

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

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 accumulation of substances harmful to
100 human health in fish tissue. Recreational uses may support
101 prolonged and direct contact with the water with minimal risk of
102 water ingestion in quantities sufficient to pose a health
103 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 accumulation of substances
107 harmful to human health in fish tissue. Recreational uses may
108 result in contact with the water that is incidental or
109 accidental with minimal risk of water ingestion. Other uses
110 include, but are not limited to, waters used for flood control,
111 shipping ports, stormwater or agricultural conveyance or

112 storage, nonpotable water supply, or waters that are constructed
113 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 accumulation of substances harmful to human health in fish
117 tissue. Human contact with the water is limited or restricted
118 due to unsafe physical conditions. Other uses include, but are
119 not limited to, waters used for flood control, shipping ports,
120 stormwater or agricultural conveyance or storage, nonpotable
121 water supply, or waters that are constructed and wholly
122 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 minimal 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 applicable ~~Class III~~ narrative nutrient
 239 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 applicable
 246 ~~Class III~~ narrative nutrient criterion necessary to meet water
 247 quality standards in the Everglades Protection Area; and

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

250 2. In no case shall such phosphorus criterion allow waters
 251 in the Everglades Protection Area to be altered so as to cause

252 an imbalance in the natural populations of aquatic flora or
253 fauna. The phosphorus criterion shall be 10 parts per billion
254 (ppb) in the Everglades Protection Area in the event the
255 department does not adopt by rule such criterion by December 31,
256 2003. However, in the event the department fails to adopt a
257 phosphorus criterion on or before December 31, 2002, any person
258 whose substantial interests would be affected by the rulemaking
259 shall have the right, on or before February 28, 2003, to
260 petition for a writ of mandamus to compel the department to
261 adopt by rule such criterion. Venue for the mandamus action must
262 be Leon County. The court may stay implementation of the 10
263 parts per billion (ppb) criterion during the pendency of the
264 mandamus proceeding upon a demonstration by the petitioner of
265 irreparable harm in the absence of such relief. The department's
266 phosphorus criterion, whenever adopted, shall supersede the 10
267 parts per billion (ppb) criterion otherwise established by this
268 section, but shall not be lower than the natural conditions of
269 the Everglades Protection Area and shall take into account
270 spatial and temporal variability. The department's rule adopting
271 a phosphorus criterion may include moderating provisions during
272 the implementation of the initial phase of the Long-Term Plan
273 authorizing discharges based upon BAPRT providing net
274 improvement to impacted areas. Discharges to unimpacted areas
275 may also be authorized by moderating provisions, which shall
276 require BAPRT, and which must be based upon a determination by
277 the department that the environmental benefits of the discharge
278 clearly outweigh potential adverse impacts and otherwise comply
279 with antidegradation requirements. Moderating provisions

280 authorized by this section shall not extend beyond December 2016
281 unless further authorized by the Legislature pursuant to
282 paragraph (3) (d).

283 3. The department shall use the best available information
284 to define relationships between waters discharged to, and the
285 resulting water quality in, the Everglades Protection Area. The
286 department or the district shall use these relationships to
287 establish discharge limits in permits for discharges into the
288 EAA canals and the Everglades Protection Area necessary to
289 prevent an imbalance in the natural populations of aquatic flora
290 or fauna in the Everglades Protection Area, and to provide a net
291 improvement in the areas already impacted. During the
292 implementation of the initial phase of the Long-Term Plan,
293 permits issued by the department shall be based on BAPRT and
294 shall include technology-based effluent limitations consistent
295 with the Long-Term Plan. Compliance with the phosphorus
296 criterion shall be based upon a long-term geometric mean of
297 concentration levels to be measured at sampling stations
298 recognized from the research to be reasonably representative of
299 receiving waters in the Everglades Protection Area, and so
300 located so as to assure that the Everglades Protection Area is
301 not altered so as to cause an imbalance in natural populations
302 of aquatic flora and fauna and to assure a net improvement in
303 the areas already impacted. For the Everglades National Park and
304 the Arthur R. Marshall Loxahatchee National Wildlife Refuge, the
305 method for measuring compliance with the phosphorus criterion
306 shall be in a manner consistent with Appendices A and B,
307 respectively, of the settlement agreement dated July 26, 1991,

308 entered in case No. 88-1886-Civ-Hoeveler, United States District
 309 Court for the Southern District of Florida, that recognizes and
 310 provides for incorporation of relevant research.

