reduce pollutant loads,
82 | including best management practices, prior to the development of
83 | the basin management action plan. The plan must ~~shall~~ also
84 | identify the mechanisms that will address ~~by which~~ potential
85 | future increases in pollutant loading ~~will be addressed~~.

86 | 3. The basin management action planning process is intended
87 | to involve the broadest possible range of interested parties,

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88 | with the objective of encouraging the greatest amount of
89 | cooperation and consensus possible. In developing a basin
90 | management action plan, the department shall assure that key
91 | stakeholders, including, but not limited to, applicable local
92 | governments, water management districts, the Department of
93 | Agriculture and Consumer Services, other appropriate state
94 | agencies, local soil and water conservation districts,
95 | environmental groups, regulated interests, and affected pollution
96 | sources, are invited to participate in the process. The
97 | department shall hold at least one public meeting in the vicinity
98 | of the watershed or basin to discuss and receive comments during
99 | the planning process and shall otherwise encourage public
100 | participation to the greatest practicable extent. Notice of the
101 | public meeting must ~~shall~~ be published in a newspaper of general
102 | circulation in each county in which the watershed or basin lies
103 | not less than 5 days nor more than 15 days before the public
104 | meeting. A basin management action plan shall not supplant or
105 | otherwise alter any assessment made under subsection (3) or
106 | subsection (4) or any calculation or initial allocation.

107 | 4. The department shall adopt all or any part of a basin
108 | management action plan and any amendment to such plan by
109 | secretarial order pursuant to chapter 120 to implement the
110 | provisions of this section.

111 | 5. The basin management action plan must ~~shall~~ include
112 | milestones for implementation and water quality improvement, and
113 | an associated water quality monitoring component sufficient to
114 | evaluate whether reasonable progress in pollutant load reductions
115 | is being achieved over time. An assessment of progress toward
116 | these milestones shall be conducted every 5 years, and revisions

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117 | to the plan shall be made as appropriate. Revisions to the basin
118 | management action plan shall be made by the department in
119 | cooperation with basin stakeholders. Revisions to the management
120 | strategies required for nonpoint sources must ~~shall~~ follow the
121 | procedures set forth in subparagraph (c)4. Revised basin
122 | management action plans must ~~shall~~ be adopted pursuant to
123 | subparagraph 4.

124 | 6. In accordance with procedures adopted by rule under
125 | paragraph (9) (c), basin management action plans may allow point
126 | or nonpoint sources that will achieve greater pollutant
127 | reductions than required by an adopted total maximum load or
128 | wasteload allocation to generate, register, and trade water
129 | quality credits for the excess reductions to enable other sources
130 | to achieve their allocation; however, the generation of water
131 | quality credits does not remove the obligation of a source or
132 | activity to meet applicable technology requirements or adopted
133 | best management practices. Such plans must allow trading between
134 | NPDES permittees, and trading that may or may not involve NPDES
135 | permittees, where the generation or use of the credits involve an
136 | entity or activity not subject to department water discharge
137 | permits whose owner voluntarily elects to obtain department
138 | authorization for the generation and sale of credits.

139 | 7. The provisions of the department's rule relating to the
140 | equitable abatement of pollutants into surface waters shall not
141 | be applied to water bodies or water body segments for which a
142 | basin management plan that takes into account future new or
143 | expanded activities or discharges has been adopted under this
144 | section.

145 | (b) Total maximum daily load implementation.--

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146 1. The department shall be the lead agency in coordinating
147 the implementation of the total maximum daily loads through
148 existing water quality protection programs. Application of a
149 total maximum daily load by a water management district must
150 ~~shall~~ be consistent with this section and shall not require the
151 issuance of an order or a separate action pursuant to s.

152 120.536(1) or s. 120.54 for the adoption of the calculation and
153 allocation previously established by the department. Such
154 programs may include, but are not limited to:

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

157 b. Nonregulatory and incentive-based programs, including
158 best management practices, cost sharing, waste minimization,
159 pollution prevention, agreements established pursuant to s.
160 403.061(21), and public education;

161 c. Other water quality management and restoration
162 activities, for example surface water improvement and management
163 plans approved by water management districts or basin management
164 action plans developed pursuant to this subsection;

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

167 e. Public works including capital facilities; or

168 f. Land acquisition.

