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CS/HB 547, Engrossed 2

2008 Legislature

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

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29 | changes made by the act; amending s. 403.088, F.S.;

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

54 | basin 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

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57 available to the state through existing water quality protection
 58 programs to achieve the total maximum daily loads and may
 59 provide for phased implementation of these management strategies
 60 to 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
 77 by 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

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85 future increases in pollutant loading ~~will be addressed~~.

86 3. The basin management action planning process is
87 intended to involve the broadest possible range of interested
88 parties, with the objective of encouraging the greatest amount
89 of 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
96 pollution sources, are invited to participate in the process.
97 The department shall hold at least one public meeting in the
98 vicinity of the watershed or basin to discuss and receive
99 comments during the planning process and shall otherwise
100 encourage public participation to the greatest practicable
101 extent. Notice of the public meeting must ~~shall~~ be published in
102 a newspaper of general circulation in each county in which the
103 watershed or basin lies not less than 5 days nor more than 15
104 days before the public meeting. A basin management action plan
105 shall not supplant or otherwise alter any assessment made under
106 subsection (3) or subsection (4) or any calculation or initial
107 allocation.

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

112 5. The basin management action plan must ~~shall~~ include

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113 milestones for implementation and water quality improvement, and
 114 an associated water quality monitoring component sufficient to
 115 evaluate whether reasonable progress in pollutant load
 116 reductions is being achieved over time. An assessment of
 117 progress toward these milestones shall be conducted every 5
 118 years, and revisions to the plan shall be made as appropriate.
 119 Revisions to the basin management action plan shall be made by
 120 the department in cooperation with basin stakeholders. Revisions
 121 to the management strategies required for nonpoint sources must
 122 ~~shall~~ follow the procedures set forth in subparagraph (c)4.
 123 Revised basin management action plans must ~~shall~~ be adopted
 124 pursuant to subparagraph 4.

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

140 7. The provisions of the department's rule relating to the

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141 equitable abatement of pollutants into surface waters shall not
 142 be applied to water bodies or water body segments for which a
 143 basin management plan that takes into account future new or
 144 expanded activities or discharges has been adopted under this
 145 section.

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

147 1. The department shall be the lead agency in coordinating
 148 the implementation of the total maximum daily loads through
 149 existing water quality protection programs. Application of a
 150 total maximum daily load by a water management district must
 151 ~~shall~~ be consistent with this section and shall not require the
 152 issuance of an order or a separate action pursuant to s.
 153 120.536(1) or s. 120.54 for the adoption of the calculation and
 154 allocation previously established by the department. Such
 155 programs may include, but are not limited to:

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

158 b. Nonregulatory and incentive-based programs, including
 159 best management practices, cost sharing, waste minimization,
 160 pollution prevention, agreements established pursuant to s.
 161 403.061(21), and public education;

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

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

168 e. Public works including capital facilities; or

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169 f. Land acquisition.
 170 2. For a basin management action plan adopted pursuant to
 171 paragraph (a) ~~subparagraph (a)4.~~, any management strategies and
 172 pollutant reduction requirements associated with a pollutant of
 173 concern for which a total maximum daily load has been developed,
 174 including effluent limits set forth for a discharger subject to
 175 NPDES permitting, if any, must ~~shall~~ be included in a timely
 176 manner in subsequent NPDES permits or permit modifications for
 177 that discharger. The department shall not impose limits or
 178 conditions implementing an adopted total maximum daily load in
 179 an NPDES permit until the permit expires, the discharge is
 180 modified, or the permit is reopened pursuant to an adopted basin
 181 management action plan.

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

196 b. For holders of NPDES municipal separate storm sewer

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197 system permits and other stormwater sources, implementation of a
 198 total maximum daily load or basin management action plan must
 199 ~~shall~~ be achieved, to the maximum extent practicable, through
 200 the use of best management practices or other management
 201 measures.

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

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

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

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

223 g. A nonpoint source discharger included in a basin
 224 management action plan must ~~shall~~ demonstrate compliance with

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

234 h. A nonpoint source discharger included in a basin
 235 management action plan may be subject to enforcement action by
 236 the department or a water management district based upon a
 237 failure to implement the responsibilities set forth in sub-
 238 subparagraph g.

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

249 (c) Best management practices.--

250 1. The department, in cooperation with the water
 251 management districts and other interested parties, as
 252 appropriate, may develop suitable interim measures, best

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253 management practices, or other measures necessary to achieve the
 254 level of pollution reduction established by the department for
 255 nonagricultural nonpoint pollutant sources in allocations
 256 developed pursuant to subsection (6) and this subsection. These
 257 practices and measures may be adopted by rule by the department
 258 and the water management districts ~~pursuant to ss. 120.536(1)~~
 259 ~~and 120.54~~, and, where adopted by rule, shall be implemented by
 260 those parties responsible for nonagricultural nonpoint source
 261 pollution.