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

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

329 373.461 Lake Apopka improvement and management.—

330 (1) FINDINGS AND INTENT.—

331 (b) Technical studies have determined that substantial
 332 reductions in or elimination of phosphorus in farm discharges to
 333 Lake Apopka will be necessary in order to improve water quality
 334 and restore the lake to Human Use 3/Aquatic Life Use 2 Class~~III~~
 335 standards.

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

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

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

343 380.061 The Florida Quality Developments program.—

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

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

359 a. Those wetlands and water bodies throughout the state
 360 which would be delineated if the provisions of s. 373.4145(1) (b)
 361 were applied. The developer may use such areas for the purpose
 362 of site access, provided other routes of access are unavailable
 363 or impracticable; may use such areas for the purpose of

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

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

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

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

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

387 2. Produce, or dispose of, no substances designated as
 388 hazardous or toxic substances by the United States Environmental
 389 Protection Agency, the Department of Environmental Protection,
 390 or the Department of Agriculture and Consumer Services. This
 391 subparagraph does not apply to the production of these

392 substances in nonsignificant amounts as would occur through
 393 household use or incidental use by businesses.

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

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

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

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

420 applicable regional planning council transportation rule, and
 421 the approved local government comprehensive plan and land
 422 development regulations adopted pursuant to part II of chapter
 423 163.

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

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

430 403.061 Department; powers and duties.—The department
 431 shall have the power and the duty to control and prohibit
 432 pollution of air and water in accordance with the law and rules
 433 adopted and promulgated by it and, for this purpose, to:

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

440
 441 The department shall implement such programs in conjunction with
 442 its other powers and duties and shall place special emphasis on
 443 reducing and eliminating contamination that presents a threat to
 444 humans, animals or plants, or to the environment.

445 Section 10. Effective July 1, 2012, paragraph (b) of
 446 subsection (7) of section 403.086, Florida Statutes, is amended
 447 to read:

448 403.086 Sewage disposal facilities; advanced and secondary
 449 waste treatment.—

450 (7)

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

- 462 1. The discharge will be to an Outstanding Florida Water,
 463 except as provided in chapter 90-262, Laws of Florida;
- 464 2. The discharge will be to Human Use 1/Aquatic Life Use 2
 465 ~~Class I~~ or Human Use 2/Aquatic Life Use 2 ~~Class II~~ waters;
- 466 3. The increased volume of fresh water contributed by a
 467 backup discharge will seriously alter the natural freshwater to
 468 saltwater balance of receiving waters after reasonable
 469 opportunity for mixing;
- 470 4. The discharge will be to a water body having a
 471 pollutant load reduction goal established by a water management
 472 district or the department, and the discharge will cause or
 473 contribute to a violation of the established goal;
- 474 5. The discharge fails to meet the requirements of the
 475 antidegradation policy contained in department rules; or

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

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

482 403.0882 Discharge of demineralization concentrate.—

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

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

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

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

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

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

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

501 6. The discharge fails to meet applicable surface water
 502 and groundwater quality standards; or

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

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

510 403.121 Enforcement; procedure; remedies.—The department
 511 shall have the following judicial and administrative remedies
 512 available to it for violations of this chapter, as specified in
 513 s. 403.161(1).

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

517 (c) For a dredge and fill or stormwater violation, the
 518 department shall assess a penalty of \$1,000 for unpermitted or
 519 unauthorized dredging or filling or unauthorized construction of
 520 a stormwater management system against the person or persons
 521 responsible for the illegal dredging or filling, or unauthorized
 522 construction of a stormwater management system plus \$2,000 if
 523 the dredging or filling occurs in an aquatic preserve,
 524 Outstanding Florida Water, conservation easement, or Human Use
 525 1/Aquatic Life Use 2 Class I or Human Use 2/Aquatic Life Use 2
 526 Class II surface water, plus \$1,000 if the area dredged or
 527 filled is greater than one-quarter acre but less than or equal
 528 to one-half acre, and plus \$1,000 if the area dredged or filled
 529 is greater than one-half acre but less than or equal to one
 530 acre. The administrative penalty schedule shall not apply to a

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

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

553 403.707 Permits.—

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

558 Section 14. Effective July 1, 2012, paragraph (m) of

559 subsection (1) of section 403.813, Florida Statutes, is amended
 560 to read:

561 403.813 Permits issued at district centers; exceptions.—

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

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

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