FPL

P.O. Box 078768, West Palm Beach, FL 33407-0768
5500 Village Blvd.

FEDERAL EXPRESS

March 20, 1991

Mr. A. Alexander, Deputy Assistant Secretary
State of Florida Department of Environmental Regulation
Central Florida District
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803

RE: **Sanford Plant, Unit No. 4**
Orimulsion Test Burn
Compliance Stack Testing Notification

Dear Mr. Alexander:

As I discussed by phone today with Pius Sanabani and Alan Zahm of your staff, please be advised that Sanford Unit 4 is expected to return to service during the weekend of March 23-24, 1991. Thus, in accordance with the specific conditions of the Department's permit authorizing the Orimulsion Test Burn, emissions compliance testing has been scheduled at the above unit as follows:

Test date	Pollutant(s)	Operational Mode
4/1/91	Particulate Matter Sulfur Dioxide NO_x VOC	Steady-State
4/2/91	Particulate Matter Sulfur Dioxide NO_x VOC	Steady-State
4/3/91	Particulate Matter Sulfur Dioxide NO_x VOC	Soot-Blowing
4/4/91	Particulate Matter Sulfur Dioxide NO_x VOC	Steady-State

Test date	Pollutant(s)	Operational Mode
4/5/91	Particulate Matter Sulfur Dioxide NO_x VOC	Steady-State
4/8/91	Particulate Matter Sulfur Dioxide NO_x VOC Sulfuric Acid Mist Trace Elements & Metals	Steady-State
4/9/91	Particulate Matter Sulfur Dioxide NO_x VOC Vanadium Pentoxide	Steady-State
4/10/91	Particulate Matter Sulfur Dioxide NO_x VOC	Soot-blowing
4/11/91	Particulate Matter Sulfur Dioxide NO_x VOC	Steady-State
4/12/91	Particulate Matter Sulfur Dioxide NO_x VOC	Steady-State

As we also discussed, it is my understanding that Mr. Sanabani and Mr. Zahm have no problem with this revised testing schedule.

Please call me at (407) 697-6926 if you have any questions or comments.

Sincerely,

Elsa A. Bishop
Senior Environmental Coordinator
Florida Power & Light Company

EAB:jm

Enclosure

cc: Clair Fancy - DER/Tall
Cindy Phillips - DER/Tall
William Green - HBG&S
Angela R. Morrison - HBG&S
Caroline Shine - DER/Orlando
Charles M. Collins - DER/Orlando
Alan Zahm - DER/Orlando
Entropy Environmentalists, Inc.

FPL

P.O. Box 078768, West Palm Beach, FL 33407-0768
5500 Village Blvd.

March 20, 1991

MAR 25 1991

DER - BAQM

Mr. Alex Alexander,
Deputy Assistant Secretary
State of Florida
Department of Environmental Regulation
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803

Re: **Sanford Plant, Unit No. 4**
Orimulsion Test Burn
Particle Size Distribution Testing - Notification

Dear Mr. Alexander:

Please be advised that, in accordance with the requirements established in Specific Condition 7.f. of the Department's modified permit authorizing the Orimulsion Test Burn, particle size distribution testing has been scheduled for March 29, 1991. Attached is a copy of a memo from Dr. Ken Olen to me providing further details on these tests.

Please call me at (407) 697-6926 if you have any questions.

Sincerely,

Elsa A. Bishop
Senior Environmental Coordinator
Florida Power & Light Company

EAB:ln

Attachment

CC: Cindy Phillips - DER/Tall

FPL

Inter-Office Correspondence

TO: E. A. Bishop **DATE:** March 20, 1991

FROM: K. R. Olen **LOCATION:** JRD/NP

SUBJECT: **ORIMULSION TEST BURN: DER REQUIREMENT FOR FLY ASH PSD**

Tests to determine Orimulsion fly ash particle size distribution are scheduled to be carried out on Friday, March 29, 1991. These tests will be carried out by Southern Research Institute using a University of Washington cascade impactor. The sampling ports to be used are located between the Air Preheaters and the Multi-clone dust collectors on either side of Sanford #4.

I appreciate that the Permit Modification for the Orimulsion Test Burn requires that the above tests be conducted within 30 days of the issuance date, i.e., by March 30, 1991, and that the above schedule just meets this requirement. Please note that these test could not have been carried out at an earlier date, due to the delays caused by the unexpected and extensive maintenance outage, and the availability of SRI personnel and the appropriate test ports.

KRO:sm

FPL

P.O. Box 078768, West Palm Beach, FL 33407-0768
5500 Village Blvd.

May 2, 1991

Mr. John Gray
C/O Pinnacle Company
5445-6 Delaney Avenue
Orlando, Florida 32801

RE: **Sanford Plant, Unit No. 4**
Orimulsion Test Burn
Weekly Opacity Reports - April 22-28, 1991

Dear Mr. Gray:

As was agreed during the meeting held on March 5, 1991 between representatives of the Gray family and of FPL, attached please find a copy of the Weekly Opacity Research Status Report relevant to the Orimulsion Test Burn at our Sanford Plant, Unit No. 4 for the week of April 22-28 , 1991. This is one of several reports submitted to the Florida DER on a weekly basis, as required by the Department's permit authorizing the Test Burn.

Sincerely,

Elsa A. Bishop
Senior Environmental Coordinator
Florida Power & Light Company

EAB:jm

Enclosure

cc: Cindy Phillips - DER/Tall (w/o encl.)
Charles M. Collins - DER/Orlando (w/o encl.)
Sondra Gray - DeBary/Fla. (w/o encl.)

P.O. Box 078768, West Palm Beach, FL 33407-0768
5500 Village Blvd.

FPL

April 30, 1991

Ms. Cindy Phillips
State of Florida Department of Environmental Regulation
2600 Blair Stone Road
Tallahassee, Florida 32301

RE: **Sanford Plant, Unit No. 4**
Orimulsion Test Burn
Emissions Testing - Vanadium Pentoxide

Dear Ms. Phillips:

Attached is a copy of the revised testing protocol for vanadium pentoxide proposed by Entropy Environmentalists, Inc. in an attempt to comply with Specific Condition No. 7.d of the Department permit authorizing the Orimulsion Test Burn. This proposal has been discussed by Walt Smith of Entropy with John Glunn of your staff.

As you are aware, Sanford Unit No. 4 has been taken off Orimulsion due to the need to operate Sanford Unit No. 5 during the generation shortage currently being experienced by FP&L. In hope of a quick and favorable interpretation of the Orimulsion permit conditions as outlined in Bill Green's letter of April 29, we have tentatively scheduled this testing for the week of May 6. Once I know the exact day, I will promptly notify you. Given the numerous complications which have arisen relevant to this vanadium pentoxide testing, due to the short time remaining for the Test Burn, and in an attempt to comply with permit conditions, we request that the fifteen-day notification requirement be waived for this test.

Unless we hear from you otherwise, we will assume that the protocol proposed is acceptable and that you have waived the notification requirements. Please call me at (407) 697-6926 if you need further discussion or have any questions.

Sincerely,

Elsa A. Bishop
Senior Environmental Coordinator
Florida Power & Light Company

EAB:jm

Enclosure

cc: Charles M. Collins - DER/Orlando

Analyte of Interest: Vanadium Pentoxide

Method: Modification of NIOSH 7504

Description of Modification: The NIOSH 7504 is an ambient source method not well suited to heated source testing. In order to test for the analyte of interest, some modification of NIOSH 7504 is necessary. The isokinetic sampling train will have an Electro-clean stainless steel nozzle and a twenty foot heated Teflon probe liner. The probe outlet connects directly to the impingers. The train will consist of four impingers and a three inch tare weighed cellulostic filter. Impingers one and two will be charged with 100 mL each of DI water, the second impinger stem will be of the Greenburg-Smith design, the third impinger will be left dry, and the fourth impinger will contain 200 grams of silica gel. The cellulostic filter will be located between the third and fourth impingers.

If the cellulostic filter should clog in five minutes or less, we will use the same type of filter between the third and fourth impingers but the test will be non-isokinetic, low flow rate sample. This will also be a 24 point sample. In the event of another clogging problem a Whatman paper will be substituted using the same scenario described above.

Sample Train Clean-up: The clean up of the sample train will be performed as follows: the contents of each impinger will be poured into the original containers and a moisture determination made on-site. The filter will be cleaned up dry, and placed in a glass jar. Impingers 1, 2, 3, the liner, the nozzle, and the front half of the filter holder will be rinsed with acetone and collected in a separate container.

Sample Preparation and Analysis: volume weighted aliquots of the acetone rinse, the contents of the first three impingers, and the dissolved filter will be combined and deposited on a silver filter. The silver filter is then analyzed for vanadium pentoxide using x-ray powder diffraction using the techniques described in NIOSH 7504.

FPL

P.O. Box 078768, West Palm Beach, FL 33407-0768
5500 Village Blvd.

April 25, 1991

Mr. John Gray
C/O Pinnacle Company
5445-6 Delaney Avenue
Orlando, Florida 32801

RE: **Sanford Plant, Unit No. 4**
Orimulsion Test Burn
Weekly Opacity Reports - April 15-21, 1991

Dear Mr. Gray:

As was agreed during the meeting held on March 5, 1991 between representatives of the Gray family and of FPL, attached please find a copy of the Weekly Opacity Research Status Report relevant to the Orimulsion Test Burn at our Sanford Plant, Unit No. 4 for the week of April 15-21 , 1991. This is one of several reports submitted to the Florida DER on a weekly basis, as required by the Department's permit authorizing the Test Burn.

Sincerely,

Elsa A. Bishop
Senior Environmental Coordinator
Florida Power & Light Company

EAB:jm

Enclosure

cc: Cindy Phillips - DER/Tall (w/o encl.)
Charles M. Collins - DER/Orlando (w/o encl.)
Sondra Gray - DeBary/Fla. (w/o encl.)

Florida Department of Environmental Regulation

Twin Towers Office Bldg. ● 2600 Blair Stone Road ● Tallahassee, Florida 32399-2400

Lawton Chiles, Governor

Carol M. Browner, Secretary

May 1, 1991

Mr. Greer C. Tidwell
Regional Administrator
U.S.E.P.A., Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Dear Mr. Tidwell:

The attached revision to Florida's State Air Implementation Plan (SIP) is submitted for your approval pursuant to 40 CFR 51.104. The revision amends the state air implementation plan to include a modification of the Florida Power & Light Company (FP&L), Sanford Unit No. 4 testing and research order and PSD permit issued on October 4, 1990 and previously amended on February 28, 1991.

As our staffs have discussed, we interpret this SIP revision to be a technical amendment that is expected to generate no public interest. This amendment will allow FP&L to operate at either their original permit conditions or their previously amended permit conditions. As the revision is expected to generate no public comment, it should be subject to the letter notice procedures described in 54 Fed. Reg. 2214 (Jan. 19, 1989), and 55 Fed. Reg. 5824 (Feb. 16, 1990). We believe that 40 CFR 51.102 and 51.104 do not require public notice or a public hearing prior to the adoption of this SIP revision by the State of Florida or the Environmental Protection Agency (EPA). It is our understanding that EPA will provide subsequent notice in the Federal Register according to the normal procedures for letter notice approvals.

Sincerely,

for Carol M. Browner
Secretary

Enclosure
c: Steve Smallwood
William Green, Esq.

STATE OF FLORIDA

STATE AIR IMPLEMENTATION PLAN

FLORIDA POWER & LIGHT COMPANY

SANFORD UNIT NO. 4

AMENDMENT OF

TESTING AND RESEARCH ORDER AND PSD PERMIT

MAY 1, 1991

SIP REVISION FOR FLORIDA POWER & LIGHT COMPANY
SANFORD UNIT NO. 4, VOLUSIA COUNTY, FLORIDA
TESTING AND RESEARCH ORDER

TABLE OF CONTENTS

COMPARATIVE APPRAISAL

A. Introduction and History:

As allowed by Rule 17-103.120, F.A.C., on April 2, 1990, Florida Power & Light Company (FP&L) petitioned for a temporary relaxation of the sulfur dioxide, particulate matter, and opacity limits contained in the State Implementation Plan (SIP), Chapter 17-2 of the Florida Administrative Code (F.A.C.), and the air operating permit for FP&L's Sanford Power Plant Unit No. 4 in order to conduct testing of a new fuel from Venezuela called Orimulsion. FP&L submitted a PSD air construction permit application to the Department on May 22, 1990. On October 4, following a duly noticed public hearing, the Department of Environmental Regulation issued an Order authorizing the test and the PSD permit contingent upon EPA approval of the SIP revision. The Environmental Protection Agency approved the revision to the SIP, and FP&L was authorized to begin the test burn on January 7, 1991. The SIP revision authorized the relaxation of opacity limits for Sanford Unit No. 4 as follows:

Visible Emissions: Steady-state - 60% opacity; Excess emissions, not to exceed 3 hours per 24-hour period, for soot-blowing, startup, shutdown and load changes - 100% opacity; Excess emissions, not to exceed 2 hours per 24-hour period, for malfunction - 100% opacity.

FP&L began the test burn on January 9, 1991. The mass emissions were within the permitted limits. However, operating Unit No. 4 at maximum capacity would have caused the opacity limits to be exceeded. Because the unit needed to be operated at full load to test boiler performance, FP&L requested that the opacity limit be further relaxed. The Department revised the permit and the opacity was further relaxed as follows:

Visible Emissions from effective date of revision until May 31, 1991, or until 90 full-capacity equivalent burn days have elapsed since January 9, 1991, whichever occurs first: Steady-state - 80% opacity; Excess emissions, not to exceed 3 hours per 24-hour period, for soot-blowing, startup, and shutdown and load changes - 100% opacity; Excess emissions, not to exceed 2 hours per 24-hour period, for malfunction - 100% opacity. If the unit operates for at least 10 hours in any 24 hours period, the 2 hours (per 24-hour period) of excess emissions of 100% opacity previously allowed for malfunction may be used for malfunction and/or soot-blowing.

In addition, to offset the increase in opacity, the Department prohibited Unit 5 from operating until May 31, 1991 while Orimulsion is fired in Unit 4. However, FP&L is experiencing unusually high peak demands at the present time and is requesting that they be permitted to operate Unit 5 to meet demand while continuing to test Orimulsion in Unit 4. If allowed to operate Unit 5, FP&L will revert back to their original opacity limitation of 60%.

B. Action taken:

The amendment to the PSD air construction permit, No. AC 64-180842, was signed by Steve Smallwood for Ms. Carol Browner, Secretary of the Department of Environmental Regulation, on May 1, 1991.

C. Effect:

Until May 31, 1991, when Unit 5 is not on line, the opacity limits will be 80 percent steady-state limit with an additional 2 hours (per 24-hour period) of excess emissions of 100% opacity for soot-blowing if the unit is operated over 10 hours per 24-hour period. When Unit 5 is in operation and Orimulsion is burned in Unit No. 4, the original opacity limitation of 60% shall apply.

The mass emission limits are not increased, and the environmental impact from the test is unchanged.

The modifications to the Order and Permit are temporary, expiring on May 31, 1991. On June 1, 1991, the Permit and Order as originally approved shall apply.