262 2. The Department of Agriculture and Consumer Services may
 263 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
 264 suitable interim measures, best management practices, or other
 265 measures necessary to achieve the level of pollution reduction
 266 established by the department for agricultural pollutant sources
 267 in allocations developed pursuant to subsection (6) and this
 268 subsection or for programs implemented pursuant to paragraph
 269 (13)(b) ~~(11)(b)~~. These practices and measures may be implemented
 270 by those parties responsible for agricultural pollutant sources
 271 and the department, the water management districts, and the
 272 Department of Agriculture and Consumer Services shall assist
 273 with implementation. In the process of developing and adopting
 274 rules for interim measures, best management practices, or other
 275 measures, the Department of Agriculture and Consumer Services
 276 shall consult with the department, the Department of Health, the
 277 water management districts, representatives from affected
 278 farming groups, and environmental group representatives. Such
 279 rules must ~~shall~~ also incorporate provisions for a notice of
 280 intent to implement the practices and a system to assure the

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281 implementation of the practices, including recordkeeping
282 requirements.

283 3. Where interim measures, best management practices, or
284 other measures are adopted by rule, the effectiveness of such
285 practices in achieving the levels of pollution reduction
286 established in allocations developed by the department pursuant
287 to subsection (6) and this subsection or in programs implemented
288 pursuant to paragraph (13)(b) must ~~(11)(b) shall~~ be verified at
289 representative sites by the department. The department shall use
290 best professional judgment in making the initial verification
291 that the best management practices are reasonably expected to be
292 effective and, where applicable, must ~~shall~~ notify the
293 appropriate water management district or the Department of
294 Agriculture and Consumer Services of its initial verification
295 before ~~prior to~~ the adoption of a rule proposed pursuant to this
296 paragraph. Implementation, in accordance with rules adopted
297 under this paragraph, of practices that have been initially
298 verified to be effective, or verified to be effective by
299 monitoring at representative sites, by the department, shall
300 provide a presumption of compliance with state water quality
301 standards and release from the provisions of s. 376.307(5) for
302 those pollutants addressed by the practices, and the department
303 is not authorized to institute proceedings against the owner of
304 the source of pollution to recover costs or damages associated
305 with the contamination of surface water or groundwater caused by
306 those pollutants. Research projects funded by the department, a
307 water management district, or the Department of Agriculture and
308 Consumer Services to develop or demonstrate interim measures or

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309 best management practices shall be granted a presumption of
 310 compliance with state water quality standards and a release from
 311 the provisions of s. 376.307(5). The presumption of compliance
 312 and release is ~~shall be~~ limited to the research site and only
 313 for those pollutants addressed by the interim measures or best
 314 management practices. Eligibility for the presumption of
 315 compliance and release is ~~shall be~~ limited to research projects
 316 on sites where the owner or operator of the research site and
 317 the department, a water management district, or the Department
 318 of Agriculture and Consumer Services have entered into a
 319 contract or other agreement that, at a minimum, specifies the
 320 research objectives, the cost-share responsibilities of the
 321 parties, and a schedule that details the beginning and ending
 322 dates of the project.

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

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

348 6. The provisions of subparagraphs 1. and 2. do ~~shall~~ not
 349 preclude the department or water management district from
 350 requiring compliance with water quality standards or with
 351 current best management practice requirements set forth in any
 352 applicable regulatory program authorized by law for the purpose
 353 of protecting water quality. Additionally, subparagraphs 1. and
 354 2. are applicable only to the extent that they do not conflict
 355 with any rules adopted by the department that are necessary to
 356 maintain a federally delegated or approved program.

357 (8) WATER QUALITY CREDIT TRADING.--

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

360 (b) Water quality credit trading must be implemented
 361 through permits, including water quality credit trading permits,
 362 other authorizations, or other legally binding agreements as
 363 established by department rule.

364 (c) The department shall establish the pollutant load-

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365 reduction value of water quality credits and shall be
 366 responsible for authorizing their use.

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

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

378 (f) Buyers of water quality credits are responsible for
 379 complying with the terms of the department water discharge
 380 permit.

381 (g) The department shall take appropriate action to
 382 address the failure of a credit seller to fulfill its
 383 obligations, including, as necessary, deeming the seller's
 384 credits invalid if the seller cannot achieve the load reductions
 385 on which the credits were based in a reasonable time. If the
 386 department determines duly acquired water quality credits to be
 387 invalid, in whole or in part, thereby causing the credit buyer
 388 to be unable to timely meet its pollutant-reduction obligations
 389 under this section, the department shall issue an order
 390 establishing the actions required of the buyer to meet its
 391 obligations by alternative means and a reasonable schedule for
 392 completing the actions. The invalidation of credits shall not

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393 itself constitute a violation of the buyer's water discharge
 394 permit.

