

1 A bill to be entitled
2 An act relating to water quality; directing the Department
3 of Environmental Protection to publish a notice of
4 proposed rulemaking by a specified date to revise certain
5 criteria for the state's waterbodies; creating s.
6 403.0675, F.S.; prohibiting the implementation of certain
7 federal numeric nutrient water quality criteria rules by
8 the Department of Environmental Protection, water
9 management districts, and other governmental entities;
10 clarifying the authority of water management districts and
11 other governmental entities with respect to pollution
12 control; providing construction; authorizing the
13 department to adopt numeric nutrient water quality
14 criteria for surface waters under certain conditions;
15 providing that certain total maximum daily loads and
16 associated numeric interpretations constitute site
17 specific numeric nutrient water quality criteria; creating
18 s. 403.066, F.S.; providing for the classification of
19 designated uses of the state's surface waters by human use
20 and aquatic life use; redesignating specified surface
21 water classifications; authorizing the department to adopt
22 rules; providing for the department to adopt a
23 classification system by rule, subject to ratification by
24 the Legislature; providing for repeal of the section upon
25 ratification of the department rule; providing for effect
26 of the section; amending ss. 373.199, 373.453, 373.4592,
27 373.461, 380.061, 403.061, 403.086, 403.0882, 403.121,

28 403.707, and 403.813, F.S.; conforming provisions to
 29 changes made by the act; providing effective dates.
 30

31 Be It Enacted by the Legislature of the State of Florida:
 32

33 Section 1. The Department of Environmental Protection is
 34 directed to publish a notice of proposed rulemaking no later
 35 than May 31, 2012, to revise the dissolved oxygen criteria
 36 applicable to Florida waterbodies to take into account the
 37 variability occurring in nature.

38 Section 2. Section 403.0675, Florida Statutes, is created
 39 to read:

40 403.0675 Numeric nutrient water quality criteria.—

41 (1) (a) The department, water management districts, and all
 42 other state, regional, and local governmental entities may not
 43 implement or give any effect to the United States Environmental
 44 Protection Agency's nutrient water quality criteria rules for
 45 the state's lakes and flowing waters, finalized on December 6,
 46 2010, and published in Volume 75, No. 233 of the Federal
 47 Register, in any regulatory program administered by the
 48 department, water management district, or governmental entity
 49 where the criteria are more stringent than necessary to protect
 50 the biological community and the designated use.

51 (b) The prohibition in paragraph (a) does not limit the
 52 ability of any water management district or any other state,
 53 regional, or local governmental entity from applying for any
 54 pollution discharge permit or complying with the conditions of
 55 such permits, including those issued under the Federal National

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56 Pollutant Discharge Elimination System, or from implementing
57 best management practices, source control, or pollution
58 abatement measures for water quality improvement programs as
59 provided by law.

60 (2) This section does not derogate or limit county and
61 municipal home rule authority.

62 (3) (a) Notwithstanding subsection (1), the department may
63 adopt numeric nutrient water quality criteria for a particular
64 surface water or group of surface waters pursuant to s. 403.061,
65 which may be expressed in terms of concentration, mass loading,
66 waste load allocation, and surrogate standards, such as
67 chlorophyll-a, and may be supplemented by narrative statements.

68 (b) The standards established pursuant to this subsection
69 shall be based on objective and credible data and scientific
70 studies and analysis. The department's implementation of the
71 standard shall only require nutrient reductions where necessary
72 to protect the biological community and the designated use.

73 (4) Numeric nutrient total maximum daily loads developed
74 by the department and approved by the United States
75 Environmental Protection Agency constitute the site specific
76 numeric interpretation of the narrative nutrient water quality
77 criteria.

78 Section 3. Effective July 1, 2012, section 403.066,
79 Florida Statutes, is created to read:

80 403.066 Classification of surface waters.-

81 (1) Except as provided in paragraphs (2) (d) and (e), the
82 designated uses for all surface waters of the state shall be
83 classified to include a Human Use and an Aquatic Life Use as

84 follows:

85 (a) Human Uses.—

86 1. Human Use 1 – Protection of potable water supply
87 suitable for human consumption following conventional drinking
88 water treatment methods, fish consumption, and full body
89 contact.—This use requires maintaining a level of water quality
90 suitable for potable water or intended to be suitable for human
91 consumption after conventional drinking water treatment methods.