EXHIBIT I

REVISION TO BE INCORPORATED INTO THE SIP

Florida Department of Environmental Regulation
Twin Towers Office Bldg. • 2600 Blair Stone Road • Tallahassee, Florida 32399-2400
Lawton Chiles, Governor
Carol M. Browner, Secretary

May 1, 1991

Martin A. Smith, Ph.D., Manager
Environmental Permitting Programs
Florida Power & Light Company
P.O. Box 078768
West Palm Beach, Florida 33407-0768

Dear Dr. Smith:

Re: Air Construction Permit Amendment
Volusia County, AC 64-180842, PSD-FL-150
Sanford Plant Unit #4 , Orimulsion Fuel Test Burn

In order to allow FP&L to either operate Unit #5 while firing Unit #4 with Orimulsion up to the previously permitted opacity of 60%, or to not operate Unit #5 if Unit #4 is firing Orimulsion up to the amended permitted opacity of 80%, upon EPA's approval of a State Implementation Plan (SIP) revision, the referenced permit is hereby amended with the following changes. Until the SIP is formally revised, the Department shall consider these amendments as an interpretation of Department policy:

FROM: SPECIFIC CONDITION 3.d) Visible Emissions from effective date of this amendment until May 31, 1991, or until 90 full-capacity equivalent burn days have elapsed since January 9, 1991, whichever occurs first: Steady-state - 80% opacity; Excess emissions, not to exceed 3 hours per 24-hour period, for soot-blowing, startup, shutdown and load changes - 100% opacity; Excess emissions, not to exceed 2 hours per 24-hour period, for malfunction - 100% opacity. If the unit operates for at least 10 hours in any 24 hour period, the 2 hours (per 24-hour period) of excess emissions of 100% opacity previously allowed for malfunction may be used for malfunction and/or soot-blowing.

TO: SPECIFIC CONDITION 3.d) When Unit #5 is off-line, Visible Emissions from effective date of this amendment until May 31, 1991, or until 90 full-capacity equivalent burn days have elapsed since January 9, 1991, whichever occurs first: Steady-state - 80% opacity; Excess emissions, not to exceed 3 hours per 24-hour period, for soot-blowing, startup, shutdown and load changes - 100% opacity; Excess emissions, not to exceed 2 hours per 24-hour period, for malfunction - 100% opacity. If the unit operates for at least 10 hours in any 24 hour period, the 2 hours (per 24-hour period) of excess emissions of 100% opacity previously allowed for malfunction may be used for malfunction and/or soot-blowing.

FROM: SPECIFIC CONDITION 3.c) Visible Emissions: Steady-state - 60% opacity; Excess emissions, not to exceed 3 hours per 24-hour period, for soot-blowing, startup, shutdown and load changes - 100% opacity; Excess emissions, not to exceed 2 hours per 24-hour period for malfunction - 100% opacity.

TO: SPECIFIC CONDITION 3.c) Visible Emissions, when Unit 5 is in operation: Steady-state - 60% opacity; Excess emissions, not to exceed 3 hours per 24-hour period, for soot-blowing, startup, shutdown and load changes - 100% opacity; Excess emissions, not to exceed 2 hours per 24-hour period for malfunction - 100% opacity.

FROM: SPECIFIC CONDITION 2. Permitted Fuels: Unit 4 shall be fired with Orimulsion Fuel, No. 6. Residual Oil, No. 2 Fuel Oil, or Natural Gas only. By separate permit amendments, the Department has temporarily restricted Units 3 and 5 to be fired only with Natural Gas and/or Fuel Oil with a sulfur content limit equivalent to 1.1 lb SO_2/MMBtu, and, until May 31, 1991 has restricted Unit 5 from operating at all, during such times as Orimulsion is combusted in Unit 4.

TO: SPECIFIC CONDITION 2. Permitted Fuels: Unit 4 shall be fired with Orimulsion Fuel, No. 6. Residual Oil, No. 2 Fuel Oil, or Natural Gas only. By separate permit amendments, the Department has temporarily restricted Units 3 and 5 to be fired only with Natural Gas and/or Fuel Oil with a sulfur content limit equivalent to 1.1 lb SO_2/MMBtu.

A person whose substantial interests are affected by this permit amendment may petition for an administrative proceeding (hearing) in accordance with Section 120.57, Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 14 days of receipt of this permit amendment. Petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Section 120.57, Florida Statutes.

The Petition shall contain the following information; (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department Permit File Number and the county in which the project is proposed; (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by Petitioner, if any; (e) A statement of facts which petitioner

contends warrant reversal or modification of the Department's action or proposed action; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this amendment. Persons whose substantial interests will be affected by any decision of the Department with regard to the amendment have the right to petition to become a party to the proceeding. The petition must conform to the days of publication of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-5.207, F.A.C.

This permit amendment is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above paragraphs or unless a request for an extension of time in which to file a petition is filed within the time specified for filing a petition and conforms to Rule 17-103.070, F.A.C. Upon timely filing of a petition or a request for an extension of time this permit amendment will not be effective until further Order of the Department.

When the Order (Permit) is final, any party to the Order has the right to seek judicial review of the Order pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of the Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate district Court of Appeal. The Notice of Appeal must be filed within 30 days from the date the Final Order is filed with the Clerk of the Department.

Executed in Tallahassee, Florida

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

for Carol M. Browner, Secretary

c: Chuck Collins, P.E., CD

CERTIFICATE OF SERVICE

This is to certify that this NOTICE OF PERMIT AMENDMENT and all copies were mailed before the close of business on 5-1-91 to the listed persons.

FILING AND ACKNOWLEDGEMENT FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk 5-1-91 Date

EXHIBIT II

LEGAL AUTHORITY

LEGAL AUTHORITY

The legal authority under state law to administer all of the provisions of the SIP is included in the attached Chapter 403 F.S., Environmental Control, Part I and Part V.

CHAPTER 403

ENVIRONMENTAL CONTROL

PART I POLLUTION CONTROL (ss. 403.011–403.4153)

PART II ELECTRICAL POWER PLANT SITING (ss. 403.501–403.539)

PART III INTERSTATE ENVIRONMENTAL CONTROL COMPACT (s. 403.60)

PART IV RESOURCE RECOVERY AND MANAGEMENT (ss. 403.702–403.7893)

PART V ENVIRONMENTAL REGULATION (ss. 403.801–403.8171)

PART VI DRINKING WATER (ss. 403.850–403.864)

PART VII MISCELLANEOUS (s. 403.90)

PART VIII PERMITTING OF ACTIVITIES IN WETLANDS (ss. 403.91–403.938)

PART I

POLLUTION CONTROL

403.011 Short title.—This act shall be known and cited as the "Florida Air and Water Pollution Control Act."
History.—s. 2, ch. 67-436.

403.021 Legislative declaration; public policy.—

(1) The pollution of the air and waters of this state constitutes a menace to public health and welfare; creates public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of air and water.

(2) It is declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of wildlife and fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses and to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water.

(3) It is declared to be the public policy of this state and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. In accordance with the public policy established herein, the Legislature further declares that the citizens of this state should be afforded reasonable protection from the dangers inherent in the release of toxic or otherwise hazardous vapors, gases, or highly volatile liquids into the environment.

(4) It is declared that local and regional air and water pollution control programs are to be supported to the extent practicable as essential instruments to provide for a coordinated statewide program of air and water pollution prevention, abatement, and control for the securing and maintenance of appropriate levels of air and water quality.

(5) It is hereby declared that the prevention, abatement, and control of the pollution of the air and waters of this state are affected with a public interest, and the provisions of this act are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(6) The Legislature finds and declares that control, regulation, and abatement of the activities which are causing or may cause pollution of the air or water resources in the state and which are or may be detrimental to human, animal, aquatic, or plant life, or to property, or unreasonably interfere with the comfortable enjoyment of life or property be increased to ensure conservation of natural resources; to ensure a continued safe environment; to ensure purity of air and water; to ensure domestic water supplies; to ensure protection and preservation of the public health, safety, welfare, and economic well-being; to ensure and provide for recreational and wildlife needs as the population increases and the economy expands; and to ensure a continuing growth of the economy and industrial development.

(7) The Legislature further finds and declares that:

(a) Compliance with this law will require capital outlays of hundreds of millions of dollars for the installation of machinery, equipment, and facilities for the treatment of industrial wastes which are not productive assets and increased operating expenses to owners without any financial return and should be separately classified for assessment purposes.

(b) Industry should be encouraged to install new machinery, equipment, and facilities as technology in environmental matters advances, thereby improving the quality of the air and waters of the state and benefiting the citizens of the state without pecuniary benefit to the owners of industries; and the Legislature should prescribe methods whereby just valuation may be secured to such owners and exemptions from certain excise taxes should be offered with respect to such installations.

(c) Facilities as herein defined should be classified separately from other real and personal property of any manufacturing or processing plant or installation, as such facilities contribute only to general welfare and health and are assets producing no profit return to owners.

(d) In existing manufacturing or processing plants it is more difficult to obtain satisfactory results in treating industrial wastes than in new plants being now planned or constructed and that with respect to existing plants in many instances it will be necessary to demolish and remove substantial portions thereof and replace the same with new and more modern equipment in order to more effectively treat, eliminate, or reduce the objectionable characteristics of any industrial wastes and that such replacements should be classified and assessed differently from replacements made in the ordinary course of business.

(8) The Legislature further finds and declares that the public health, welfare, and safety may be affected by disease-carrying vectors and pests. The department shall assist all governmental units charged with the control of such vectors and pests. Furthermore, in reviewing applications for permits, the department shall consider the total well-being of the public and shall not consider solely the ambient pollution standards when exercising its powers, if there may be danger of a public health haz-

(a) The Legislature finds and declares that it is essential to preserve and maintain authorized water depth in the existing navigation channels, port harbors, turning basins, and harbor berths of this state in order to provide for the continued safe navigation of deepwater shipping commerce. The department shall recognize that maintenance of authorized channel depths is an ongoing, continuous, beneficial, and necessary activity; and it shall develop a regulatory process which shall enable the ports of this state to conduct such activities in an environmentally sound, expeditious, and efficient manner.

(b) The provisions of paragraph (a) apply only to the port waters, spoil disposal sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation in the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, and Pensacola.

(10) It is the policy of the state to ensure that the existing and potential drinking water resources of the state remain free from harmful quantities of contaminants. The department, as the state water quality protection agency, shall compile, correlate, and disseminate available information on any contaminant which endangers or may endanger existing or potential drinking water resources. It shall also coordinate its regulatory program with the regulatory programs of other agencies to assure adequate protection of the drinking water resources of the state.

(11) It is the intent of the Legislature that water quality standards be reasonably established and applied to take into account the variability occurring in nature. The department shall recognize the statistical variability inherent in sampling and testing procedures that are used to express water quality standards. The department shall also recognize that some deviations from water quality standards occur as the result of natural background conditions. The department shall not consider deviations from water quality standards to be violations when the discharger can demonstrate that the deviations would occur in the absence of any man-induced discharges or alterations to the water bod[illegible]

History.—s. 3, ch. 67-436; s. 1, ch. 78-98; ss. 1, 5, ch. 8[illegible] s. 4, ch. 84-79; s. 46, ch. 84-338; s. 11, ch. 85-269; s. 1, ch. 85-277; s. 6, ch. [illegible] s. 3, ch. 86-213.

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(1) "Contaminant" is any substance which is harmful to plant, animal, or human life.

(2) "Department" is the Department of Environmental Regulation.

(3) "Effluent limitations" means any restriction established by the department on quantities, rates, or concentrations of chemical, physical, biological, or other constituents which are discharged from sources into waters of the state.

(4) "Installation" is any structure, equipment, or facility, or appurtenances thereto, or operation which may emit air or water contaminants in quantities prohibited by rules of the department.

(5) "Person" means the state or any agency or institution thereof or any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.

(6) "Plant" is any unit operation, complex, area or multiple of unit operations that produce, process, or cause to be processed any materials, the processing of which can, or may, cause air or water pollution.

(7) "Pollution" is the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or manmade or man-induced impairment of air or waters or alteration of the chemical, physical, biological, or radiological integrity of air or water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law.

(8) "Sewerage system" means pipelines or conduits, pumping stations, and force mains and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(9) "Source" is any and all points of origin of the item defined in subsection (1), whether privately or publicly owned or operated.

(10) "Treatment works" and "disposal systems" mean any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

(11) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state.

(12) "Waters" include, but are not limited to, rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether manmade or natural. Solely for purposes of this chapter, waters of the state also include the area bounded by the following:

(a) Commence at the intersection of State Road (SRD) 5 (U.S. 1) and the county line dividing Dade and Monroe Counties, said point also being the mean high-water line of Florida Bay, located in section 4, township 60 south, range 39 east of the Tallahassee Meridian for the point of beginning. From said point of beginning, thence run northwesterly along said SRD 5 to an intersection with the north line of section 18, township 58 south, range 39 east; thence run westerly to a point marking the southeast corner of section 12, township 58 south, range 37 east, said point also lying on the east boundary of the Everglades National Park; thence run north along the east boundary of the aforementioned Everglades National Park to a point marking the northeast corner of section 1, township 58 south, range 37 east; thence run west along said park to a point marking the northwest corner of said section 1; thence run northerly along said park to a point marking the northwest corner of section 24, township 57 south, range 37 east; thence run westerly along the south lines of sections 14, 15, and 16 to the southwest corner of section 16; thence leaving the Everglades National Park boundary run northerly along the west line of section 16 to the northwest corner of section 16; thence east along the northerly line of section 16 to a point at the intersection of the east one-half and west one-half of section 9; thence northerly along the line separating the east one-half and the west one-half of sections 9, 4, 33, and 28; thence run easterly along the north line of section 28 to the northeast corner of section 28; thence run northerly along the west line of section 22 to the northwest corner of section 22; thence easterly along the north line of section 22 to a point at the intersection of the east one-half and west one-half of section 15; thence run northerly along said line to the point of intersection with the north line of section 15; thence easterly along the north line of section 15 to the northeast corner of section 15; thence run northerly along the west lines of sections 11 and 2 to the northwest corner of section 2; thence run easterly along the north lines of sections 2 and 1 to the northeast corner of section 1, township 56 south, range 37 east; thence run north along the east line of section 36, township 55 south, range 37 east to the northeast corner of section 36; thence run west along the north line of section 36 to the northwest corner of section 36; thence run north along the west line of section 25 to the northwest corner of section 25; thence run west along the north line of section 26 to the northwest corner of section 26; thence run north along the west line of section 23 to the northwest corner of section 23; thence run easterly along the north line of section 23 to the northeast corner of section 23; thence run north along the west line of section 13 to the northwest corner of section 13; thence run east along the north line of section 13 to a point of intersection with the west line of the southeast one-quarter of section 12; thence run north along the west line of the southeast one-quarter of section 12 to the northwest corner of the southeast one-quarter of section 12; thence run east along the north line of the southeast one-quarter of section 12 to the point of intersection with the east line of section 12; thence run east along the south line of the northwest one-quarter of section 7 to the southeast corner of the northwest one-quarter of section 7; thence run north along the east line of the northwest one-quarter of section 7 to the point of intersection with the north line of section 7; thence run northerly along the west line of the southeast one-quarter of section 6 to the northwest corner of the southeast one-quarter of section 6; thence run east along the north lines of the southeast one-quarter of section 6 and the southwest one-quarter of section 5 to the northeast corner of the southwest one-quarter of section 5; thence run northerly along the east line of the northwest one-quarter of section 5 to the point of intersection with the north line of section 5; thence run northerly along the line dividing the east one-half and the west one-half of Lot 5 to a point intersecting the north line of Lot 5; thence run east along the north line of Lot 5 to the northeast corner of Lot 5, township 54 ½ south, range 38 east; thence run north along the west line of section 33, township 54 south, range 38 east to a point intersecting the northwest corner of the southwest one-quarter of section 33; thence run easterly along the north line of the southwest one-quarter of section 33 to the northeast corner of the southwest one-quarter of section 33; thence run north along the west line of the northeast one-quarter of section 33 to a point intersecting the north line of section 33; thence run easterly along the north line of section 33 to the northeast corner of section 33; thence run northerly along the west line of section 27 to a point intersecting the northwest corner of the southwest one-quarter of section 27; thence run easterly to the northeast corner of the southwest one-quarter of section 27; thence run northerly along the west line of the northeast one-quarter of section 27 to a point intersecting the north line of section 27; thence run west along the north line of section 27 to the northwest corner of section 27; thence run north along the west lines of sections 22 and 15 to the northwest corner of section 15; thence run easterly along the north lines of sections 15 and 14 to the point of intersection with the L-31N Levee, said intersection located near the southeast corner of section 11, township 54 south, range 38 east; thence run northerly along Levee L-31N crossing SRD 90 (U.S. 41 Tamiami Trail) to an intersection common to Levees L-31N, L-29, and L-30, said intersection located near the southeast corner of section 2, township 54 south, range 38 east; thence run northeasterly, northerly, and northeasterly along Levee L-30 to a point of intersection with the Dade/Broward Levee, said intersection located near the northeast corner of section 17, township 52 south, range 39 east; thence run due east to a point of intersection with SRD 27 (Krome Ave.); thence run northeasterly along SRD 27 to an intersection with SRD 25 (U.S. 27),