169 2. For a basin management action plan adopted pursuant to
170 paragraph (a) ~~subparagraph (a)4.~~, any management strategies and
171 pollutant reduction requirements associated with a pollutant of
172 concern for which a total maximum daily load has been developed,
173 including effluent limits set forth for a discharger subject to
174 NPDES permitting, if any, must ~~shall~~ be included in a timely

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175 manner in subsequent NPDES permits or permit modifications for
176 that discharger. The department shall not impose limits or
177 conditions implementing an adopted total maximum daily load in an
178 NPDES permit until the permit expires, the discharge is modified,
179 or the permit is reopened pursuant to an adopted basin management
180 action plan, unless required by federal law or regulation.

181 a. Absent a detailed allocation, total maximum daily loads
182 shall be implemented through NPDES permit conditions that provide
183 for ~~afford~~ a compliance schedule. In such instances, a facility's
184 NPDES permit must ~~shall~~ allow time for the issuance of an order
185 adopting the basin management action plan. The time allowed for
186 the issuance of an order adopting the plan shall not exceed 5
187 years. Upon issuance of an order adopting the plan, the permit
188 must ~~shall~~ be reopened or renewed, as necessary, and permit
189 conditions consistent with the plan must ~~shall~~ be established.
190 Notwithstanding the other provisions of this subparagraph, upon
191 request by a NPDES permittee, the department as part of a permit
192 issuance, renewal, or modification may establish individual
193 allocations prior to the adoption of a basin management action
194 plan.

195 b. For holders of NPDES municipal separate storm sewer
196 system permits and other stormwater sources, implementation of a
197 total maximum daily load or basin management action must ~~plan~~
198 shall be achieved, to the maximum extent practicable, through the
199 use of best management practices or other management measures.

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

203 d. Management strategies set forth in a basin management

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204 | action plan to be implemented by a discharger subject to
205 | permitting by the department must ~~shall~~ be completed pursuant to
206 | the schedule set forth in the basin management action plan. This
207 | implementation schedule may extend beyond the 5-year term of an
208 | NPDES permit.

209 | e. Management strategies and pollution reduction
210 | requirements set forth in a basin management action plan for a
211 | specific pollutant of concern shall not be subject to challenge
212 | under chapter 120 at the time they are incorporated, in an
213 | identical form, into a subsequent NPDES permit or permit
214 | modification.

215 | f. For nonagricultural pollutant sources not subject to
216 | NPDES permitting but permitted pursuant to other state, regional,
217 | or local water quality programs, the pollutant reduction actions
218 | adopted in a basin management action plan shall be implemented to
219 | the maximum extent practicable as part of those permitting
220 | programs.

221 | g. A nonpoint source discharger included in a basin
222 | management action plan must ~~shall~~ demonstrate compliance with the
223 | pollutant reductions established under ~~pursuant to~~ subsection (6)
224 | by either implementing the appropriate best management practices
225 | established pursuant to paragraph (c) or conducting water quality
226 | monitoring prescribed by the department or a water management
227 | district. A nonpoint source discharger may, in accordance with
228 | department rules, supplement the implementation of best-
229 | management practices with water quality credit trades in order to
230 | demonstrate compliance with the pollutant reductions established
231 | under subsection (6).

232 | h. A nonpoint source discharger included in a basin

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233 management action plan may be subject to enforcement action by
234 the department or a water management district based upon a
235 failure to implement the responsibilities set forth in sub-
236 subparagraph g.

237 i. A landowner, discharger, or other responsible person who
238 is implementing applicable management strategies specified in an
239 adopted basin management action plan shall not be required by
240 permit, enforcement action, or otherwise to implement additional
241 management strategies to reduce pollutant loads to attain the
242 pollutant reductions established pursuant to subsection (6) and
243 shall be deemed to be in compliance with this section. This
244 subparagraph does not limit the authority of the department to
245 amend a basin management action plan as specified in subparagraph
246 (a)5.