92 2. Human Use 2 – Protection of shellfish harvesting for
93 human consumption, fish consumption, and full body contact.—This
94 use requires maintaining a level of water quality that prevents
95 unpalatable flavor or accumulation of substances harmful to
96 human health in shellfish tissue.

97 3. Human Use 3 – Protection of fish consumption and full
98 body contact.—This use requires maintaining a level of water
99 quality that prevents unpalatable flavor or accumulation of
100 substances harmful to human health in fish tissue. Recreational
101 uses may support prolonged and direct contact with the water
102 with minimal risk of water ingestion in quantities sufficient to
103 pose a health hazard.

104 4. Human Use 4 – Protection of fish consumption and
105 incidental human contact.—This use requires maintaining a level
106 of water quality that prevents unpalatable flavor or
107 accumulation of substances harmful to human health in fish
108 tissue. Recreational uses may result in contact with the water
109 that is incidental or accidental with minimal risk of water
110 ingestion. Other uses include, but are not limited to, waters
111 used for flood control, shipping ports, stormwater or

112 agricultural conveyance or storage, nonpotable water supply, or
113 waters that are constructed and wholly artificial.

114 5. Human Use 5 – Protection of fish consumption.–This use
115 requires maintaining a level of water quality that prevents
116 unpalatable flavor or accumulation of substances harmful to
117 human health in fish tissue. Human contact with the water is
118 limited or restricted due to unsafe physical conditions. Other
119 uses include, but are not limited to, waters used for flood
120 control, shipping ports, stormwater or agricultural conveyance
121 or storage, nonpotable water supply, or waters that are
122 constructed and wholly artificial.

123 6. Human Use 6 – Protection of waters for crop irrigation
124 or consumption by livestock.–This use requires maintaining a
125 level of water quality suitable for consumption of water by
126 livestock or surface water withdrawal for the irrigation of
127 cropland.

128 7. Human Use 7 – Utility and industrial uses.–This use
129 requires maintaining a level of water quality suitable for
130 utility and industrial purposes.

131 (b) Aquatic Life Uses.–

132 1. Aquatic Life Use 1 – Propagation and maintenance of
133 exceptional aquatic communities that approximate the biological
134 structure and function of the natural background.–Under this
135 use, natural structural, functional, and taxonomic integrity is
136 preserved or approximated; structure and function are similar to
137 the natural community; and ecosystem level functions are fully
138 maintained.

139 2. Aquatic Life Use 2 – Propagation and maintenance of

140 healthy, well-balanced aquatic communities with minimal
 141 deviation of the biological structure and function relative to
 142 the natural background.—Under this use, overall balanced
 143 distribution of all expected groups of taxa and all ecosystem
 144 functions are fully maintained. May have changes in the
 145 biological structure as evidenced by the replacement of
 146 sensitive taxa by more tolerant taxa.

147 3. Aquatic Life Use 3 – Protection of aquatic communities
 148 with moderate deviation of the biological structure and function
 149 relative to the natural background.—Under this use, changes in
 150 the biological structure and function have resulted in an
 151 altered aquatic community, a transition between a community
 152 characterized by sensitive or expected taxa to one characterized
 153 by tolerant taxa has occurred, and biology may be limited due to
 154 habitat limitations, hydrologic modifications, physical
 155 alterations, or other factors identified by department rule.

156 4. Aquatic Life Use 4 – Protection of aquatic communities
 157 with substantial deviation of the biological structure and
 158 function relative to the natural background.—Under this use,
 159 substantial changes in the biological structure and function
 160 have resulted in a limited aquatic community, the community
 161 consists primarily of tolerant taxa able to survive and
 162 propagate under adverse or variable environmental conditions,
 163 and biology may be limited due to extreme habitat limitations,
 164 hydrologic modifications, physical alterations, or other factors
 165 identified by department rule.