d intersection located in section 3, township 52 south, range 39 east; thence run northerly along said SRD 25, entering into Broward County, to an intersection with SRD 84 at Andytown; thence run southeasterly along the aforementioned SRD 84 to an intersection with the southwesterly prolongation of Levee L-35A, said intersection being located in the northeast one-quarter of section 5, township 50 south, range 40 east; thence run northeasterly along Levee L-35A to an intersection of Levee L-36, said intersection located near the southeast corner of section 12, township 49 south, range 40 east; thence run northerly along Levee L-36, entering into Palm Beach County, to an intersection common to said Levees L-36, L-39, and L-40, said intersection located near the west quarter corner of section 19, township 47 south, range 41 east; thence run northeasterly, easterly, and northerly along Levee L-40, said Levee L-40 being the easterly boundary of the Loxahatchee National Wildlife Refuge, to an intersection with SRD 80 (U.S 441), said intersection located near the southeast corner of section 32, township 43 south, range 40 east; thence run westerly along the aforementioned SRD 80 to a point marking the intersection of said road and the northeasterly prolongation of Levee L-7, said Levee L-7 being the westerly boundary of the Loxahatchee National Wildlife Refuge; thence run southwesterly and southerly along said Levee L-7 to an intersection common to Levees L-7, L-15 (Hillsborough Canal), and L-6; thence run southwesterly along Levee L-6 to an intersection common to Levee L-6, SRD 25 (U.S. 27), and Levee L-5, said intersection being located near the northwest corner of section 27, township 47 south, range 38 east; thence run westerly along the aforementioned Levee L-5 to a point intersecting the east line of range 36 east; thence run northerly along said range line to a point marking the northeast corner of section 1, township 47 south, range 36 east; thence run westerly along the north line of township 47 south, to an intersection with Levee L-23,24 (Miami Canal); thence run northwesterly along the Miami Canal Levee to a point intersecting the north line of section 22, township 46 south, range 35 east; thence run westerly to a point marking the northwest corner of section 21, township 46 south, range 35 east; thence run southerly to the southwest corner of said section 21; thence run westerly to a point marking the northwest corner of section 30, township 46 south, range 35 east, said point also being on the line dividing Palm Beach and Hendry Counties; from said point, thence run southerly along said county line to a point marking the intersection of Broward, Hendry, and Collier Counties, said point also being the northeast corner of section 1, township 49 south, range 34 east; thence run westerly along the line dividing Hendry and Collier Counties and continuing along the prolongation thereof to a point marking the southwest corner of section 36, township 48 south, range 29 east; thence run southerly to a point marking the southwest corner of section 12, township 49 south, range 29 east; thence run westerly to a point marking the southwest corner of section 10, township 49 south, range 29 east; thence run southerly to a point marking the southwest corner of section 15, township 49 south, range 29 east; thence run westerly to a point marking the northwest corner of section 24, township 49 south, range 28 east, said point lying on the west boundary of the Big Cypress Area of Critical State Concern as described in Rule 27F-3, Florida Administrative Code; thence run southerly along said boundary crossing SRD 84 (Alligator Alley) to a point marking the southwest corner of section 24, township 50 south, range 28 east; thence leaving the aforementioned west boundary of the Big Cypress Area of Critical State Concern run easterly to a point marking the northeast corner of section 25, township 50 south, range 28 east; thence run southerly along the east line of range 28 east to a point lying approximately 0.15 miles south of the northeast corner of section 1, township 52 south, range 28 east; thence run southwesterly 2.4 miles more or less to an intersection with SRD 90 (U.S. 41 Tamiami Trail), said intersection lying 1.1 miles more or less west of the east line of range 28 east; thence run northwesterly and westerly along SRD 90 to an intersection with the west line of section 10, township 52 south, range 28 east; thence leaving SRD 90 run southerly to a point marking the southwest corner of section 15, township 52 south, range 28 east; thence run westerly crossing the Faka Union Canal 0.6 miles more or less to a point; thence run southerly and parallel to the Faka Union Canal to a point located on the mean high-water line of Faka Union Bay; thence run southeasterly along the mean high-water line of the various bays, rivers, inlets, and streams to the point of beginning.

(b) The area bounded by the line described in paragraph (a) generally includes those waters to be known as waters of the state. The landward extent of these waters shall be determined as provided in s. 403.817. Any waters which are outside the general boundary line described in paragraph (a) but which are contiguous thereto by virtue of the presence of a watercourse or as determined pursuant to ²s. 17-4.022, Florida Administrative Code, shall be a part of this water body. Any areas within the line described in paragraph (a) which are not within the jurisdiction of the department as determined pursuant to ²s. 17-4.022, Florida Administrative Code, shall be excluded therefrom. If the Florida Environmental Regulation Commission designates the waters within the boundaries an Outstanding Florida Water, waters outside the boundaries shall not be included as part of such designation unless a hearing is held pursuant to notice in each appropriate county and the boundaries of such lands are specifically considered and described for such designation.

(13) "State water policy" means the comprehensive statewide policy as adopted by the department pursuant to ss. 373.026 and 403.061, setting forth goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources.

(14) "Stormwater management program" means the institutional strategy for stormwater management, including urban, agricultural, and other stormwater.

(15) "Stormwater management system" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degrada-

ion and water pollution or otherwise affect the quantity and quality of discharges from the system.

(16) "Stormwater utility" means the funding of a stormwater management program by assessing the cost of the program to the beneficiaries based on their relative contribution to its need. It is operated as a typical utility which bills services regularly, similar to water and wastewater services.

(17) "Watershed" means the land area which contributes to the flow of water into a receiving body of water.

History.—s. 4, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 71-36; s. 2, ch. 71-137; s. 153, ch. 71-377; s. 1, ch. 73-46; s. 112, ch. 73-333; ss. 1, 2, ch. 74-133; s. 1, ch. 77-174; s. 72, ch. 79-65; s. 13, ch. 84-79; s. 1, ch. 89-143; s. 30, ch. 89-279.

*Note.—Chapter 27F-3, Florida Administrative Code, was transferred to ch. 28-25, Florida Administrative Code.

**Note.—Section 17-4.022, Florida Administrative Code, was transferred to s. 17-3.022, Florida Administrative Code.

403.051 Meetings; hearings and procedure.—

(1) The department shall cause a transcript of the proceedings at all meetings to be made.

(2)(a) Any department planning, design, construction, modification, or operating standards, criteria, and requirements for treatment works, disposal systems, and sewerage systems for wastes from any source shall be promulgated as a rule or regulation.

(b) The department shall not withhold the issuance of a permit to consider matters not addressed by the permit application or to consider standards, criteria, and requirements not adopted as required by paragraph (a).

History.—s. 6, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-84; s. 2, ch. 71-137; s. 1, ch. 71-138; s. 154, ch. 71-377; s. 1, ch. 72-223; s. 1, ch. 74-306; s. 14, ch. 78-95; s. 58, ch. 83-218.

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

(1) Approve and promulgate current and long-range plans developed to provide for air and water quality control and pollution abatement.

(2) Hire only such employees as may be necessary to effectuate the responsibilities of the department.

(3) Utilize the facilities and personnel of other state agencies, including the Department of Health and Rehabilitative Services, and delegate to any such agency any duties and functions as the department may deem necessary to carry out the purposes of this act.

(4) Secure necessary scientific, technical, research, administrative, and operational services by interagency agreement, by contract, or otherwise. All state agencies, upon direction of the department, shall make these services and facilities available.

(5) Accept state appropriations and loans and grants from the Federal Government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes of this act.

(6) Exercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution.

(7) Adopt, modify, and repeal rules and regulations to carry out the intent and purposes of this act. Any rule or regulation adopted pursuant to this act shall be consistent with the provisions of federal law, if any, relating to control of emissions from motor vehicles, effluent limitations, pretreatment requirements, or standards of performance. Rules adopted pursuant to this act shall not require dischargers of waste into waters of the state to improve natural background conditions. Discharges from steam electric generating plants existing or licensed under this chapter on July 1, 1984, shall not be required to be treated to a greater extent than may be necessary to assure that the quality of nonthermal components of discharges from nonrecirculated cooling water systems is as high as the quality of the makeup waters; that the quality of nonthermal components of discharges from recirculated cooling water systems is no lower than is allowed for blowdown from such systems; or that the quality of noncooling system discharges which receive makeup water from a receiving body of water which does not meet applicable department water quality standards is as high as the quality of the receiving body of water. The department may not adopt standards more stringent than federal regulations, except as provided in s. 403.804.

(8) Issue such orders as are necessary to effectuate the control of air and water pollution and enforce the same by all appropriate administrative and judicial proceedings.

(9) Adopt a comprehensive program for the prevention, control, and abatement of pollution of the air and waters of the state, and from time to time review and modify such program as necessary.

(10) Develop a comprehensive program for the prevention, abatement, and control of the pollution of the waters of the state. In order to effect this purpose, a grouping of the waters into classes may be made in accordance with the present and future most beneficial uses. Such classifications may from time to time be altered or modified. However, before any such classification is made, or any modification made thereto, public hearings shall be held by the department.

(11) Establish ambient air quality and water quality standards for the state as a whole or for any part thereof, and also standards for the abatement of excessive and unnecessary noise. The department is authorized to establish reasonable zones of mixing for discharges into waters.

(a) When a receiving body of water fails to meet a water quality standard for pollutants set forth in department rules, a steam-electric generating plant discharge of pollutants that is existing or licensed under this chapter on July 1, 1984, may nevertheless be granted a mixing zone, provided that:

1. The standard would not be met in the water body in the absence of the discharge;

2. The discharge is in compliance with all applicable technology-based effluent limitations;

3. The discharge does not cause a measurable increase in the degree of noncompliance with the standard at the boundary of the mixing zone; and

4. The discharge otherwise complies with the mixing zone provisions specified in department rules.

(b) No mixing zone for point source discharges shall be permitted in Outstanding Florida Waters except for:

1. Sources which have received permits from the department prior to April 1, 1982, or the date of designation, whichever is later;

Blowdown from new power plants certified pur- to the Florida Electrical Power Plant Siting Act; nd

3. Discharges of water necessary for water man- gement purposes which have been approved by the overning board of a water management district and, if quired by law, by the secretary.

othing in this act shall be construed to invalidate any isting department rule relating to mixing zones. The epartment shall cooperate with the Department of ighway Safety and Motor Vehicles in the development regulations required by s. 316.272(1).

(12)(a) Cause field studies to be made and samples be taken out of the air and from the waters of the state eriodically and in a logical geographic manner so as to etermine the levels of air quality of the air and water uality of the waters of the state.

(b) Determine the source of the pollution whenever study is made or a sample collected which proves to e below the air or water quality standard set for air or ater.

(13) Require persons engaged in operations which ay result in pollution to file reports which may contain formation relating to locations, size of outlet, height of utlet, rate and period of emission, and composition and oncentration of effluent and such other information as ie department shall prescribe to be filed relative to pol- ution.

(14) Establish a permit system whereby a permit may e required for the operation, construction, or expansion f any installation that may be a source of air or water ollution and provide for the issuance and revocation of uch permits and for the posting of an appropriate bond o operate.

(a) Notwithstanding any other provision of this chap- er, the Department of Environmental Regulation may uthorize, by rule, the Department of Transportation to erform any activity requiring a permit from the Depart- ient of Environmental Regulation covered by this chap- er, upon certification by the Department of Transporta- ion that it will meet all requirements imposed by statute, ule, or standard for environmental control and protec- ion as such statute, rule, or standard applies to a gov- rnmental program. To this end, the Department of Envi- onmental Regulation may accept such certification of compliance for programs of the Department of Transpor- ation, may conduct investigations for compliance, and, f a violation is found to exist, may take all necessary en- orcement action pertaining thereto, including, but not imited to, the revocation of certification. The authoriza- ion shall be by rule of the Department of Environmental Regulation, shall be limited to the maintenance, repair, or replacement of existing structures, and shall be con- ditioned upon compliance by the Department of Trans- portation with specific guidelines or requirements which are set forth in the formal acceptance and deemed nec- e by by the Department of Environmental Regulation to ensure future compliance with this chapter and appli- cable department rules. The failure of the Department of Transportation to comply with any provision of the written acceptance shall constitute grounds for its revo- cation by the Department of Environmental Regulation.

(b) The provisions of chapter 120 shall be accorded any person when substantial interests will be affected by an activity proposed to be conducted by the Depart- ment of Transportation pursuant to its certification and the acceptance of the Department of Environmental Regulation. If a proceeding is conducted pursuant to s 120.57, the Department of Environmental Regulation may intervene as a party. Should a hearing officer of the Division of Administrative Hearings of the Department of Administration submit a recommended order pursuant to s. 120.57, the Department of Environmental Regula- tion shall issue a final department order adopting, reject- ing, or modifying the recommended order pursuant to such action.

(15) Consult with any person proposing to construct install, or otherwise acquire a pollution control device or system concerning the efficacy of such device or sys- tem, or the pollution problem which may be related to the source, device, or system. Nothing in any such con- sultation shall be construed to relieve any person from compliance with this act, rules and regulations of the de- partment, or any other provision of law.

(16) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this act.

(17) Encourage local units of government to handle pollution problems within their respective jurisdictions on a cooperative basis and provide technical and con- sultative assistance therefor.

(18) Encourage and conduct studies, investigations, and research relating to pollution and its causes, effects, prevention, abatement, and control.

(19) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and the several parts thereof and make recommendations to ap- propriate public and private bodies with respect thereto.

(20) Collect and disseminate information and con- duct educational and training programs relating to pollu- tion.

(21) Advise, consult, cooperate, and enter into agree- ments with other agencies of the state, the Federal Gov- ernment, other states, interstate agencies, groups, polit- ical subdivisions, and industries affected by the provi- sions of this act, rules, or policies of the department.

(22) Adopt, modify, and repeal rules governing the specifications, construction, and maintenance of indus- trial reservoirs, dams, and containers which store or re- tain industrial wastes of a deleterious nature.

(23) Adopt rules and regulations to ensure that no de- tergents are sold in Florida after December 31, 1972, which are reasonably found to have a harmful or deleteri- ous effect on human health or on the environment. Any regulations adopted pursuant to this subsection shall apply statewide. Subsequent to the promulgation of such rules and regulations, no county, municipality, or other local political subdivision shall adopt or enforce any local ordinance, special law, or local regulation gov- erning detergents which is less stringent than state law or regulation. Regulations, ordinances, or special acts adopted by a county or municipality governing deter- gents shall be subject to approval by the department, except that regulations, ordinances, or special acts adopted by any county or municipality with a local pollu-

tion control program approved pursuant to s. 403.182 shall be approved as an element of the local pollution control program.