247 (c) Best management practices.--

248 1. The department, in cooperation with the water management
249 districts and other interested parties, as appropriate, may
250 develop suitable interim measures, best management practices, or
251 other measures necessary to achieve the level of pollution
252 reduction established by the department for nonagricultural
253 nonpoint pollutant sources in allocations developed pursuant to
254 subsection (6) and this subsection. These practices and measures
255 may be adopted by rule by the department and the water management
256 districts ~~pursuant to ss. 120.536(1) and 120.54,~~ and, where
257 adopted by rule, shall be implemented by those parties
258 responsible for nonagricultural nonpoint source pollution.

259 2. The Department of Agriculture and Consumer Services may
260 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
261 suitable interim measures, best management practices, or other

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262 measures necessary to achieve the level of pollution reduction
263 established by the department for agricultural pollutant sources
264 in allocations developed pursuant to subsection (6) and this
265 subsection or for programs implemented pursuant to paragraph
266 (13) (b) ~~(11) (b)~~. These practices and measures may be implemented
267 by those parties responsible for agricultural pollutant sources
268 and the department, the water management districts, and the
269 Department of Agriculture and Consumer Services shall assist with
270 implementation. In the process of developing and adopting rules
271 for interim measures, best management practices, or other
272 measures, the Department of Agriculture and Consumer Services
273 shall consult with the department, the Department of Health, the
274 water management districts, representatives from affected farming
275 groups, and environmental group representatives. Such rules must
276 ~~shall~~ also incorporate provisions for a notice of intent to
277 implement the practices and a system to assure the implementation
278 of the practices, including recordkeeping requirements.

279 3. Where interim measures, best management practices, or
280 other measures are adopted by rule, the effectiveness of such
281 practices in achieving the levels of pollution reduction
282 established in allocations developed by the department pursuant
283 to subsection (6) and this subsection or in programs implemented
284 pursuant to paragraph (13) (b) must ~~(11) (b) shall~~ be verified at
285 representative sites by the department. The department shall use
286 best professional judgment in making the initial verification
287 that the best management practices are reasonably expected to be
288 effective and, where applicable, must ~~shall~~ notify the
289 appropriate water management district or the Department of
290 Agriculture and Consumer Services of its initial verification

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291 | before ~~prior to~~ the adoption of a rule proposed pursuant to this
292 | paragraph. Implementation, in accordance with rules adopted under
293 | this paragraph, of practices that have been initially verified to
294 | be effective, or verified to be effective by monitoring at
295 | representative sites, by the department, shall provide a
296 | presumption of compliance with state water quality standards and
297 | release from the provisions of s. 376.307(5) for those pollutants
298 | addressed by the practices, and the department is not authorized
299 | to institute proceedings against the owner of the source of
300 | pollution to recover costs or damages associated with the
301 | contamination of surface water or groundwater caused by those
302 | pollutants. Research projects funded by the department, a water
303 | management district, or the Department of Agriculture and
304 | Consumer Services to develop or demonstrate interim measures or
305 | best management practices shall be granted a presumption of
306 | compliance with state water quality standards and a release from
307 | the provisions of s. 376.307(5). The presumption of compliance
308 | and release is ~~shall be~~ limited to the research site and only for
309 | those pollutants addressed by the interim measures or best
310 | management practices. Eligibility for the presumption of
311 | compliance and release is ~~shall be~~ limited to research projects
312 | on sites where the owner or operator of the research site and the
313 | department, a water management district, or the Department of
314 | Agriculture and Consumer Services have entered into a contract or
315 | other agreement that, at a minimum, specifies the research
316 | objectives, the cost-share responsibilities of the parties, and a
317 | schedule that details the beginning and ending dates of the
318 | project.