166 (2) Unless otherwise specified by department rule, the
 167 following surface water classifications are renamed:

168 (a) Class I is renamed as Human Use 1/Aquatic Life Use 2.
 169 (b) Class II is renamed as Human Use 2/Aquatic Life Use 2.
 170 (c) Class III is renamed as Human Use 3/Aquatic Life Use
 171 2.
 172 (d) Class IV is renamed as Human Use 6 and includes the
 173 Class IV classification criteria.
 174 (e) Class V is renamed as Human Use 7 and includes the
 175 Class V classification criteria.
 176 (3) (a) Surface waters or groups of similar surface waters
 177 shall be assigned classifications under this section pursuant to
 178 chapter 120. When adopting waters into appropriate
 179 classifications, the department shall:
 180 1. Consider that manmade or other structurally modified
 181 waters may exhibit physical, hydrologic, and other factors that
 182 limit the attainable uses of the water.
 183 2. Assess the economic costs of achieving designated uses
 184 on individual entities and communities.
 185 3. Establish appropriate water quality criteria for the
 186 waters.
 187 (b) Surface waters constructed pursuant to chapter 378,
 188 excluding wetlands or any waters constructed for the purposes of
 189 mitigation under chapter 373, may not be assigned a
 190 classification until the department approves the constructed
 191 waterbody for final release of obligations under chapter 378.
 192 Upon approval, the constructed waterbody shall be classified
 193 based on the highest attainable uses considering the location
 194 and purpose for which the surface water was constructed.

195 (4) The department may adopt rules to implement this
 196 section. If the department determines that changes are necessary
 197 to improve the classification system under this section, it
 198 shall adopt an updated classification system by rule, which
 199 shall be subject to ratification by the Legislature. Upon
 200 ratification of the department rule, this section is repealed.

201 Section 4. Effective July 1, 2012, paragraph (d) of
 202 subsection (4) of section 373.199, Florida Statutes, is amended
 203 to read:

204 373.199 Florida Forever Water Management District Work
 205 Plan.—

206 (4) The list submitted by the districts shall include,
 207 where applicable, the following information for each project:

208 (d) A description of strategies and potential strategies,
 209 including improved stormwater management, for restoring or
 210 protecting the water body to Human Use 3/Aquatic Life Use 2
 211 ~~Class III~~ or better surface water quality status. Such
 212 strategies may utilize alternative technologies for pollutant
 213 reduction, such as cost-effective biologically-based, hybrid
 214 wetlands/chemical and other innovative nutrient control
 215 technologies.

216 Section 5. Effective July 1, 2012, paragraph (e) of
 217 subsection (2) of section 373.453, Florida Statutes, is amended
 218 to read:

219 373.453 Surface water improvement and management plans and
 220 programs.—

221 (2) Unless otherwise provided by law, the water management
 222 districts, in cooperation with state agencies, local

223 governments, and others, may develop surface water improvement
 224 and management plans and programs for the water bodies
 225 identified on the priority lists. Plans developed pursuant to
 226 this subsection shall include, but not be limited to:

227 (e) A description of strategies and a schedule for related
 228 management actions for restoring or protecting the water body to
 229 Human Use 3/Aquatic Life Use 2 Class III or better, including
 230 those needed to help achieve state-adopted total maximum daily
 231 loads for the water body;

232 Section 6. Effective July 1, 2012, paragraph (m) of
 233 subsection (2) and paragraph (e) of subsection (4) of section
 234 373.4592, Florida Statutes, are amended to read:

235 373.4592 Everglades improvement and management.—

236 (2) DEFINITIONS.—As used in this section:

237 (m) "Phosphorus criterion" means a numeric interpretation
 238 for phosphorus of the Human Use 3/Aquatic Life Use 2 Class III
 239 narrative nutrient criterion.

240 (4) EVERGLADES PROGRAM.—

241 (e) Evaluation of water quality standards.—

242 1. The department and the district shall employ all means
 243 practicable to complete by December 31, 1998, any additional
 244 research necessary to:

245 a. Numerically interpret for phosphorus the Human Use
 246 3/Aquatic Life Use 2 Class III narrative nutrient criterion
 247 necessary to meet water quality standards in the Everglades
 248 Protection Area; and

249 b. Evaluate existing water quality standards applicable to
 250 the Everglades Protection Area and EAA canals.