(24)(a) Establish a permit system to provide for spoil site approval, as may be requested and required by local governmental agencies as defined in s. 403.1822(3), or mosquito control districts as defined in s. 388.011(2), to facilitate these agencies in providing spoil sites for the deposit of spoil from maintenance dredging of navigation channels, port harbors, turning basins, and harbor berths, as part of a federal project, when the agency is acting as sponsor of a contemplated dredge and fill operation involving an established navigation channel, harbor, turning basin, or harbor berth. A spoil site approval granted to the agency shall be granted for a period of 10 to 25 years when such site is not inconsistent with an adopted local governmental comprehensive plan and the requirements of this chapter. The department shall periodically review each permit to determine compliance with the terms and conditions of the permit. Such review shall be conducted at least once every 10 years.

(b) This subsection applies only to those maintenance dredging operations permitted after July 1, 1980, where the United States Army Corps of Engineers is the prime dredge and fill agent and the local governmental agency is acting as sponsor for the operation, and does not require the redesignation of currently approved spoil sites under such previous operations.

(25) Establish and administer a program for the restoration and preservation of bodies of water within the state. The department shall have the power to acquire lands, to cooperate with other applicable state or local agencies to enhance existing public access to such bodies of water, and to adopt all rules necessary to accomplish this purpose.

(26)(a) Develop standards and criteria for waters used for deepwater shipping which standards and criteria consider existing water quality; appropriate mixing zones and other requirements for maintenance dredging in previously constructed deepwater navigation channels, port harbors, turning basins, or harbor berths; and appropriate mixing zones for disposal of spoil material from dredging and, where necessary, develop a separate classification for such waters. Such classification, standards, and criteria shall recognize that the present dedicated use of these waters is for deepwater commercial navigation.

(b). The provisions of paragraph (a) apply only to the port waters, spoil disposal sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation in the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Port Bartow, Florida Power Corporation's Crystal River Canal, Boca Grande, Green Cove Springs, and Pensacola.

(27)(a) Establish rules which provide for a special category of water bodies within the state, to be referred to as "Outstanding Florida Waters," which water bodies shall be worthy of special protection because of their natural attributes. Nothing in this subsection shall affect any existing rule of the department.

(b) Waters within the following aquatic preserves which have not been designated as Outstanding Florida Waters as of June 1, 1986, may be designated as Outstanding Florida Waters only where the Environmental Regulation Commission determines that the natural attributes of such waters are of exceptional recreational or ecological significance pursuant to the procedures established by rules for designating special waters as Outstanding Florida Waters:

1. Guana River Marsh Aquatic Preserve.
2. Big Bend Aquatic Preserve.
3. Terra Ceia Aquatic Preserve.
4. Rookery Bay Aquatic Preserve.
5. Banana River Aquatic Preserve.
6. Wekiva River Aquatic Preserve.
7. Indian River–Malabar to Vero Beach Aquatic Preserve.
8. Loxahatchee River–Lake Worth Creek Aquatic Preserve.

(28) Perform any other act necessary to control and prohibit air and water pollution, and to delegate any of its responsibilities, authority, and powers, other than rulemaking powers, to any state agency now or hereinafter established.

(29) Adopt by rule special criteria to protect Class II shellfish harvesting waters. Rules previously adopted by the department in ss. 17-4.28(8)(a), Florida Administrative Code, are hereby ratified and determined to be a valid exercise of delegated legislative authority and shall remain in effect unless amended by the Environmental Regulation Commission.

(30) Establish requirements by rule that reasonably protect the public health and welfare from electric and magnetic fields associated with existing 230 kV or greater electrical transmission lines, new 230 kV and greater electrical transmission lines for which an application for certification under the Transmission Line Siting Act, ss. 403.52–403.536, is not filed, new or existing electrical transmission or distribution lines with voltage less than 230 kV, and substation facilities. Notwithstanding any other provision in this chapter or any other law of this state or political subdivision thereof, the department shall have exclusive jurisdiction in the regulation of electric and magnetic fields associated with all electrical transmission and distribution lines and substation facilities. However, nothing herein shall be construed as superseding or repealing the provisions of s. 403.523(1) and (14).

(31) Adopt rules necessary to obtain approval from the U.S. Environmental Protection Agency to administer the Federal National Pollution Discharge Elimination System (NPDES) permitting program in Florida under Sections 318, 402, and 405 of the Federal Clean Water Act, Pub. L. No. 92-500, as amended. This authority shall be implemented consistent with the provisions of part II, which shall be applicable to facilities certified thereunder. The department shall establish all rules, standards, and requirements that regulate the discharge of pollutants into waters of the United States as defined by and in a manner consistent with federal regulations; provided, however, that the department may adopt a standard that is stricter or more stringent than one set by the U.S. Environmental Protection Agency if

roved by the Governor and Cabinet in accordance the procedures of s. 403.804(2).

(32) Coordinate the state's stormwater program.

(33) Adopt by rule a state water policy, which shall provide goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources. This state water policy shall be consistent with the state comprehensive plan and may include such department rules as are specifically identified in the policy.

History.—s. 7, ch. 67-436; ss. 19, 26, 35, ch. 69-106; s. 1, ch. 71-35; s. 2, ch. 71-36; s. 3, ch. 72-39; s. 1, ch. 72-53; s. 113, ch. 73-333; s. 3, ch. 74-133; s. 1, ch. 77-21; s. 137, ch. 77-104; s. 268, ch. 77-147; s. 2, ch. 77-369; s. 14, ch. 78-95; s. 2, ch. 78-437; s. 73, ch. 79-65; s. 1, ch. 79-130; s. 96, ch. 79-164; s. 160, ch. 79-400; s. 1, ch. 80-66; ss. 2, 5, ch. 81-228; s. 5, ch. 82-27; s. 1, ch. 82-79; s. 2, ch. 82-80; s. 66, ch. 83-310; s. 5, ch. 84-79; s. 1, ch. 84-338; s. 1, ch. 85-296; s. 5, ch. 85-345; s. 5, ch. 86-173; s. 52, ch. 86-186; s. 22, ch. 86-393; s. 31, ch. 89-279.

[1]Note.—Section 17-4.28(8)(a), Florida Administrative Code, was transferred to s. 17-4.280(8)(a) which was transferred to s. 17-12.150, Florida Administrative Code.

403.0615 Water resources restoration and preservation.—

(1) This section may be cited as the "Water Resources Restoration and Preservation Act."

(2) The Department of Environmental Regulation shall establish a program to assist in the restoration and preservation of bodies of water and to enhance existing public access when deemed necessary for the enhancement of the restoration effort. This program shall be funded from the General Revenue Fund, from funds available from the Pollution Recovery Fund, and from available federal moneys.

(3) The department shall adopt, by rule, criteria for the allocation of restoration and preservation funds. Such criteria shall include, but not be limited to, the following:

(a) The degree of water quality degradation;

(b) The degree to which sources of pollution which have contributed to the need for restoration or preservation have been abated;

(c) The public uses which can be made of the subject waters;

(d) The ecological value of the subject waters in relation to other waters proposed for restoration and preservation;

(e) The implementation by local government of regulatory or management programs to prevent further and subsequent degradation of the subject waters; and

(f) The commitment of local government resources to assist in the proposed restoration and preservation.

(4) There is hereby created the Water Resources Restoration and Preservation Trust Fund for the deposit and disbursement of funds available from the Pollution Recovery Fund and from federal moneys in accordance with the provisions of this act.

(5) The provisions of this act are for the benefit of the public and shall be liberally construed to accomplish the purposes set forth in this act.

History.—ss. 1, 4, 5, ch. 77-369; s. 2, ch. 79-130.

403.062 Pollution control; underground, surface, and coastal waters.—The department and its agents shall have general control and supervision over underground water, lakes, rivers, streams, canals, ditches, and coastal waters under the jurisdiction of the state insofar as their pollution may affect the public health or impair the interest of the public or persons lawfully using them.

History.—s. 2, ch. 29634, 1955; ss. 26, 35, ch. 69-106.

Note.—Former s. 381.43, s. 381.251.

[1]403.0625 Environmental laboratory certification; water quality tests conducted by a certified laboratory.

(1) To assure the acceptable quality, reliability, and validity of testing results, the department and the Department of Health and Rehabilitative Services shall jointly establish criteria for certification of laboratories that perform analyses of environmental water quality samples which are not covered by the provisions in s. 403.863 and that wish to be certified. The Department of Health and Rehabilitative Services shall have the responsibility for the operation and implementation of such laboratory certification. The Department of Health and Rehabilitative Services may charge and collect fees for the certification of such laboratories. The fee schedule shall be based on the number of analytical functions for which certification is sought. Such fees shall be sufficient to meet the costs incurred by the Department of Health and Rehabilitative Services in administering this program in coordination with the Department of Environmental Regulation. All fees collected pursuant to this section shall be deposited in a trust fund to be administered by the Department of Health and Rehabilitative Services and shall be used only for the purposes of this section.

(2) An environmental water quality test to determine the quality of the effluent of a domestic wastewater facility must be conducted by a laboratory certified under this section if such test results are to be submitted to the Department of Environmental Regulation or a local pollution control program pursuant to s. 403.182.

History.—s. 7, ch. 85-269; s. 3, ch. 88-89.

[1]Note.—Section 4, ch. 88-89, provides that "by October 1, 1989, the department shall develop and adopt rules to implement this act."

403.063 Ground water quality monitoring.—

(1) The department, in cooperation with other state and federal agencies, water management districts, and local governments, shall establish a ground water quality monitoring network designed to detect or predict contamination of the ground water resources of the state.

(2) The department may by rule determine the priority of sites to be monitored within such ground water quality monitoring network, based upon the following criteria:

(a) The degree of danger to the public health caused or potentially caused by contamination.

(b) The susceptibility of each site to contamination.

(3) This information shall be made available to state and federal agencies and local governments to facilitate their regulatory and land use planning decisions.

(4) To the greatest extent practicable, the actual sampling and testing of ground water pursuant to the provisions of this section may be conducted by local and regional agencies.

History.—s. 3, ch. 83-310.

403.064 Reuse of reclaimed water.—

(1) The encouragement and promotion of water conservation, and reuse of reclaimed water, as defined by the department, are state objectives. The Legislature

finds that for those wastewater treatment plants permitted and operated under an approved reuse program by the department, the reclaimed water shall be considered environmentally acceptable and not a threat to public health and safety.

(2) After January 1, 1992, all applicants for permits to construct or operate a domestic wastewater treatment facility in a critical water supply area shall evaluate the costs and benefits of reuse of reclaimed water as part of their application for the permit. The evaluation shall be performed by the applicant, and the applicant's evaluation shall be final.

(3) The requirements of this section for such evaluation shall apply to domestic wastewater treatment facilities located within, serving a population located within, or discharging within critical water supply problem areas.

(4) Local governments may and are encouraged to implement programs for the reuse of reclaimed water. Nothing in this chapter shall be construed to prohibit or preempt such local reuse programs.

(5) A local government that implements a reuse program under this section shall be allowed to allocate the costs in a reasonable manner.

(6) Pursuant to [1]chapter 367, the Florida Public Service Commission shall allow entities which implement reuse projects to recover the full cost of such facilities through their rate structure.

(7) In issuing consumptive use permits, the permitting agency shall take into consideration the local reuse program.

(8) A local government shall require a developer, as a condition for obtaining a development order, to comply with the local reuse program.

History.—s. 7, ch. 89-324.

[1]Note.—The reference to ch. 367 was substituted by the editors for a reference to ch. 366 because reference to ch. 366 which deals with "public utilities" appeared to be erroneous. The contextually consistent reference is ch. 367 which deals with "water and sewer systems."

403.081 Performance by other state agencies.—All state agencies, including the Department of Health and Rehabilitative Services, shall be available to the Department of Environmental Regulation to perform, at its direction, the duties required of the Department of Environmental Regulation under this act.

History.—s. 9, ch. 67-436; ss. 19, 26, 35, ch. 69-106; s. 269, ch. 77-147.

403.085 Sanitary sewage disposal units; advanced and secondary waste treatment; industrial waste, ocean outfall, inland outfall, or disposal well waste treatment.—

(1) Neither the Department of Health and Rehabilitative Services nor any other state agency, county, special district, or municipality shall approve construction of any ocean outfall or disposal well for sanitary sewage disposal which does not provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental Regulation.

(2) Sanitary sewage disposal treatment plants which discharge effluent through ocean outfalls or disposal wells on July 1, 1970, shall provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of [1][Environmental Regulation] by January 3, 1974. Failure to conform by said date shall be punishable by a fine of $500 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

(3) Neither the Department of Health and Rehabilitative Services nor any other state agency, county, special district, or municipality shall approve construction of any ocean outfall, inland outfall, or disposal well for the discharge of industrial waste of any kind which does not provide for secondary waste treatment or such other treatment as is deemed necessary and ordered by the Department of Environmental Regulation.

(4) Industrial plants or facilities which discharge industrial waste of any kind through ocean outfalls, inland outfalls, or disposal wells on July 1, 1971, shall provide for secondary waste treatment or such other waste treatment as deemed necessary and ordered by January 1, 1973, by the Department of [1][Environmental Regulation]. Failure to conform by said date shall be punishable as provided in s. 403.161(2).

History.—ss. 1, 2, ch. 70-82; s. 2, ch. 71-137; s. 1, ch. 71-274; s. 270, ch. 77-147; s. 74, ch. 79-65.

[1]Note.—Bracketed words substituted by the editors for words "Pollution Control." See s. 8, ch. 75-22, which transferred the Department of Pollution Control to the Department of Environmental Regulation.

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

(1)(a) Neither the Department of Health and Rehabilitative Services nor any other state agency, county, special district, or municipality shall approve construction of any facilities for sanitary sewage disposal which do not provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental Regulation.

(b) No facilities for sanitary sewage disposal constructed after June 14, 1978, shall dispose of any wastes by deep well injection without providing for secondary waste treatment and, in addition thereto, advanced waste treatment deemed necessary by the Department of Environmental Regulation to protect adequately the beneficial use of the receiving waters.

(c) Notwithstanding any other provisions of this chapter or chapter 373, facilities for sanitary sewage disposal may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, or Charlotte Harbor Bay, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment, as defined in subsection (4), approved by the Department of Environmental Regulation. This paragraph shall not apply to facilities which were permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

(2) Any facilities for sanitary sewage disposal existing on July 1, 1971, shall provide for secondary waste treatment by January 1, 1973, and, in addition thereto, advanced waste treatment as deemed necessary and

ordered by the former Department of Pollution Control or its successor, the Department of Environmental Regulation. Failure to conform by said date shall be punishable by a civil penalty of $500 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

(3) This section shall not be construed to prohibit or regulate septic tanks or other means of individual waste disposal which are otherwise subject to state regulation.

(4) For purposes of this section, the term "advanced waste treatment" means that treatment which will provide a recovered water product that:

(a) Contains not more, on a permitted annual average basis, than the following concentrations:

1. Biochemical Oxygen Demand (CBOD5) 5mg/l
2. Suspended Solids 5mg/l
3. Total Nitrogen, expressed as N 3mg/l
4. Total Phosphorus, expressed as P 1mg/l

(b) Has received high level disinfection, as defined by rule of the Department of Environmental Regulation.

In those waters where the concentrations of phosphorus have been shown not to be a limiting nutrient or a contaminant, the department may waive or alter the compliance levels for phosphorus until there is a demonstration that phosphorus is a limiting nutrient or a contaminant.

(5)(a) Notwithstanding any other provisions of this chapter or chapter 373, when a recovered water product has been established to be in compliance with the standards set forth in subsection (4), that water shall be presumed to be allowable, and its discharge shall be permitted in the waters described in paragraph (c) of subsection (1) at a reasonably accessible point where such discharge results in minimal negative impact. This presumption may be overcome only by a demonstration that one or more of the following would occur:

1. That the discharge of recovered water that meets the standards set forth in subsection (4) will be, by itself, a cause of considerable degradation to an Outstanding Florida Water or to other waters and is not clearly in the public interest.