319 | 4. Where water quality problems are demonstrated, despite

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320 the appropriate implementation, operation, and maintenance of
321 best management practices and other measures required by
322 ~~according to~~ rules adopted under this paragraph, the department,
323 a water management district, or the Department of Agriculture and
324 Consumer Services, in consultation with the department, shall
325 institute a reevaluation of the best management practice or other
326 measure. Should the reevaluation determine that the best
327 management practice or other measure requires modification, the
328 department, a water management district, or the Department of
329 Agriculture and Consumer Services, as appropriate, shall revise
330 the rule to require implementation of the modified practice
331 within a reasonable time period as specified in the rule.

332 5. Agricultural records relating to processes or methods of
333 production, costs of production, profits, or other financial
334 information held by the Department of Agriculture and Consumer
335 Services pursuant to subparagraphs 3. and 4. or pursuant to any
336 rule adopted pursuant to subparagraph 2. are confidential and
337 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
338 Constitution. Upon request, records made confidential and exempt
339 pursuant to this subparagraph shall be released to the department
340 or any water management district provided that the
341 confidentiality specified by this subparagraph for such records
342 is maintained.

343 6. The provisions of subparagraphs 1. and 2. do ~~shall~~ not
344 preclude the department or water management district from
345 requiring compliance with water quality standards or with current
346 best management practice requirements set forth in any applicable
347 regulatory program authorized by law for the purpose of
348 protecting water quality. Additionally, subparagraphs 1. and 2.

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349 are applicable only to the extent that they do not conflict with
350 any rules adopted by the department that are necessary to
351 maintain a federally delegated or approved program.

352 (8) WATER QUALITY CREDIT TRADING.--

353 (a) Water quality credit trading must be consistent with
354 federal law and regulation.

355 (b) Water quality credit trading must be implemented
356 through permits, including water quality credit trading permits,
357 other authorizations, or other legally binding agreements as
358 established by department rule.

359 (c) The department shall establish the pollutant load-
360 reduction value of water quality credits and shall be responsible
361 for authorizing their use.

362 (d) A person that acquires water quality credits ("buyer")
363 shall timely submit to the department an affidavit, signed by the
364 buyer and the credit generator ("seller"), disclosing the term of
365 acquisition, number of credits, unit credit price paid, and any
366 state funding received for the facilities or activities that
367 generate the credits. The department shall not participate in the
368 establishment of credit prices.

369 (e) Sellers of water quality credits are responsible for
370 achieving the load reductions on which the credits are based and
371 complying with the terms of the department authorization and any
372 trading agreements into which they may have entered.

373 (f) Buyers of water quality credits are responsible for
374 complying with the terms of the department water discharge
375 permit.

376 (g) The department shall take appropriate action to address
377 the failure of a credit seller to fulfill its obligations,

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378 including, as necessary, deeming the seller's credits invalid if
379 the seller cannot achieve the load reductions on which the
380 credits were based in a reasonable time. If the department
381 determines duly acquired water quality credits to be invalid, in
382 whole or in part, thereby causing the credit buyer to be unable
383 to timely meet its pollutant-reduction obligations under this
384 section, the department shall issue an order establishing the
385 actions required of the buyer to meet its obligations by
386 alternative means and a reasonable schedule for completing the
387 actions. The invalidation of credits shall not itself constitute
388 a violation of the buyer's water discharge permit.

389 (9) ~~(8)~~ RULES.--The department is authorized to adopt rules
390 pursuant to ss. 120.536(1) and 120.54 for:

391 (a) Delisting water bodies or water body segments from the
392 list developed under subsection (4) pursuant to the guidance
393 under subsection (5).~~†~~

394 (b) Administering ~~Administration~~ of funds to implement the
395 total maximum daily load and basin management action planning
396 programs.~~†~~

397 (c) Water quality credit ~~Procedures for pollutant trading~~
398 among the pollutant sources to a water body or water body
399 segment. By July 1, 2008, rulemaking must be initiated which
400 provides for the following:~~including a mechanism for the~~
401 issuance and tracking of pollutant credits. ~~Such procedures may~~
402 be implemented through permits or other authorizations and must
403 be legally binding. ~~Prior to adopting rules for pollutant trading~~
404 under this paragraph, and no later than November 30, 2006, the
405 Department of Environmental Protection shall submit a report to
406 the Governor, the President of the Senate, and the Speaker of the

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407 ~~House of Representatives containing recommendations on such~~
408 ~~rules, including the proposed basis for equitable economically~~
409 ~~based agreements and the tracking and accounting of pollution~~
410 ~~credits or other similar mechanisms. Such recommendations shall~~
411 ~~be developed in cooperation with a technical advisory committee~~
412 ~~that includes experts in pollutant trading and representatives of~~
413 ~~potentially affected parties;~~

414 1. The process to be used to determine how credits are
415 generated, quantified, and validated.