251 2. In no case shall such phosphorus criterion allow waters
252 in the Everglades Protection Area to be altered so as to cause
253 an imbalance in the natural populations of aquatic flora or
254 fauna. The phosphorus criterion shall be 10 parts per billion
255 (ppb) in the Everglades Protection Area in the event the
256 department does not adopt by rule such criterion by December 31,
257 2003. However, in the event the department fails to adopt a
258 phosphorus criterion on or before December 31, 2002, any person
259 whose substantial interests would be affected by the rulemaking
260 shall have the right, on or before February 28, 2003, to
261 petition for a writ of mandamus to compel the department to
262 adopt by rule such criterion. Venue for the mandamus action must
263 be Leon County. The court may stay implementation of the 10
264 parts per billion (ppb) criterion during the pendency of the
265 mandamus proceeding upon a demonstration by the petitioner of
266 irreparable harm in the absence of such relief. The department's
267 phosphorus criterion, whenever adopted, shall supersede the 10
268 parts per billion (ppb) criterion otherwise established by this
269 section, but shall not be lower than the natural conditions of
270 the Everglades Protection Area and shall take into account
271 spatial and temporal variability. The department's rule adopting
272 a phosphorus criterion may include moderating provisions during
273 the implementation of the initial phase of the Long-Term Plan
274 authorizing discharges based upon BAPRT providing net
275 improvement to impacted areas. Discharges to unimpacted areas
276 may also be authorized by moderating provisions, which shall
277 require BAPRT, and which must be based upon a determination by
278 the department that the environmental benefits of the discharge

279 clearly outweigh potential adverse impacts and otherwise comply
280 with antidegradation requirements. Moderating provisions
281 authorized by this section shall not extend beyond December 2016
282 unless further authorized by the Legislature pursuant to
283 paragraph (3) (d).

284 3. The department shall use the best available information
285 to define relationships between waters discharged to, and the
286 resulting water quality in, the Everglades Protection Area. The
287 department or the district shall use these relationships to
288 establish discharge limits in permits for discharges into the
289 EAA canals and the Everglades Protection Area necessary to
290 prevent an imbalance in the natural populations of aquatic flora
291 or fauna in the Everglades Protection Area, and to provide a net
292 improvement in the areas already impacted. During the
293 implementation of the initial phase of the Long-Term Plan,
294 permits issued by the department shall be based on BAPRT and
295 shall include technology-based effluent limitations consistent
296 with the Long-Term Plan. Compliance with the phosphorus
297 criterion shall be based upon a long-term geometric mean of
298 concentration levels to be measured at sampling stations
299 recognized from the research to be reasonably representative of
300 receiving waters in the Everglades Protection Area, and so
301 located so as to assure that the Everglades Protection Area is
302 not altered so as to cause an imbalance in natural populations
303 of aquatic flora and fauna and to assure a net improvement in
304 the areas already impacted. For the Everglades National Park and
305 the Arthur R. Marshall Loxahatchee National Wildlife Refuge, the
306 method for measuring compliance with the phosphorus criterion

307 shall be in a manner consistent with Appendices A and B,
 308 respectively, of the settlement agreement dated July 26, 1991,
 309 entered in case No. 88-1886-Civ-Hoeveler, United States District
 310 Court for the Southern District of Florida, that recognizes and
 311 provides for incorporation of relevant research.

312 4. The department's evaluation of any other water quality
 313 standards must include the department's antidegradation
 314 standards and EAA canal classifications. In recognition of the
 315 special nature of the conveyance canals of the EAA, as a
 316 component of the classification process, the department is
 317 directed to formally recognize by rulemaking existing actual
 318 beneficial uses of the conveyance canals in the EAA. This shall
 319 include recognition of the Human Use 3/Aquatic Life Use 2 Class
 320 ~~III~~ designated uses of recreation, propagation and maintenance
 321 of a healthy, well-balanced population of fish and wildlife, the
 322 integrated water management purposes for which the Central and
 323 Southern Florida Flood Control Project was constructed, flood
 324 control, conveyance of water to and from Lake Okeechobee for
 325 urban and agricultural water supply, Everglades hydroperiod
 326 restoration, conveyance of water to the STAs, and navigation.

327 Section 7. Effective July 1, 2012, paragraph (b) of
 328 subsection (1) and paragraph (b) of subsection (2) of section
 329 373.461, Florida Statutes, are amended to read:

330 373.461 Lake Apopka improvement and management.—

331 (1) FINDINGS AND INTENT.—

332 (b) Technical studies have determined that substantial
 333 reductions in or elimination of phosphorus in farm discharges to
 334 Lake Apopka will be necessary in order to improve water quality

335 and restore the lake to Human Use 3/Aquatic Life Use 2 Class III
 336 standards.