395 ~~(9)(8)~~ RULES.--The department is authorized to adopt rules
 396 pursuant to ss. 120.536(1) and 120.54 for:

397 (a) Delisting water bodies or water body segments from the
 398 list developed under subsection (4) pursuant to the guidance
 399 under subsection (5).~~†~~

400 (b) Administering ~~Administration~~ of funds to implement the
 401 total maximum daily load and basin management action planning
 402 programs.~~†~~

403 (c) Water quality credit ~~Procedures for pollutant~~ trading
 404 among the pollutant sources to a water body or water body
 405 segment. By September 1, 2008, rulemaking must be initiated
 406 which provides for the following: ~~including a mechanism for the~~
 407 ~~issuance and tracking of pollutant credits. Such procedures may~~
 408 ~~be implemented through permits or other authorizations and must~~
 409 ~~be legally binding. Prior to adopting rules for pollutant~~
 410 ~~trading under this paragraph, and no later than November 30,~~
 411 ~~2006, the Department of Environmental Protection shall submit a~~
 412 ~~report to the Governor, the President of the Senate, and the~~
 413 ~~Speaker of the House of Representatives containing~~
 414 ~~recommendations on such rules, including the proposed basis for~~
 415 ~~equitable economically based agreements and the tracking and~~
 416 ~~accounting of pollution credits or other similar mechanisms.~~
 417 ~~Such recommendations shall be developed in cooperation with a~~
 418 ~~technical advisory committee that includes experts in pollutant~~
 419 ~~trading and representatives of potentially affected parties;~~

420 1. The process to be used to determine how credits are

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421 generated, quantified, and validated.

422 2. A publicly accessible water quality credit trading
 423 registry that tracks water quality credits, trading activities,
 424 and prices paid for credits.

425 3. Limitations on the availability and use of water
 426 quality credits, including a list of eligible pollutants or
 427 parameters and minimum water quality requirements and, where
 428 appropriate, adjustments to reflect best-management practice
 429 performance uncertainties and water-segment-specific location
 430 factors.

431 4. The timing and duration of credits and allowance for
 432 credit transferability.

433 5. Mechanisms for determining and ensuring compliance with
 434 trading procedures, including recordkeeping, monitoring,
 435 reporting, and inspections.

436
 437 At the time of publication of the draft rules on water quality
 438 credit trading, the department shall submit a copy to the United
 439 States Environmental Protection Agency for review.

440 (d) The total maximum daily load calculation in accordance
 441 with paragraph (6) (a) immediately upon the effective date of
 442 this act, for those eight water segments within Lake Okeechobee
 443 proper as submitted to the United States Environmental
 444 Protection Agency pursuant to subsection (2) ~~and~~

445 (e) Implementation of other specific provisions.

446 (10) Water quality credit trading shall be limited to the
 447 Lower St. Johns River Basin, as defined by the department, as a
 448 pilot project. The department may authorize water quality credit

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449 trading and establish specific requirements for trading in the
 450 adopted basin management action plan for the Lower St. Johns
 451 River Basin prior to the adoption of rules under paragraph
 452 (9) (c) in order to effectively implement the pilot project.
 453 Entities that participate in water quality credit trades shall
 454 timely report to the department the prices for credits, how the
 455 prices were determined, and any state funding received for the
 456 facilities or activities that generated the credits. The
 457 department shall not participate in the establishment of credit
 458 prices. No later than 24 months after adoption of the basin
 459 management action plan for the Lower St. Johns River, the
 460 department shall submit a report to the Governor, the President
 461 of the Senate, and the Speaker of the House of Representatives
 462 on the effectiveness of the pilot project, including the
 463 following information:
 464 (a) A summary of how water quality credit trading was
 465 implemented, including the number of pounds of pollutants
 466 traded.
 467 (b) A description of the individual trades and estimated
 468 pollutant load reductions that are expected to result from each
 469 trade.
 470 (c) A description of any conditions placed on trades.
 471 (d) Prices associated with the trades, as reported by the
 472 traders.
 473 (e) A recommendation as to whether other areas of the
 474 state would benefit from water quality credit trading and, if
 475 so, an identification of the statutory changes necessary to
 476 expand the scope of trading.

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

479 403.088 Water pollution operation permits; conditions.--

480 (2)

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

484 1. The applicant is constructing, installing, or placing
 485 into operation, or has submitted plans and a reasonable schedule
 486 for constructing, installing, or placing into operation, an
 487 approved pollution abatement facility or alternative waste
 488 disposal system;

489 2. The applicant needs permission to pollute the waters
 490 within the state for a period of time necessary to complete
 491 research, planning, construction, installation, or operation of
 492 an approved and acceptable pollution abatement facility or
 493 alternative waste disposal system;

494 3. There is no present, reasonable, alternative means of
 495 disposing of the waste other than by discharging it into the
 496 waters of the state;

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

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

501 6. A water quality credit trade that meets the
 502 requirements of s. 403.067.

503 (f) A permit issued, renewed, or reissued pursuant to
 504 paragraph (e) shall be accompanied by an order establishing a

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505 | schedule for achieving compliance with all permit conditions.
506 | Such permit may require compliance with the accompanying order.
507 | Section 3. This act shall take effect July 1, 2008.
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509 |