2. That the recovered water discharge will have a substantial negative impact on an approved shellfish harvesting area or a water used as a public domestic water supply.

3. That the increased volume of fresh water contributed by the recovered water product will seriously alter the natural fresh-salt water balance of the receiving water after reasonable opportunity for mixing.

(b) If one or more of the conditions described in subparagraphs 1.-3. of paragraph (a) has been demonstrated, remedies may include, but are not limited to, the following:

1. Require more stringent effluent limitations;
2. Order the point or method of discharge changed;
3. Limit the duration or volume of the discharge; or
4. Prohibit the discharge only if no other alternative is in the public interest.

(6) As of July 10, 1987, any facility covered in paragraph (c) of subsection (1) shall be permitted to discharge if it meets the standards set forth in subsections (4) and (5). Facilities that do not meet the standards in subsections (4) and (5) as of July 10, 1987, may be permitted to discharge under existing law until October 1, 1990. On and after October 1, 1990, all of the facilities covered in paragraph (c) of subsection (1) shall be required to meet the standards set forth in subsections (4) and (5).

History.—ss. 1, 2, 3, ch. 71-259; s. 2, ch. 71-137; s. 1, ch. 72-58; s. 271, ch. 77-147; s. 1, ch. 78-206; s. 75, ch. 79-65; s. 1, ch. 80-371; s. 1, ch. 81-246; s. 262, ch. 81-259; s. 2, ch. 86-173; s. 1, ch. 87-303.

403.0861 Scallop processing; discharge standards.—

(1) In furtherance of public policy established in s. 403.021, the department shall, not later than July 1, 1987, adopt rules establishing technology-based effluent limitations for waste resulting from the processing of scallops (Family: Pectinidae) which is discharged into waters of the state. The rules shall contain technology-based effluent limitations for biochemical oxygen demand and total suspended solids and for any other contaminant that the department deems appropriate. This section does not prohibit the department from establishing stricter effluent limitations based on the quality of receiving waters.

(2) Upon becoming effective, the rules required by this section shall be applicable to all permits or permit renewals allowing waste resulting from the processing of scallops to be discharged into waters of the state. Such rules shall be administered and enforced by the department in accordance with this chapter.

History.—s. 1, ch. 85-231; s. 9, ch. 86-186.

403.0862 Discharge of waste from state groundwater cleanup operations to publicly owned treatment works.—

(1) Upon agreement between a local governmental agency and the department, treated waste resulting from the department's cleanup or restoration of contaminated groundwater may be discharged to a publicly owned treatment works under the jurisdiction of the local governmental agency.

(2) Upon a demonstration by the local government that it incurred damages and costs, including attorney's fees, as a result of the discharge from the department's cleanup operations, the department shall pay for all actual damages and costs, including, but not limited to, the cost of bringing the facility into compliance with any state or federal requirements.

(3) Should the discharge from the department's cleanup operations exceed agreed upon pretreatment limits, the department shall pay the local government an agreed upon sum for each occasion that the discharge exceeds pretreatment limits without proof of damages as required by subsection (2).

(4) The limitation on damages provided by s. 768.28(5) shall not apply to any obligation or payment which may become due under this section.

History.—s. 10, ch. 86-186.

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(1) No stationary installation which will reasonably be expected to be a source of air or water pollution shall be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the department, unless exempted by de-

partment rule. In no event shall a permit for a water pollution source be valid for more than 5 years. However, upon expiration, a new permit may be issued by the department in accordance with this act and the rules and regulations of the department. The renewal of a permit issued under s. 403.088 for the operation of a sanitary sewage system may be issued for periods of up to 10 years, provided:

(a) The system is not currently operating under a temporary operating permit and does not have any enforcement action pending against it by the Environmental Protection Agency or the department;

(b) The department has reviewed the operation reports required under department rule, which reports include the levels of oxygen, suspended solids and percentage of removal, and phosphorus and acidity/alkalinity present in the discharge, and the department is satisfied that the report is accurate;

(c) The department has conducted, within the 12 months prior to issuance of the 10-year permit, an inspection of the system and verified, in writing to the operator of the system, that the system is not exceeding capacity and is in proper working order; and

(d) The system has met all water quality standards within the last 2 years prior to the issuance of the 10-year permit, except for violations not attributable to the sanitary sewage system or its operator.

The operator of a system operating under a 10-year permit shall report to the department, in writing, within 48 hours, of the existence of any malfunctioning equipment or other conditions which would, if allowed to continue, cause water quality standards to be violated or would violate any other department rule or standard. The report should state any corrective measures that have been taken or a plan for correcting the malfunctioning equipment or other conditions so that the department can determine whether the corrective measures or plan are appropriate.

(2) The department shall adopt, amend, or repeal rules, regulations, and standards for the issuance, denial, and revocation of permits.

(3) The department shall issue permits on such conditions as are necessary to effect the intent and purposes of this section.

(4) The department shall issue permits to construct, operate, maintain, expand, or modify an installation which may reasonably be expected to be a source of pollution only when it determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules promulgated by the department, except as provided in s. 403.088, and which will comply with the prohibitions in 140 C.F.R. s. 124.41.

[2](5)(a) The department may require a processing fee in an amount sufficient to cover the costs of reviewing and acting upon any application for a permit or request for site-specific alternative criteria or for an exemption from water quality criteria and to cover the costs of surveillance and other field services associated with any permit issued pursuant to this chapter. However, when an application is received without the required fee, the department shall acknowledge receipt of the application and shall immediately return the unprocessed application to the applicant and shall take no further action until the application is received with the appropriate fee. The amount of the fees shall be adopted by rule, subject to the following limitations:

1. The permit fee for any of the following permits shall not exceed $5,000:
   a. Air pollution, construction permit.
   b. Hazardous waste, construction permit.
   c. Hazardous waste, closure permit.
   d. Solid waste, construction permit.
   e. Industrial waste, construction permit.
   f. Deep injection well, construction permit.
2. The permit fee for a temporary operation permit for an industrial waste source shall not exceed $4,000.
3. The permit fee for any of the following permits shall not exceed $3,000:
   a. Domestic waste, temporary operation permit.
   b. Dredge and fill, standard form permit.
   c. Hazardous waste, temporary operation permit.
   d. Hazardous waste, research and development permit.
   e. Solid waste, temporary operation permit.
   f. Solid waste, operation permit.
   g. Solid waste, closure permit.
   h. Deep injection well, operation permit.
4. The fee for any of the following permits shall not exceed $2,000:
   a. Air pollution, temporary operation permit.
   b. Air pollution, operation permit.
   c. Domestic waste, operation permit.
   d. Domestic waste, construction permit.
   e. Hazardous waste, operation permit.
   f. Industrial waste, operation permit.
5. The permit fee for a drinking water facility construction permit shall not exceed $1,000.
6. The permit fee for any of the following permits shall not exceed $500:
   a. Domestic waste, collection systems.
   b. Dredge and fill, short form.
   c. Drinking water, distribution system.
   d. Other injection wells, construction and operation.
7. The permit fee for any of the following permits shall not exceed $100:
   a. Domestic waste, general permit.
   b. Dredge and fill, general permit.
   c. Mangrove alteration.
   d. Solid waste, general permit.
   e. Industrial waste, general permit.
   f. Drinking water, general permit.
   g. Injection well, general permit.
   h. Injection well, abandonment.
   i. Stormwater.
8. The fee for a permit issued pursuant to s. 403.816 is $5,000, and the fee for any modification of such permit requested by the applicant is $1,000.

(b) Where new or existing multiple air pollution sources located at the same facility are substantially similar in nature, the applicant may submit a single application and permit fee for construction or operation of the sources at that facility. The department may develop by

criteria for determining what constitutes substantially similar sources.

(c) The fee schedule shall be adopted by rule based on a sliding scale relating to the size or type of installation which is proposed or operated by the applicant. The fee schedule shall provide for a reduced fee where the applicant seeks to renew an existing permit and there is no significant change in the authorized activity, and may provide for maximum permit fees to be paid during any 5-year period by the owner or operator of a single facility. The amount of each fee shall be reasonably related to the costs of permitting and field services for the particular activity taking into consideration standard cost-accounting principles and economies of scale. If the department requires by rule or by permit condition that a permit be renewed more frequently than once every 5 years, the permit fee shall be prorated based upon the permit fee schedule in effect at the time of permit renewal.

(d) Nothing in this subsection authorizes the construction or expansion of any stationary installation except to the extent specifically authorized by department permit or rule.

(6) A permit issued pursuant to this section shall not become a vested right in the permittee. The department may revoke any permit issued by it if it finds that the permitholder:

(a) Has submitted false or inaccurate information in application;

(b) Has violated law, department orders, rules, or regulations, or permit conditions;

(c) Has failed to submit operational reports or other information required by department rule or regulation; or

(d) Has refused lawful inspection under s. 403.091.

(7) The department shall not issue a permit to any person for the purpose of engaging in, or attempting to engage in, any activity relating to the extraction of solid minerals not exempt pursuant to chapter 211 within any state or national park or state or national forest when the activity will degrade the ambient quality of the waters of the state or the ambient air within those areas. In the event the Federal Government prohibits the mining or leasing of solid minerals on federal park or forest lands, then, and to the extent of such prohibition, this act shall not apply to those federal lands.

(8) A violation of this section is punishable as provided in this chapter.

History.—s. 1, ch. 71-203; s. 4, ch. 74-133; s. 14, ch. 78-85; s. 14, ch. 82-27; s. 1, ch. 82-54; s. 1, ch. 82-122; s. 59, ch. 83-218; s. 24, ch. 84-338; s. 11, ch. 86-186; s. 2, ch. 87-125; s. 17, ch. 88-393.

[1]Note.—40 C.F.R. s. 124.41 is a definitions section containing no obvious reference to prohibitions.

[2]Note.—Section 20, ch. 88-393, provides that "the Department of Environmental Regulation shall begin rulemaking to implement the provisions of sections 17, 18, and 19 no later than 30 days after [July 6, 1988]."

403.0871 Florida Permit Fee Trust Fund.—There is established within the Department of Environmental Regulation a nonlapsing trust fund to be known as the "Florida Permit Fee Trust Fund." All funds received from applicants for permits pursuant to ss. 403.087(5) and 403.861(7) shall be deposited in the Florida Permit Fee Trust Fund and shall be used by the department with the advice and consent of the Legislature to supplement appropriations and other funds received by the department for the administration of its responsibilities under this chapter. In no case shall funds from the Florida Permit Fee Trust Fund be used for salary increases without the approval of the Legislature.

History.—s. 2, ch. 82-122; s. 12, ch. 86-186.

403.0875 Citation of rule.—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

History.—s. 7, ch. 79-161.

403.0876 Permits; processing.—

(1) Within 30 days after receipt of an application for a permit under this chapter, the department shall review the application and shall request submittal of all additional information the department is permitted by law to require. If the applicant believes any departmental request for additional information is not authorized by law or departmental rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department shall review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the department for such additional information is not authorized by law or departmental rule, the department, at the applicant's request, shall proceed to process the permit application.

(2)(a) A permit shall be approved or denied within 90 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

(b) The failure of the department to approve or deny a permit for an underground injection well within the 90-day time period shall not result in the automatic approval or denial of the permit and shall not prevent the inclusion of specific permit conditions which are necessary to ensure compliance with applicable statutes and rules. If the department fails to approve or deny such a permit within the 90-day period, the applicant may petition for a writ of mandamus to compel the department to act consistently with applicable regulatory requirements.

(3)(a) The department shall establish a special unit for permit coordination and processing to provide expeditious processing of department permits which the district offices are unable to process expeditiously and to provide accelerated processing of certain permits or renewals for economic and operating stability. The ability of the department to process applications pursuant to this subsection in a more timely manner than allowed by subsections (1) and (2) is dependent upon the timely exchange of information between the applicant and the department and the intervention of outside parties as allowed by law. An applicant may request the processing of its permit application by the special unit if the application is from an area of high unemployment or low per capita income, is from a business or industry that is the

primary employer within an area's labor market, or is in an industry with respect to which the complexities involved in the review of the application require special skills uniquely available in the headquarters office. The department may require the applicant to waive the 90-day time limitation for department issuance or denial of the permit once for a period not to exceed 90 days. The department may require a special fee to cover the direct cost of processing special applications in addition to normal permit fees and costs. The special fee may not exceed $10,000 per permit required. Applications for renewal permits, but not applications for initial permits, required for facilities pursuant to the Electrical Power Plant Siting Act or the Transmission Line Siting Act may be processed under this subsection. Personnel staffing the special unit shall have lengthy experience in permit processing.

(b) At the applicant's discretion and notwithstanding any other provisions of chapter 120, a permit processed under this subsection is subject to an expedited administrative hearing pursuant to s. 120.57. To request such hearing, the applicant must notify the Division of Administrative Hearings, the department, and all other parties in writing within 15 days after his receipt of notice of assignment of a hearing officer from the division. The division shall conduct a hearing within 45 days after receipt of the request for such expedited hearing.

History.—s. 2, ch. 80-66; s. 25, ch. 84-338; s. 13, ch. 86-186; s. 14, ch. 88-393.

403.0877 Certification by professionals regulated by the Department of Professional Regulation.—

(1) Nothing in this section shall be construed as specific authority for a water management district or the department to require certification by a professional engineer licensed under chapter 471, a professional landscape architect licensed under part II of chapter 481, a professional geologist licensed under chapter 492, or a professional land surveyor licensed under chapter 472, for an activity that is not within the definition or scope of practice of the regulated profession.

(2) If an application for a permit or license to conduct an activity regulated under this chapter, chapter 373, chapter 376, or any permitting program delegated to a water management district by a state agency requires the services of a professional as enumerated in subsection (1), the department or governing board of a water management district may require, by rule, in conjunction with such an application or any submittals required as a condition of granting a permit or license, such certification by the professional as may be necessary to ensure that the proposed activity is designed, constructed, operated, and maintained in accordance with applicable law and rules of the department or district and in conformity with proper and sound design principles, or other such certification by the professional as may be necessary to ensure compliance with applicable law or rules of the department or district. The department or governing board of a water management district may further require as a condition of granting a permit or license, that the professional certify upon completion of the permitted or licensed activity that such activity has, to the best of his knowledge, been completed in substantial conformance with the plans and specifications approved by the department or board.

(3) The cost of such certifications by the professional shall be borne by the permittee.

(4) No permitted or licensed activity which is required to be so certified upon completion of the activity shall be placed into use or operation until the professional's certificate is filed with the department or board.

History.—s. 9, ch. 89-324.

403.088 Water pollution operation permits; temporary permits; conditions.—

(1) No person, without written authorization of the department, shall discharge into waters within the state any waste which, by itself or in combination with the wastes of other sources, reduces the quality of the receiving waters below the classification established for them. However, this section shall not be deemed to prohibit the application of pesticides to waters in the state for the control of insects, aquatic weeds, or algae, provided the application is performed pursuant to a program approved by the Department of Health and Rehabilitative Services, in the case of insect control, or the Department of Natural Resources, in the case of aquatic weed or algae control. The Department of Environmental Regulation is directed to enter into interagency agreements to establish the procedures for program approval. Such agreements shall provide for public health, welfare, and safety, as well as environmental factors. Approved programs must provide that only chemicals approved for the particular use by the Federal Environmental Protection Agency or by the Department of Agriculture and Consumer Services may be employed and that they be applied in accordance with registered label instructions, state standards for such application, and the provisions of the Florida Pesticide Law, chapter 487.

(2)(a) Any person intending to discharge wastes into the waters of the state shall make application to the department for an operation permit. Application shall be made on a form prescribed by the department and shall contain such information as the department requires.

(b) If the department finds that the proposed discharge will reduce the quality of the receiving waters below the classification established for them, it shall deny the application and refuse to issue a permit. If the department finds that the proposed discharge will not reduce the quality of the receiving waters below the classification established for them, it may issue an operation permit if it finds that such degradation is necessary or desirable under federal standards and under circumstances which are clearly in the public interest.