416 2. A publicly accessible water quality credit trading
417 registry that tracks water quality credits, trading activities,
418 and prices paid for credits.

419 3. Limitations on the availability and use of water quality
420 credits, including a list of eligible pollutants or parameters
421 and minimum water quality requirements and, where appropriate,
422 adjustments to reflect best-management practice performance
423 uncertainties and water-segment-specific location factors.

424 4. The timing and duration of credits and allowance for
425 credit transferability.

426 5. Mechanisms for determining and ensuring compliance with
427 trading procedures, including recordkeeping, monitoring,
428 reporting, and inspections.

429
430 At the time of publication of the draft rules on water quality
431 credit trading, the department shall submit a copy to the United
432 States Environmental Protection Agency for review.

433 (d) The total maximum daily load calculation in accordance
434 with paragraph (6) (a) immediately upon the effective date of this
435 act, for those eight water segments within Lake Okeechobee proper

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436 as submitted to the United States Environmental Protection Agency
437 pursuant to subsection (2) ~~and~~

438 (e) Implementation of other specific provisions.

439 (10) Water quality credit trading shall be limited to the
440 Lower St. Johns River Basin, as defined by the department, as a
441 pilot project. The department may authorize water quality credit
442 trading and establish specific requirements for trading in the
443 adopted basin management action plan for the Lower St. Johns
444 River Basin prior to the adoption of rules under paragraph (9) (c)
445 in order to effectively implement the pilot project. Entities
446 that participate in water quality credit trades shall timely
447 report to the department the prices for credits, how the prices
448 were determined, and any state funding received for the
449 facilities or activities that generated the credits. The
450 department shall not participate in the establishment of credit
451 prices. No later than 24 months after adoption of the basin
452 management action plan for the Lower St. Johns River, the
453 department shall submit a report to the Governor, the President
454 of the Senate, and the Speaker of the House of Representatives on
455 the effectiveness of the pilot project, including the following
456 information:

457 (a) A summary of how water quality credit trading was
458 implemented, including the number of pounds of pollutants traded.

459 (b) A description of the individual trades and estimated
460 pollutant load reductions that are expected to result from each
461 trade.

462 (c) A description of any conditions placed on trades.

463 (d) Prices associated with the trades, as reported by the
464 traders.

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465 (e) A recommendation as to whether other areas of the state
466 would benefit from water quality credit trading and, if so, an
467 identification of the statutory changes necessary to expand the
468 scope of trading.

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

471 403.088 Water pollution operation permits; conditions.--

472 (2)

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

476 1. The applicant is constructing, installing, or placing
477 into operation, or has submitted plans and a reasonable schedule
478 for constructing, installing, or placing into operation, an
479 approved pollution abatement facility or alternative waste
480 disposal system;

481 2. The applicant needs permission to pollute the waters
482 within the state for a period of time necessary to complete
483 research, planning, construction, installation, or operation of
484 an approved and acceptable pollution abatement facility or
485 alternative waste disposal system;

486 3. There is no present, reasonable, alternative means of
487 disposing of the waste other than by discharging it into the
488 waters of the state;

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

491 5. The discharge will not be unreasonably destructive to
492 the quality of the receiving waters; or-

493 6. A water quality credit trade that meets the requirements

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494 | of s. 403.067.

495 | (f) A permit issued, renewed, or reissued pursuant to
496 | paragraph (e) shall be accompanied by an order establishing a
497 | schedule for achieving compliance with all permit conditions.
498 | Such permit may require compliance with the accompanying order.

499 | Section 3. This act shall take effect July 1, 2008.