337 (2) DEFINITIONS.—As used in this section:

338 (b) "Phosphorus criterion" means a numeric interpretation
 339 for phosphorus of the Human Use 3/Aquatic Life Use 2 Class III
 340 narrative nutrient criterion.

341 Section 8. Effective July 1, 2012, paragraph (a) of
 342 subsection (3) of section 380.061, Florida Statutes, is amended
 343 to read:

344 380.061 The Florida Quality Developments program.—

345 (3) (a) To be eligible for designation under this program,
 346 the developer shall comply with each of the following
 347 requirements if applicable to the site of a qualified
 348 development:

349 1. Donate or enter into a binding commitment to donate the
 350 fee or a lesser interest sufficient to protect, in perpetuity,
 351 the natural attributes of the types of land listed below. In
 352 lieu of this requirement, the developer may enter into a binding
 353 commitment that runs with the land to set aside such areas on
 354 the property, in perpetuity, as open space to be retained in a
 355 natural condition or as otherwise permitted under this
 356 subparagraph. Under the requirements of this subparagraph, the
 357 developer may reserve the right to use such areas for passive
 358 recreation that is consistent with the purposes for which the
 359 land was preserved.

360 a. Those wetlands and water bodies throughout the state
 361 which would be delineated if the provisions of s. 373.4145(1) (b)
 362 were applied. The developer may use such areas for the purpose

363 of site access, provided other routes of access are unavailable
364 or impracticable; may use such areas for the purpose of
365 stormwater or domestic sewage management and other necessary
366 utilities if such uses are permitted pursuant to chapter 403; or
367 may redesign or alter wetlands and water bodies within the
368 jurisdiction of the Department of Environmental Protection which
369 have been artificially created if the redesign or alteration is
370 done so as to produce a more naturally functioning system.

371 b. Active beach or primary and, where appropriate,
372 secondary dunes, to maintain the integrity of the dune system
373 and adequate public accessways to the beach. However, the
374 developer may retain the right to construct and maintain
375 elevated walkways over the dunes to provide access to the beach.

376 c. Known archaeological sites determined to be of
377 significance by the Division of Historical Resources of the
378 Department of State.

379 d. Areas known to be important to animal species
380 designated as endangered or threatened by the United States Fish
381 and Wildlife Service or by the Fish and Wildlife Conservation
382 Commission, for reproduction, feeding, or nesting; for traveling
383 between such areas used for reproduction, feeding, or nesting;
384 or for escape from predation.

385 e. Areas known to contain plant species designated as
386 endangered by the Department of Agriculture and Consumer
387 Services.

388 2. Produce, or dispose of, no substances designated as
389 hazardous or toxic substances by the United States Environmental
390 Protection Agency, the Department of Environmental Protection,

391 or the Department of Agriculture and Consumer Services. This
392 subparagraph does not apply to the production of these
393 substances in nonsignificant amounts as would occur through
394 household use or incidental use by businesses.

395 3. Participate in a downtown reuse or redevelopment
396 program to improve and rehabilitate a declining downtown area.

397 4. Incorporate no dredge and fill activities in, and no
398 stormwater discharge into, waters designated as Human Use
399 2/Aquatic Life Use 2 Class II, aquatic preserves, or Outstanding
400 Florida Waters, except as permitted pursuant to s. 403.813(1),
401 and the developer demonstrates that those activities meet the
402 standards under Human Use 2/Aquatic Life Use 2 Class II waters,
403 Outstanding Florida Waters, or aquatic preserves, as applicable.

404 5. Include open space, recreation areas, Florida-friendly
405 landscaping as defined in s. 373.185, and energy conservation
406 and minimize impermeable surfaces as appropriate to the location
407 and type of project.

408 6. Provide for construction and maintenance of all onsite
409 infrastructure necessary to support the project and enter into a
410 binding commitment with local government to provide an
411 appropriate fair-share contribution toward the offsite impacts
412 that the development will impose on publicly funded facilities
413 and services, except offsite transportation, and condition or
414 phase the commencement of development to ensure that public
415 facilities and services, except offsite transportation, are
416 available concurrent with the impacts of the development. For
417 the purposes of offsite transportation impacts, the developer
418 shall comply, at a minimum, with the standards of the state land

419 | planning agency's development-of-regional-impact transportation
 420 | rule, the approved strategic regional policy plan, any
 421 | applicable regional planning council transportation rule, and
 422 | the approved local government comprehensive plan and land
 423 | development regulations adopted pursuant to part II of chapter
 424 | 163.