(c) A permit shall:

1. Specify the manner, nature, volume, and frequency of the discharge permitted;

2. Require proper operation and maintenance of any pollution abatement facility by qualified personnel in accordance with standards established by the department;

3. Contain such additional conditions, requirements, and restrictions as the department deems necessary to preserve and protect the quality of the receiving waters; and

4. Be valid for the period of time specified therein.

(d) An operation permit may be renewed upon application to the department. No renewal permit shall be is-

if the department finds that the proposed discharge will reduce the quality of the receiving waters below the classification established for them.

(3)(a) A person who does not qualify for an operation permit or has been denied an operation permit under paragraph (b) of subsection (2) may apply to the department for a temporary operation permit. Application shall be made on a form prescribed by the department and shall contain such information as the department may require. The department may require such person to submit any additional information reasonably necessary for proper evaluation.

(b) The department shall give notice to people resident in the drainage area of the receiving waters for the proposed discharge concerning the period during which they may present objections to the proposed discharge.

(c) After consideration of the application, any additional information furnished, and all written objections submitted, the department shall grant or deny a temporary operation permit. No temporary permit shall be granted by the department unless it affirmatively finds:

1. The proposed discharge does not qualify for an operation permit;

2. The applicant is constructing, installing, or placing into operation, or has submitted plans and reasonable schedules for constructing, installing or placing into operation, an approved pollution abatement facility or alternate waste disposal system, or that the applicant has waste for which no feasible and acceptable method of treatment or disposal is known or recognized but is making a bona fide effort through research and other means to discover and implement such a method;

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

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

5. The denial of a temporary operation permit would work an extreme hardship upon the applicant;

6. The granting of a temporary operation permit will be in the public interest; or

7. The discharge will not be unreasonably destructive to the quality of the receiving waters.

(d) A temporary operation permit issued shall:

1. Specify the manner, nature, volume, and frequency of the discharge permitted;

2. Require the proper operation and maintenance of any interim or temporary pollution abatement facility or system required by the department as a condition of the permit;

3. Require the permitholder to maintain such monitoring equipment and make and file such records and reports as the department deems necessary to insure compliance with the terms of the permit and to evaluate the effect of the discharge upon the receiving waters;

4. Be valid only for the period of time necessary for the permit holder to place into operation the facility, system, or method contemplated in his application as determined by the department; and

5. Contain other requirements and restrictions which the department deems necessary and desirable to protect the quality of the receiving waters and promote the public interest.

(4)(a) The provisions of this section shall not be construed to repeal or restrict any other provisions of this chapter, but shall be cumulative thereto.

(b) This section shall not be construed to exempt any permittee from the pollution control requirements of any local air and water pollution control rule, regulation, ordinance, or code, or to authorize or allow any violation thereof.

(5) Notwithstanding any act to the contrary, if the discharge from any sewage disposal or treatment plant is permitted pursuant to this chapter and by a local pollution control program, the discharge shall be deemed lawful. Further, any person, firm, corporation, or public body that constructs, reconstructs, extends, or increases the capacity or volume of any sewage disposal or treatment plant pursuant to permits or authorizations under this chapter and through any local pollution control program shall not be subject to an action by the state attorney to restrain, enjoin, or otherwise prevent such construction, reconstruction, extension, or increase.

History.—ss. 2, 3, 5, ch. 71-203; s. 1, ch. 73-360; s. 5, ch. 74-133; s. 2, ch. 76-112; s. 1, ch. 77-174; s. 14, ch. 78-95; s. 2, ch. 78-98; s. 87, ch. 79-164; s. 60, ch. 83-218; s. 14, ch. 86-186.

403.0881 Sewage or disposal systems or water treatment works; construction permits.—The department may issue construction permits for sewage systems, treatment works, or disposal systems based upon review of a preliminary design report, application forms, and other required information, all of which shall be formulated by department rule. Detailed construction plans and specifications shall not be required prior to issuance of a construction permit unless such plans and specifications are required to secure federal funding and the project is expected to receive federal funding. Upon a demonstration that a constructed system operates as designed, the department shall issue a permit for operation of the system.

History.—s. 3, ch. 87-125.

403.0885 Establishment of federally approved state National Pollutant Discharge Elimination System (NPDES) program.—

(1) The Legislature finds and declares that it is in the public interest to promote effective and efficient regulation of the discharge of pollutants into waters of the state and eliminate duplication of permitting programs by the U.S. Environmental Protection Agency under Section 402 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. s. 1251 et seq., and the department under this chapter. It is further found that state implementation of the federal NPDES program, with sufficient time for legislative revision prior to the implementation of the state NPDES permit program by the department, would promote the orderly establishment of a state administered NPDES program. It is the specific intent of the Legislature that permit fees charged by the department for processing of federally approved NPDES permits be adequate to cover the entire cost to the de-

partment of program management, for reviewing and acting upon any permit application, and to cover the cost of surveillance and other field services of any permits issued pursuant to this section. Further, it is legislative intent, upon a finding by the department determining such additional costs for administering an NPDES program, to set permit fees by legislative act during the 1989 regular legislative session.

(2) To this end, the department shall apply no later than January 1, 1989, to the U.S. Environmental Protection Agency, pursuant to Section 402 of the Federal Clean Water Act, Pub. L. No. 92-500, as amended, for approval to operate an NPDES program. The department shall not process applications or issue or deny NPDES permits under this program until after January 1, 1990.

(3). The department is empowered to establish a state NPDES program in accordance with Section 402 of the Clean Water Act, as amended. The department shall have the power and authority to operate the NPDES permitting program in accordance with Section 402(b) of the Clean Water Act, as amended, and 40 C.F.R. Part 123. The state NPDES permit shall be the sole permit issued by the state under this chapter regulating the discharge of pollutants or wastes into surface waters within the state for discharges covered by the EPA approved state NPDES program. This legislative grant of authority is intended to be sufficient to enable the department to qualify for delegation of the Federal NPDES program to the state and operate such program in accordance with federal law.

(4) An application for an NPDES permit and other approvals from the state relating to the permitted activity shall be granted or denied by the department within the time allowed for permit review under 40 C.F.R. Part 123, subpart C. Other than for stormwater discharge permitting, the decision on issuance or denial of such permit may not be delegated to another agency or governmental authority. The department is specifically exempted from the time limitations provided in ss. 120.60 and 403.0876. However, if the department fails to render a permitting decision within the time allowed by 40 C.F.R. Part 123, subpart C, or a Memorandum of Agreement executed by the department and the U.S. Environmental Protection Agency, whichever is shorter, the applicant may apply for an order from the circuit court requiring the department to render a decision within a specified time.

(5) The department shall respond, in writing, to any written comments on a pending application for a state NPDES permit which the department receives from the Executive Director, or his designee, of the Game and Fresh Water Fish Commission or the Department of Natural Resources, on matters within the commenting agency's jurisdiction. The department's response shall not constitute agency action for purposes of s. 120.57 or other provisions of chapter 120.

History.—s. 23, ch. 88-393.

403.0891 State, regional, and local stormwater management plans and programs.—The department, the water management districts, and local governments shall have the responsibility for the development of mutually compatible stormwater management programs.

(1) The department shall include goals in the state water policy for the proper management of stormwater.

(2) Each water management district to which the state's stormwater management program is delegated shall establish district and, where appropriate, watershed or drainage basin stormwater management goals which are consistent with the goals adopted by the state and with plans adopted pursuant to ss. 373.451-373.4595, the Surface Water Improvement and Management Act.

(3)(a) Each local government required by chapter 163 to submit a comprehensive plan, whose plan is submitted after July 1, 1992, and the others when updated after July 1, 1992, in the development of its stormwater management program described by elements within its comprehensive plan shall consider state water policy, district stormwater management goals, plans approved pursuant to the Surface Water Improvement and Management Act, ss. 373.451-373.4595, and technical assistance information provided by the water management districts pursuant to s. 373.0391.

(b) Local governments are encouraged to consult with the water management districts, the Department of Transportation, and the department before adopting or updating their local government comprehensive plan or public facilities report as required by s. 189.415, whichever is applicable.

(4) The Department of Transportation shall inventory and map primary stormwater management systems constructed, operated, or maintained by the Department of Transportation in each water management district. The inventory shall include available design calculations, conditions, capacity, photographic and drainage maps, and other pertinent information and shall be submitted to the water management district in which the system is located by July 1, 1993. However, completion of both the inventory and the mapping effort shall be by July 1, 1991, for systems which affect designated priority water bodies under ss. 373.451-373.4595, the Surface Water Improvement and Management Act. The Department of Transportation shall submit an annual report of progress on the mapping effort to the Department of Environmental Regulation.

(5) The department, in coordination and cooperation with water management districts and local governments, shall conduct a continuing review of the costs of stormwater management systems and the effect on water quality and quantity, and fish and wildlife values. The department, the water management districts, and local governments shall use the review for planning purposes and to establish priorities for watersheds and stormwater management systems which require better management and treatment of stormwater with emphasis on the costs and benefits of needed improvements to stormwater management systems to better meet needs for flood protection and protection of water quality, and fish and wildlife values.

(6) The results of the review shall be maintained by the department and the water management districts and shall be provided to appropriate local governments or other parties on request. The results also shall be used in the development of the goals developed pursuant to subsections (1) and (2).

History.—s. 15, ch. 86-186; s. 32, ch. 89-279.

403.0893 Stormwater funding; dedicated funds for stormwater management.—In addition to any other funding mechanism legally available to local government to construct, operate, or maintain stormwater systems, a county or municipality may:

(1) Create one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3);

(2) Establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3); or

(3) Create, alone or in cooperation with counties, municipalities, and special districts pursuant to the Interlocal Cooperation Act, s. 163.01, one or more stormwater management system benefit areas. All property owners within said area may be assessed a per acreage fee to fund the planning, construction, operation, maintenance, and administration of a public stormwater management system for the benefited area. Any benefit area containing different land uses which receive substantially different levels of stormwater benefits shall include stormwater management system benefit subareas which shall be assessed different per acreage fees from subarea to subarea based upon a reasonable relationship to benefits received. The fees shall be calculated to generate sufficient funds to plan, construct, operate, and maintain stormwater management systems called for in the local program required pursuant to s. 403.0891(3). For fees assessed pursuant to this section, counties or municipalities may use the non-ad valorem levy, collection, and enforcement method as provided for in chapter 197.

History.—s. 16, ch. 86-186; s. 34, ch. 89-279.

403.0896 Training and assistance for stormwater management system personnel.—The Stormwater Management Assistance Consortium of the State University System, working in cooperation with the community colleges in the state, interested accredited private colleges and universities, the department, the water management districts, and local governments, shall develop training and assistance programs for persons responsible for designing, building, inspecting, or operating and maintaining stormwater management systems.

History.—s. 33, ch. 89-279.

403.091 Inspections.—

(1)(a) Any duly authorized representative of the department may at any reasonable time enter and inspect, for the purpose of ascertaining the state of compliance with the law or rules and regulations of the department, any property, premises, or place, except a building which is used exclusively for a private residence, on or at which:

1. A hazardous waste generator, transporter, or facility or other air or water contaminant source;

2. A discharger, including any nondomestic discharger which introduces any pollutant into a publicly owned treatment works;

3. Any facility, as defined in s. 376.301; or

4. A resource recovery and management facility

is located or is being constructed or installed or where records which are required under this chapter, ss. 376.30-376.319, or department rule are kept.

(b) Any duly authorized representative may at reasonable times have access to and copy any records required under this chapter or ss. 376.30-376.319; inspect any monitoring equipment or method; sample for any pollutants as defined in s. 376.301, effluents, or wastes which the owner or operator of such source may be discharging or which may otherwise be located on or underlying the owner's or operator's property; and obtain any other information necessary to determine compliance with permit conditions or other requirements of this chapter, ss. 376.30-376.319, or department rules.

(c) No person shall refuse reasonable entry or access to any authorized representative of the department who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

(2) An inspection pursuant to subsection (1) may be conducted only after:

(a) Consent for the inspection is received from the owner, operator, or person in charge; or

(b) The appropriate inspection warrant as provided in this section is obtained.

(3)(a) An inspection warrant as authorized by this chapter may be issued by a judge of any county court or circuit court of this state which has jurisdiction of the place or thing to be searched.

(b) Upon proper affidavit being made, an inspection warrant may be issued under the provisions of this chapter or ss. 376.30-376.319:

1. When it appears that the properties to be inspected may be connected with or contain evidence of the violation of any of the provisions of this chapter or ss. 376.30-376.319 or any rule properly promulgated thereunder; or

2. When the inspection sought is an integral part of a larger scheme of systematic routine inspections which are necessary to, and consistent with, the continuing efforts of the department to ensure compliance with the provisions of this chapter or ss. 376.30-376.319 and any rules adopted thereunder.

(c) The judge shall, before issuing the warrant, have the application for the warrant duly sworn to and subscribed by a representative of the department; and he may receive further testimony from witnesses, supporting affidavits, or depositions in writing to support the application. The affidavit and further proof, if had or required, shall set forth the facts tending to establish the grounds specified in paragraph (b) or the reasons for believing that such grounds exist.

(d) Upon examination of the application and proofs submitted and if satisfied that cause exists for the issuing of the inspection warrant, the judge shall thereupon issue a warrant, signed by him with the name of his office, to any department representative, which warrant

will authorize the representative forthwith to inspect the property described in the warrant.

History.—s. 10, ch. 67-436, ss. 26, 35, ch. 69-106, s. 1, ch. 80-302, s. 6, ch. 82-27; s. 26, ch. 84-338, s. 25, ch. 86-159, s. 5, ch. 89-186

Note.—The words "the reasons" were inserted by the editors.

403.092 Package sewage treatment facilities; inspection.—The Department of Environmental Regulation shall implement a program to conduct regular and continuing inspection of package sewage treatment facilities. To the greatest extent possible consistent with the abilities and the financial resources of local governments, the inspection program shall be delegated to local governments.

History.—s. 4, ch. 83-310.

403.101 Classification and reporting; regulation of operators of water purification plants and wastewater treatment plants.—

(1) The department, by rule, may classify air and water contaminant sources, which sources in its judgment may cause or contribute to air or water pollution, according to levels and types of emissions and other characteristics which relate to air or water pollution, and may require reporting for any such class or classes. Classifications made pursuant to this section may be made for application to the state as a whole or to any designated area of the state, and shall be made with special reference to physical effects on property and effects on health, economic, social, and recreational factors.

(2) Any person operating, or responsible for the operation of, air or water contaminant sources of any class for which the rules of the department require reporting shall make reports containing information as may be required concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time period or duration of emissions, and such other information as is relevant to air and water pollution and available or reasonably capable of being assembled.

(3) The department is authorized to establish qualifications for, and to examine and certify, water and wastewater treatment plant operators; to issue, deny, revoke, and suspend operator certificates pursuant to its rules and chapter 120; to charge a fee not in excess of $15 for certification; and to charge a fee not in excess of $30 for application processing and renewal of certification. In assessing fees authorized by this subsection, the department is directed to adjust the fees as needed within the established limits to ensure that generated revenues from the certification program will equal or exceed the cost of operation. Certificate renewal shall be biennial, effective January 1, 1980. A fee not to exceed $5 may be charged for the issuance of a duplicate certificate. Such fees shall be nonrefundable. Renewals of certification, issued as requested by the applicant pursuant to this section, shall be exempt from the provisions of s. 120.60(3), if the department provides each applicant with written notice either personally or by mail of the certification or renewal.

(4) No person shall perform the duties of operator of a water or wastewater treatment plant unless he holds a current operator's certificate issued by the department. However, this section shall not apply to public lodging establishments licensed under chapter 509. No owner of a water or wastewater plant shall employ any person to perform the duties of an operator unless such person possesses a valid certificate at the required level of certification.

(5) All funds collected pursuant to this section shall be deposited in the General Revenue Fund.

(6) The department may promulgate rules and minimum standards to effectuate the provisions of this section and to ensure efficient, hygienic water purification and wastewater treatment operations in this state.

(7) For purposes of this section, "operator" means any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a drinking water purification plant or a domestic wastewater treatment plant and includes the person in charge of a shift or period of operation during any part of the day.

History.—s. 11, ch. 67-436; ss. 26, 35, ch. 69-106; s. 18, ch. 77-337; s. 161, ch. 79-400; s. 3, ch. 80-66; s. 2, ch. 81-318; ss. 1, 2, 3, ch. 82-44; s. 17, ch. 86-186

Note.—Expires October 1, 1992, pursuant to s. 3, ch. 82-44, and is scheduled for review pursuant to s. 11.61 in advance of that date.

403.111 Confidential records.—Any information, other than effluent data, relating to secret processes, methods of manufacture or production which may be required, ascertained, or discovered by inspection or investigation, shall not be disclosed in public hearings and shall be kept confidential by any member, officer, or employee of the department. Provided that nothing herein shall be construed to prevent the use of such records in judicial proceedings in connection with the prosecution of violations of this act, when ordered to be produced by appropriate subpoena or by order of the court. No such subpoena or order of the court shall abridge or alter the rights or remedies of persons affected in the protection of trade secrets or secret processes, in the manner provided by law, and such persons affected may take any and all steps available by law to protect such trade secrets or processes.

History.—s. 12, ch. 67-436; ss. 26, 35, ch. 69-106; s. 6, ch. 74-133.

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

(1) Judicial remedies:

(a) The department may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.

(b) The department may institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than $10,000 per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense.

(c) It shall not be a defense to, or ground for dismissal of, these judicial remedies for damages and civil penalties that the department has failed to exhaust its administrative remedies, has failed to serve a notice of violation, or has failed to hold an administrative hearing prior to the institution of a civil action.

?) Administrative remedies:

) (a) The department may institute an administrative proceeding to establish liability and to recover damages for a. y injury to the air, waters, or property, including animal, plant, or aquatic life, of the state caused by any violation. The department may order that the violator pay a spe'. fied s:.r as damages to the state. Judgment for the amount of damages determined by the department may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(b) If the department has reason to believe a violation has occurred, it may institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action.

(c) An administrative proceeding shall be instituted by the department's serving of a written notice of violation upon the alleged violator by certified mail. The notice shall specify the provision of the law, rule, regulation, permit, certification, or order of the department alleged to be violated and the facts alleged to constitute a violation thereof. An order for corrective action may be included with the notice. However, no order shall become effective until after service and an administrative hearing, if requested within 20 days after service. Failure to request an administrative hearing within this time period shall constitute a waiver thereof.

(d) Nothing herein shall be construed as preventing ny other legal or administrative action in accordance with law.

History.—s. 13, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-114; s. 1, ch. 70-139; s. 349; ch. 71-136; s. 112, ch. 71-355; s. 1, ch. 72-286; s. 138, ch. 77-104; s. 1, ch. 77-117; s. 14, ch. 78-95; s. 263, ch. 81-259.

403.131 Injunctive relief, cumulative remedies.—

(1) The department may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this chapter or any rule, regulation, permit certification, or order; to enjoin any violation specified in s. 403.161(1); and to seek injunctive relief to prevent irreparable injury to the air, waters, and property, including animal, plant, and aquatic life, of the state and to protect human health, safety, and welfare caused or threatened by any violation.

(2) All the judicial and administrative remedies in this section and s. 403.121 are independent and cumulative except that the judicial and administrative remedies to recover damages are alternative and mutually exclusive.

History.—s. 14, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-139; s. 1, ch. 70-439; s. 2, ch. 72-286.

403.135 Persons who accept wastewater for spray irrigation; civil liability.—

(1) Any person who in good faith accepts from any owner or operator of a permitted wastewater treatment or disposal plant any wastewater permitted and intended to be used for disposal through spray irrigation is not liable for any civil damages as a result of the acceptance and disposal of such wastewater through approved spray irrigation practices.

(2) Subsection (1) does not limit or otherwise affect the liability of:

(a) Any person for damages resulting from such person's negligence, gross negligence, or reckless, wanton, or intentional misconduct;

(b) Any person for the improper management and use of the wastewater after its delivery to such person by any permitted wastewater treatment or disposal plant owner or operator; or

(c) The owner or operator of the plant for damages caused as a result of the spray irrigation.

(3) Nothing in this section shall prohibit any governmental entity from taking such action within its jurisdiction as may be necessary to protect the public health, safety, or welfare or the environment.

(4) Terms used in this section have the meaning specified in this chapter and in the rules of the Department of Environmental Regulation under this chapter.

History.—s. 1, ch. 87-207.

403.141 Civil liability; joint and several liability.—

(1) Whoever commits a violation specified in s. 403.161(1) is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition, and furthermore is subject to the judicial imposition of a civil penalty for each offense in an amount of not more than $10,000 per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. Nothing herein shall give the department the right to bring an action on behalf of any private person.

(2) Whenever two or more persons pollute the air or waters of the state in violation of this chapter or any rule, regulation, or order of the department so that the damage is indivisible, each violator shall be jointly and severally liable for such damage and for the reasonable cost and expenses of the state incurred in tracing the source of discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including the animal, plant, and aquatic life of the state, to their former condition. However, if said damage is divisible and may be attributed to a particular violator or violators, each violator is liable only for that damage attributable to his violation.

(3) In assessing damages for fish killed, the value of the fish is to be determined in accordance with a table of values for individual categories of fish which shall be promulgated by the department. At the time the table is adopted, the department shall utilize tables of values established by the Department of Natural Resources and the Game and Fresh Water Fish Commission. The total number of fish killed may be estimated by standard practices used in estimating fish population.

(4) The damage provisions of this section shall not apply to damage resulting from the application of federally approved or state-approved chemicals to the waters in the state for the control of insects, aquatic weeds, or algae, provided the application of such chemicals is done in accordance with a program approved pursuant

o s. 403.088(1) and provided said application is not done negligently.

History.—s. 15, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-141; s. 1, ch. 71-204; s. 3, ch. 72-286; s. 7, ch. 74-133, s. 1, ch. 76-112; s. 3, ch. 78-98.

403.151 Compliance with rules or orders of department.—All rules or orders of the department which require action to comply with standards adopted by it, or orders to comply with any provisions of this act, may specify a reasonable time for such compliance.

History.—s. 16, ch. 67-436; ss. 26, 35, ch. 69-106.

403.161 Prohibitions, violation, penalty, intent.—

(1) It shall be a violation of this chapter, and it shall be prohibited for any person:

(a) To cause pollution, except as otherwise provided in this chapter, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property.

(b) To fail to obtain any permit required by this chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the department pursuant to its lawful authority.

(c) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter or by any permit, rule, regulation, or order issued under this chapter.

(d) For any person who owns or operates a facility to fail to report to the representative of the department, as established by department rule, within one working day of discovery of a release of hazardous substances from the facility if the owner or operator is required to report the release to the United States Environmental Protection Agency in accordance with 42 U.S.C. s. 9603.

(2) Whoever commits a violation specified in subsection (1) is liable to the state for any damage caused and for civil penalties as provided in s. 403.141.

(3) Any person who willfully commits a violation specified in paragraph (1)(a) is guilty of a felony of the third degree punishable as provided in ss. 775.082(3)(d) and 775.083(1)(g) by a fine of not more than $50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) Any person who commits a violation specified in paragraph (1)(a) due to reckless indifference or gross careless disregard is guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082(4)(b) and 775.083(1)(g) by a fine of not more than $5,000 or by 60 days in jail, or by both, for each offense.

(5) Any person who willfully commits a violation specified in paragraph (1)(b) or paragraph (1)(c) is guilty of a misdemeanor of the first degree punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g) by a fine of not more than $10,000 or by 6 months in jail, or by both for each offense.

(6) It is the legislative intent that the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance with this section.

History.—s. 17, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-356; s. 1, ch. 70-439; s. 4, ch. 72-286; s. 8, ch. 74-133; s. 139, ch. 77-104; s. 1, ch. 77-174; s. 21, ch. 86-393; s. 2, ch. 89-143; s. 8, ch. 89-324.

403.165 Use of pollution awards; pollution recovery fund.—There is hereby created a Pollution Recovery Fund which is to be supervised and used by the department to restore polluted areas of the state, as defined by the department, to the condition they were in before pollution occurred or to otherwise enhance pollution control activities in polluted areas. The fund shall consist of all moneys recovered by the state as a result of actions against any person for violation of any of the provisions of this chapter. The moneys shall be disbursed first to pay all amounts necessary to restore the respective polluted areas which were the subjects of state actions or to otherwise enhance pollution control activities in such areas. Any moneys remaining in the fund shall then be used by the department, as it sees fit, to pay for any work needed to restore areas which required more money than the state was able to obtain by court action or otherwise or to restore other polluted areas. In determining what other areas should be chosen, the department shall give priority to restoring areas that are within the same districts, as defined in s. 373.069, as the areas where the violations occurred.

History.—s. 5, ch. 72-286; s. 18, ch. 86-186; s. 11, ch. 88-393.

403.1655 Environmental short-term emergency response program.—

(1) It is the purpose of this section to provide a mechanism through which the state can immediately respond to short-term emergencies involving a threat to or an actual contamination of surface and ground water. It is the intent of the Legislature that the department provide not only technical assistance when responding to these short-term emergencies, but also financial resources to respond to emergencies which pose an immediate environmental or public health threat.

(2) The department shall be the lead agency for interdepartmental coordination relating to water pollution, toxic substances, and hazardous waste and other environmental and health emergencies not specifically designated within other statutes.

(3) Based upon the nature of the incident, the Water Quality Assurance Trust Fund or the Inland Protection Trust Fund, whichever is appropriate, shall be utilized to enable the department to respond during an emergency to incidents which threaten the environment or public health when otherwise responsible parties do not adequately respond.

(4) The department shall adopt rules for the purposes of this section.

History.—s. 42, ch. 83-310; s. 26, ch. 86-159.

1403.1659 Florida Groundwater Protection Task Force.—

(1) The Florida Groundwater Protection Task Force is created within the Department of Environmental Regulation.

(a) The Groundwater Protection Task Force shall consist of the following members:

1. The Secretary of Community Affairs or his designee;

The Secretary of Environmental Regulation or his designee;

3. The Secretary of Health and Rehabilitative Services or his designee;

4. The Commissioner of Agriculture or his designee;

5. The Secretary of Transportation or his designee; and

6. Any additional state agency members as determined and appointed by the Governor in order to properly implement the provisions of this act.

(b) The Secretary of Environmental Regulation or a designee shall chair the task force.

(2) The Florida Groundwater Protection Task Force shall:

(a) Coordinate the temporary provision of potable water to every citizen whose drinking water supply has been deemed by the state to be unsafe, until such time as a permanent source of potable water has been made available.

(b) Ensure that public information is provided to all citizens and local governments in any area in which drinking water has been deemed by the state to be unsafe. The task force shall assure:

1. The development and maintenance of a mailing list of each citizen and each local government in an area with contaminated drinking water wells.

2. The preparation and distribution of information to affected citizens and local governments describing state agency functions in the event of groundwater contamination.

3. The preparation and distribution of a newsletter as needed to all affected citizens and local governments, which newsletter shall contain a listing of upcoming scheduled activities, the answers to frequently submitted questions, and a listing of possible solutions or remedies to water contamination problems.

4. The availability of a toll-free telephone number to allow citizens of the state access to information regarding contaminated water supplies.

(c) Make recommendations to any person or governmental agency regarding groundwater contamination affecting public or private wells.

(d) Ensure that a current inventory of all groundwater contamination research activities by public and private universities in the state; federal, state, and local agencies; and private industry is developed and maintained. This inventory shall include, but is not limited to, a statewide listing of all facilities with groundwater testing capabilities in order to ensure that all citizens have their water tested within a reasonable period of time during a crisis situation.

(e) File, by October 1 annually, a report summarizing the activities of the task force during the past year. The report shall include, but is not limited to, a chronological listing of all groundwater contamination incidents, response strategy used by the state for each incident, actual costs for each incident, and an evaluation and recommendation concerning the needs of the state for the coming year with respect to groundwater contamination problems. A copy of the report shall be sent to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(3) The Florida Groundwater Protection Task Force shall meet as needed, at the call of the chairman, to carry out the provisions of this section.

History.—s. 27, ch. 84-338; s. 2, ch. 85-65.

*Note.—Repealed effective October 1, 1989.

403.1815 Construction of water distribution mains and sewage collection laterals; local regulation.—Notwithstanding any other provision of this chapter to the contrary, the department may, upon request, allow any county or municipality to regulate independently the construction of water distribution mains and sewage collection laterals of 10 inches or less in size which may be connected to any water system or sewerage system owned by the county or municipality. In considering such request, the department shall determine the administrative and engineering ability of a county or municipality to administer and comply with the requirements of this section. In the event the department allows any county or municipality to regulate independently the construction of such water distribution mains and sewage collection laterals, these types of construction projects shall be exempt from department permit requirements. However, nothing in this section shall relieve a county or a municipality from any requirement to obtain the necessary permits for construction activities in waters of the state or of the United States or from complying with all other provisions of this chapter and rules promulgated thereunder. The exemption provided by this section shall not apply to any lateral connection to any water or sewerage system which the department has deemed to be in substantial noncompliance with applicable laws and standards if the department has so notified the respective county or municipality. Each county or municipality granted such authority shall submit monthly reports to the department of the number of connections and geographical location of such connections made to any sewerage system owned by such county or municipality and shall, not later than July 1 of each year, submit an updated map of any water distribution system and sewage collection system owned by the county or municipality. Such map shall indicate the extensions of such water mains and sewer laterals constructed for the preceding year.

History.—s. 1, ch. 80-394.

403.182 Local pollution control programs.—

(1) Each county and municipality or any combination thereof may establish and administer a local pollution control program if it complies with this act. Local pollution control programs in existence on the effective date of this act shall not be ousted of jurisdiction if such local program complies with this act. All local pollution control programs, whether established before or after the effective date of this act, must:

(a) Be approved by the department as adequate to meet the requirements of this act and any applicable rules and regulations pursuant thereto.

(b) Provide by ordinance, regulation, or local law for requirements compatible with, or stricter or more extensive than those imposed by this act and regulations issued thereunder.

(c) Provide for the enforcement of such requirements by appropriate administrative and judicial process.

(d) Provide for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its program.

(2) The department shall have the exclusive authority and power to require and issue permits; provided, however, that the department may delegate its power and authority to local pollution control organizations if the department finds it necessary or desirable to do so.

(3) If the department finds that the location, character or extent of particular concentrations of population, contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air and water quality without an areawide pollution control program, the department may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct state administration.

(4)(a) If the department has reason to believe that a pollution control program in force pursuant to this section is inadequate to prevent and control pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this act, it shall proceed to determine the matter.

(b) If the department determines that such program is inadequate to prevent and control pollution in the municipality or county or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this act, it shall require that necessary corrective measures be taken within a reasonable period of time, not to exceed 90 days.

(c) If the municipality, county, or municipalities or counties fail to take such necessary corrective action within the time required, the department shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this act. Such pollution control program shall supersede all municipal or county pollution laws, regulations, ordinances and requirements in the affected jurisdiction.

(d) If the department finds that the control of a particular class of contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local pollution control authorities or may be more efficiently and economically performed at the state level, it may assume and retain jurisdiction over that class of contaminant source. Classifications pursuant to this paragraph may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(5) Any municipality or county in which the department administers its pollution control program pursuant to subsection (4) of this section may with the approval of the department establish or resume a municipal or county pollution control program which meets the requirements of subsection (1) of this section.