425 | 7. Design and construct the development in a manner that
 426 | is consistent with the adopted state plan, the applicable
 427 | strategic regional policy plan, and the applicable adopted local
 428 | government comprehensive plan.

429 | Section 9. Effective July 1, 2012, subsection (29) of
 430 | section 403.061, Florida Statutes, is amended to read:

431 | 403.061 Department; powers and duties.—The department
 432 | shall have the power and the duty to control and prohibit
 433 | pollution of air and water in accordance with the law and rules
 434 | adopted and promulgated by it and, for this purpose, to:

435 | (29) Adopt by rule special criteria to protect Human Use
 436 | 2/Aquatic Life Use 2 ~~Class II~~ and Human Use 3/Aquatic Life Use 2
 437 | ~~Class III~~ shellfish harvesting waters. Such rules may include
 438 | special criteria for approving docking facilities that have 10
 439 | or fewer slips if the construction and operation of such
 440 | facilities will not result in the closure of shellfish waters.

441 |
 442 | The department shall implement such programs in conjunction with
 443 | its other powers and duties and shall place special emphasis on
 444 | reducing and eliminating contamination that presents a threat to
 445 | humans, animals or plants, or to the environment.

446 | Section 10. Effective July 1, 2012, paragraph (b) of

447 subsection (7) of section 403.086, Florida Statutes, is amended
 448 to read:

449 403.086 Sewage disposal facilities; advanced and secondary
 450 waste treatment.—

451 (7)

452 (b) Notwithstanding any other provisions of this chapter
 453 or chapter 373, backup discharges of reclaimed water meeting the
 454 standards as set forth in subsection (4) shall be presumed to be
 455 allowable and shall be permitted in all waters in the state at a
 456 reasonably accessible point where such discharge results in
 457 minimal negative impact. Wet weather discharges as provided in
 458 s. 2(3)(c), chapter 90-262, Laws of Florida, shall include
 459 backup discharges as provided in this section. The presumption
 460 of the allowability of a backup discharge may be overcome only
 461 by a demonstration that one or more of the following conditions
 462 is present:

463 1. The discharge will be to an Outstanding Florida Water,
 464 except as provided in chapter 90-262, Laws of Florida;

465 2. The discharge will be to Human Use 1/Aquatic Life Use 2
 466 ~~Class I~~ or Human Use 2/Aquatic Life Use 2 ~~Class II~~ waters;

467 3. The increased volume of fresh water contributed by a
 468 backup discharge will seriously alter the natural freshwater to
 469 saltwater balance of receiving waters after reasonable
 470 opportunity for mixing;

471 4. The discharge will be to a water body having a
 472 pollutant load reduction goal established by a water management
 473 district or the department, and the discharge will cause or
 474 contribute to a violation of the established goal;

475 5. The discharge fails to meet the requirements of the
476 antidegradation policy contained in department rules; or

477 6. The discharge will be to waters that the department
478 determines require more stringent nutrient limits than those set
479 forth in subsection (4).

480 Section 11. Effective July 1, 2012, paragraph (b) of
481 subsection (6) of section 403.0882, Florida Statutes, is amended
482 to read:

483 403.0882 Discharge of demineralization concentrate.—

484 (6) This subsection applies only to small water utility
485 businesses.

486 (b) The presumption in paragraph (a) may be overcome only
487 by a demonstration that one or more of the following conditions
488 is present:

489 1. The discharge will be made directly into an Outstanding
490 Florida Water, except as provided in chapter 90-262, Laws of
491 Florida;

492 2. The discharge will be made directly to Human Use
493 1/Aquatic Life Use 2 Class I or Human Use 2/Aquatic Life Use 2
494 Class II waters;

495 3. The discharge will be made to a water body having a
496 total maximum daily load established by the department and the
497 discharge will cause or contribute to a violation of the
498 established load;

499 4. The discharge fails to meet the requirements of the
500 antidegradation policy contained in the department rules;

501 5. The discharge will be made to a sole-source aquifer;

502 6. The discharge fails to meet applicable surface water

503 and groundwater quality standards; or

504 7. The results of any toxicity test performed by the
 505 applicant under paragraph (d) or by the department indicate that
 506 the discharge does not meet toxicity requirements at the
 507 boundary of the mixing zone under subparagraph (a)2.

508 Section 12. Effective July 1, 2012, paragraph (c) of
 509 subsection (3) of section 403.121, Florida Statutes, is amended
 510 to read:

511 403.121 Enforcement; procedure; remedies.—The department
 512 shall have the following judicial and administrative remedies
 513 available to it for violations of this chapter, as specified in
 514 s. 403.161(1).

515 (3) Except for violations involving hazardous wastes,
 516 asbestos, or underground injection, administrative penalties
 517 must be calculated according to the following schedule:

518 (c) For a dredge and fill or stormwater violation, the
 519 department shall assess a penalty of \$1,000 for unpermitted or
 520 unauthorized dredging or filling or unauthorized construction of
 521 a stormwater management system against the person or persons
 522 responsible for the illegal dredging or filling, or unauthorized
 523 construction of a stormwater management system plus \$2,000 if
 524 the dredging or filling occurs in an aquatic preserve,
 525 Outstanding Florida Water, conservation easement, or Human Use
 526 1/Aquatic Life Use 2 ~~Class I~~ or Human Use 2/Aquatic Life Use 2
 527 ~~Class II~~ surface water, plus \$1,000 if the area dredged or
 528 filled is greater than one-quarter acre but less than or equal
 529 to one-half acre, and plus \$1,000 if the area dredged or filled
 530 is greater than one-half acre but less than or equal to one

531 acre. The administrative penalty schedule shall not apply to a
 532 dredge and fill violation if the area dredged or filled exceeds
 533 one acre. The department retains the authority to seek the
 534 judicial imposition of civil penalties for all dredge and fill
 535 violations involving more than one acre. The department shall
 536 assess a penalty of \$3,000 for the failure to complete required
 537 mitigation, failure to record a required conservation easement,
 538 or for a water quality violation resulting from dredging or
 539 filling activities, stormwater construction activities or
 540 failure of a stormwater treatment facility. For stormwater
 541 management systems serving less than 5 acres, the department
 542 shall assess a penalty of \$2,000 for the failure to properly or
 543 timely construct a stormwater management system. In addition to
 544 the penalties authorized in this subsection, the department
 545 shall assess a penalty of \$5,000 per violation against the
 546 contractor or agent of the owner or tenant that conducts
 547 unpermitted or unauthorized dredging or filling. For purposes of
 548 this paragraph, the preparation or signing of a permit
 549 application by a person currently licensed under chapter 471 to
 550 practice as a professional engineer shall not make that person
 551 an agent of the owner or tenant.

552 Section 13. Effective July 1, 2012, subsection (5) of
 553 section 403.707, Florida Statutes, is amended to read:

554 403.707 Permits.—

555 (5) The department may not issue a construction permit
 556 pursuant to this part for a new solid waste landfill within
 557 3,000 feet of Human Use 1/Aquatic Life Use 2 ~~Class I~~ surface
 558 waters.

559 Section 14. Effective July 1, 2012, paragraph (m) of
 560 subsection (1) of section 403.813, Florida Statutes, is amended
 561 to read:

562 403.813 Permits issued at district centers; exceptions.—

563 (1) A permit is not required under this chapter, chapter
 564 373, chapter 61-691, Laws of Florida, or chapter 25214 or
 565 chapter 25270, 1949, Laws of Florida, for activities associated
 566 with the following types of projects; however, except as
 567 otherwise provided in this subsection, nothing in this
 568 subsection relieves an applicant from any requirement to obtain
 569 permission to use or occupy lands owned by the Board of Trustees
 570 of the Internal Improvement Trust Fund or any water management
 571 district in its governmental or proprietary capacity or from
 572 complying with applicable local pollution control programs
 573 authorized under this chapter or other requirements of county
 574 and municipal governments:

575 (m) The installation of subaqueous transmission and
 576 distribution lines laid on, or embedded in, the bottoms of
 577 waters in the state, except in Human Use 1/Aquatic Life Use 2
 578 ~~Class I~~ and Human Use 2/Aquatic Life Use 2 Class II waters and
 579 aquatic preserves, provided no dredging or filling is necessary.

580 Section 15. Except as otherwise expressly provided in this
 581 act, this act shall take effect upon becoming a law.