(6) Notwithstanding the existence of any local pollution control program, whether created by a county or municipality or a combination thereof or by a special law, the department shall have jurisdiction to enforce the provisions of this chapter and any rules, regulations, or orders issued pursuant to this chapter throughout the state; however, whenever rules, regulations, or orders of a stricter or more stringent nature have been adopted by a local pollution control program, the department, if it elects to assert its jurisdiction, shall then enforce the stricter rules, regulations, or orders in the jurisdiction where they apply.

(7) It shall be a violation of this chapter to violate, or fail to comply with, a rule, regulation, or order of a stricter or more stringent nature adopted by a local pollution control program, and the same shall be punishable as provided by s. 403.161. If any local program changes any rule, regulation, or order, whether or not of a stricter or more stringent nature, such change shall not apply to any installation or source operating at the time of such change in conformance with a currently valid permit issued by the Department of Environmental Regulation.

(8) Nothing in this act shall prevent any local pollution control program from enforcing its own rules, regulations, or orders. All remedies of the Department of Environmental Regulation under this chapter shall be available, as an alternative to local enforcement provisions, to each local pollution control program to enforce any provision of local law. When the department and a local program institute separate lawsuits against the same party for violation of a state or local pollution law, rule, regulation, or order arising out of the same act, the suits shall be consolidated when possible.

(9) Each local pollution control program shall cooperate with and assist the department in carrying out its powers, duties, and functions.

History.—s. 19, ch. 67-436; ss. 26, 35, ch. 69-106; s. 2, ch. 71-137; ss. 1, 2, ch. 73-256; s. 14, ch. 78-95; s. 76, ch. 79-65; s. 6, ch. 89-143.

403.1821 Water pollution control and sewage treatment.—Sections 403.1821–403.1832 shall be known and cited as the "Florida Water Pollution Control and Sewage Treatment Plant Grant Act."

History.—s. 1, ch. 70-251; s. 47, ch. 83-310.

403.1822 Definitions for ss. 403.1821–403.1832.—As used in ss. 403.1821–403.1832, the term:

(1) "Department" refers to the Department of Environmental Regulation.

(2) "Grants," "grant," "state grants," or "state grant" refers to disbursements from the State Water Pollution Control Trust Fund pursuant to s. 403.1825.

(3) "Local governmental agencies" refers to any municipality, county, district, or authority, or any agency thereof, or a combination of two or more of the foregoing, acting jointly in connection with a project, having jurisdiction over collection, transmission, treatment, or disposal of sewage, industrial wastes, stormwater, or other wastes and includes a district or authority the principal responsibility of which is to provide airport, industrial or research park, or port facilities to the public.

(4) "Project" means all or part of a sewage treatment or disposal facility, or other cost-effective alternative, and may include the construction or reconstruction of existing sewage collection or transmission lines.

History.—s. 2, ch. 70-251; s. 1, ch. 70-439; s. 2, ch. 71-137; s. 113, ch. 71-355; s. 77, ch. 79-65; s. 48, ch. 83-310; s. 1, ch. 87-107; s. 35, ch. 89-279.

403.1823 Department of Environmental Regulation; rulemaking authority; administration of funds.—The department shall:

)) Promulgate rules and regulations to carry out the purposes of ss. 403.1821–403.1832.

(2) Administer and control all funds appropriated to or received by the department for the purposes of ss. 403.1821–403.1832.

History.—s. 3, ch. 70-251; s. 1, ch. 70-439; s. 49, ch. 83-310.

403.1824 State Water Pollution Control Trust Fund. A trust fund to be known as the "State Water Pollution Control Trust Fund" is established in the State Treasury to be used for state grants to local governmental agencies for the construction or reconstruction of sewage collection, transmission, treatment, or disposal facilities or cost-effective alternatives. All funds received by the department to carry out the purposes of ss. 403.1821–403.1832 shall be deposited in this fund; however, at least 45 percent of the funds received by the department and deposited in this fund shall be transferred to the Small Community Sewer Construction Assistance Trust Fund. The department may expend up to 2 percent of the State Water Pollution Control Trust Fund to cover the cost of reviewing and acting upon grant applications by a local governmental agency and the cost of surveillance and other field services associated with the application.

History.—s. 4, ch. 70-251; s. 1, ch. 70-439; s. 50, ch. 83-310.

403.1825 Grant payments.—Warrants for the payment of grants to local governmental agencies or increments thereof from the Water Pollution Control Trust Fund shall be issued by the State Comptroller upon certification to him by the department that such payments are due and payable under the department's published rules and regulations.

History.—s. 5, ch. 70-251; s. 1, ch. 70-439.

403.1826 Grants; requirements for eligibility.—

(1) Grants shall be made under ss. 403.1821–403.1832 for projects eligible as provided in rules of the department. Only those projects to be constructed after the effective date of this act are eligible for grants pursuant to this act.

(2) No grant may be made for any project unless such project and the plans and specifications therefor are approved by the department, subject to such requirements as the department imposes. The costs for advanced waste treatment facilities, or portions thereof, required for discharge to surface waters or ground water protection or protection of public health are eligible for funding.

(3) No grant may be made until the local governmental agency has available to it that part of the total cost of the project which is in excess of the applicable grant.

(4) The department shall require local governmental funds in the amount of 45 percent of eligible project costs as determined by rules of the department. The department is authorized to establish a maximum grant for each local governmental agency pursuant to this act.

(5) Grants made under ss. 403.1821–403.1832 shall be paid to the local governmental agency as provided by department rule.

(6) A grant may not be made unless the local governmental agency assures the department of the proper and efficient operation and maintenance of the project after construction. Revenue sufficient to ensure that the facility will be self-supporting shall be generated from sources which include, but are not limited to, service charges and connection fees. The revenue generated shall provide for financing future sanitary sewerage capital improvements. The grantee shall accumulate, during the design life of the grant-funded project, moneys in an amount equivalent to the grant amount adjusted for inflationary cost increases.

(7) No grant may be made unless the local governmental agency has filed properly executed forms and applications prescribed by the department.

(8) Any local governmental agency receiving assistance under ss. 403.1821–403.1832 shall keep such records as the department prescribes, including records which fully disclose the amount and disposition by the recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with such assistance given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. The department and the Auditor General or any of their duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to grants received under ss. 403.1821–403.1832. Upon project completion, the local governmental agency shall submit to the department a separate audit, by an independent certified public accountant, of the grant expenditures.

(9) Any project satisfactorily planned and designed in accordance with the requirements of the United States Environmental Protection Agency is eligible for funding under this act.

History.—s. 6, ch. 70-251; s. 1, ch. 70-439; s. 51, ch. 83-310; s. 28, ch. 84-338; s. 52, ch. 85-81; s. 36, ch. 89-279.

403.1829 Funding of projects; priorities.—Eligible projects shall be funded according to priorities established by department rule. Such priorities shall be established according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. Advanced waste treatment facilities or portions thereof which are required for discharge to surface waters or ground water protection or protection of public health, which are required by the department, and which are determined to be ineligible for federal funding are eligible for supplemental state funding under this act.

History.—s. 9, ch. 70-251; s. 1, ch. 70-439; s. 52, ch. 83-310.

403.1832 Department to accept federal aid.—The department is designated as the administrative agency of the state to apply for and accept any funds or other aid and to cooperate and enter into contracts and agreements with the Federal Government relating to the planning, design, construction, operation, maintenance, and enforcement activities of the program to provide clean water and pollution abatement of the waters of the state or to any other related purpose which the Congress of the United States has authorized or may authorize. The department is authorized in the name of the state to make such applications, sign such documents, give such assurances, and do such other things as are nec-

essary to obtain such aid from or cooperate with the United States Government or any agency thereof. The department may consent to enter into contracts and agreements and cooperate with any other state agency, local governmental agency, person, or other state when it is necessary to carry out the provisions of ss. 403.1821–403.1832.

History.—s. 12, ch. 70-251; s. 1, ch. 70-439; s. 53, ch. 83-310.

403.1834 State bonds to finance or refinance facilities; exemption from taxation.—

(1) The issuance of state bonds to finance or refinance the construction of water supply and distribution facilities, stormwater control and treatment facilities, and air and water pollution control and abatement and solid waste disposal facilities, payable primarily from the pledged revenues provided for by s. 14, Art. VII of the State Constitution or from such pledged revenues and the full faith and credit of any county, municipality, district, authority, or any agency thereof, and pledging the full faith and credit of the state as additional security, is authorized, subject and pursuant to the provisions of s. 14, Art. VII of the State Constitution, the provisions of the State Bond Act, ss. 215.57-215.83, as amended, and the provisions of this section.

(2) The State Board of Administration is designated as the state fiscal agency to make the determinations required by s. 14, Art. VII of the State Constitution in connection with the issuance of such bonds.

(3) The amount of the state bonds to be issued shall be determined by the Division of Bond Finance of the Department of General Services. However, the total principal amount issued shall not exceed $300 million in any state fiscal year. This limitation does not apply to bonds issued to refinance outstanding bonds that were issued pursuant to this section in a previous fiscal year.

(4) The facilities to be financed or refinanced with the proceeds of such state bonds shall be determined and approved by the Department of Environmental Regulation and may be constructed, acquired, maintained, and operated by any county, municipality, district, or authority, or any agency thereof, or by the department.

(5) The Department of Environmental Regulation and the Division of Bond Finance of the Department of General Services are hereby authorized to enter into lease-purchase agreements between such departments or to enter into lease-purchase agreements or loan agreements between either of such departments and any county, municipality, district, or authority, or any agency thereof, for such periods and under such other terms and conditions as may be mutually agreed upon by the parties thereto in order to carry out the purposes of s. 14, Art. VII of the State Constitution and this section.

(6) The Department of Environmental Regulation shall have power to fix, establish, and collect fees, rentals, or other charges for the use or benefit of said facilities or may delegate such power to any county, municipality, district, authority, or any agency thereof under such terms and conditions and for such periods as may be mutually agreed upon.

(7) It is found and declared that said facilities will constitute a public governmental purpose necessary for the health and welfare of all the inhabitants of the state, and none of said facilities or said state bonds or the interest thereon shall ever be subject to taxation by the state or any political subdivision or agency thereof. However, a leasehold interest in property of the state or the facilities thereon may not be exempted from ad valorem taxation when a nongovernmental lessee uses such property for the operation of a multipurpose hazardous waste treatment facility. The exemption granted by this subsection shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

(8) As used in this section, "water supply and distribution facilities" means a waterworks system as defined in s. 159.02(9) which is constructed, owned, or operated by a county, municipality, water management district created by chapter 373, or regional water supply authority created pursuant to chapter 373, or a water facility of an authority created by chapter 76-441, Laws of Florida, as amended by chapter 80-546, Laws of Florida.

History.—ss. 1, 2, 3, 4, 5, 6, 7, ch. 70-270; s. 1, ch. 70-439; s. 2, ch. 71-137; s. 4, ch. 73-256; s. 14, ch. 73-327; s. 78, ch. 79-65; s. 1, ch. 81-21; s. 61, ch. 83-218, s. 19, ch. 86-186; s. 1, ch. 87-203; s. 82, ch. 88-130.

403.1835 Wastewater facilities and stormwater management systems revolving loan program.—

(1) The purpose of this section is to assist in implementing the legislative declaration of public policy as contained in s. 403.021 by establishing a loan program to accelerate construction of wastewater facilities and stormwater management systems by local governmental agencies and to assist local governmental agencies in implementing stormwater management programs and to develop and implement estuary conservation and management plans.

(2) For the purposes of this section, the following terms, unless the context otherwise indicates, shall have the meanings ascribed to them in this subsection:

(a) "Local governmental agencies" means local governmental agencies as defined in s. 403.1822(3).

(b) "Wastewater facilities" means all facilities necessary, including land, for the collection, treatment, or disposal of domestic wastewater.

(c) "Bonds" means state bonds, certificates, or other obligations of indebtedness issued by the Division of Bond Finance of the Department of General Services pursuant to this section and the State Bond Act.

(3) The department is authorized to make loans to local governmental agencies to assist said agencies in the planning, designing, and construction of wastewater facilities and stormwater management systems and in the acquisition of land necessary for such construction. The department is also authorized to make loans to local governmental agencies for the implementation of stormwater management programs under s. 319 of the Federal Water Pollution Control Act and for development and implementation of estuary conservation and management plans under s. 320 of the Federal Water Pollution Control Act, as amended. The department is authorized to use the funds to provide loan guarantees, to purchase loan insurance, and to refinance local debt through the issue of new loans for projects approved by the department. Local governmental agencies are authorized to borrow funds made available pursuant to this section

...t may pledge any revenue available to them to repay ...funds borrowed.

(4) The term of loans made pursuant to this section shall not exceed 30 years. The interest rate on loans shall be no greater than that paid on the last bonds sold pursuant to s. 14, Art. VII, State Constitution.

(5)(a) The department is authorized to make rules necessary to carry out the purpose of this section, including rules to administer the state revolving fund authorized pursuant to the Federal Water Pollution Control Act, as amended.

(b) The department shall prepare an annual report detailing the amount loaned, interest earned, and loans outstanding at the end of each fiscal year.

(6) Prior to approval of a loan, the local government shall:

(a) Provide a repayment schedule.

(b) Submit plans and specifications for wastewater facilities or stormwater management systems.

(c) Provide assurance that records will be kept using accepted government accounting standards and that the department, the Auditor General, or their agents will have access to all records pertaining to the loan.

(d) Provide assurance that the facility will be properly operated and maintained.

(e) Document that the revenues generated will be sufficient to ensure that the facilities will be self-supporting.

(f) Provide assurance that annual financial audit reports, and a separate project audit prepared by an independent certified public accountant upon project completion, will be submitted to the department.

(7) Eligible projects shall be given priority according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health.

(8) In the event a local governmental agency becomes delinquent on its loan, the department shall so certify to the Comptroller who shall forward the amount delinquent to the department from any unobligated funds due to the local governmental agency under any revenue sharing or tax sharing fund established by the state, except as otherwise provided by the State Constitution. Certification of delinquency shall not limit the department from pursuing other remedies available for default on a loan. The department may impose a penalty for delinquent loan payments in the amount of 6 percent of the amount due in addition to charging the cost to handle and process the debt. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(9) A trust fund with revolving loan provisions to be known as the "Wastewater Treatment and Stormwater Management Revolving Loan Fund" is hereby established in the State Treasury to be used as a revolving fund by the department to carry out the purpose of this section. Any funds therein which are not needed on an immediate basis for loans may be invested pursuant to s. 215.49. The cost of administering the program shall, to the extent possible, be paid from federal funds and, when federal funds become no longer available, from reasonable service fees that may be imposed upon loans. Grants awarded by the Federal Government to fund revolving loans for local governmental agencies' wastewater facilities and stormwater management systems shall be deposited in the fund. All funds available in the fund are hereby designated to carry out the purpose of this section. The principal and interest of all loans repaid and investment earnings shall be deposited into this fund.

(10) Funds available in, or to become available in, the Wastewater Treatment and Stormwater Management Revolving Loan Fund and loan repayments to the department from local governmental agencies may be used to pay debt service on, or fund debt service reserve funds, rebate obligations, or other amounts with respect to bonds issued for purposes of the Wastewater Treatment and Stormwater Management Facilities Revolving Loan Program. Such bonds are hereby authorized to be issued pursuant to the provisions of s. 14, Art. VII of the State Constitution and s. 403.1834. All bonds issued pursuant to this section shall be issued by the Division of Bond Finance pursuant to the State Bond Act. Such bonds shall be secured by a debt service reserve which shall be funded at a level which is equal to the maximum annual debt service or the maximum sinking fund requirement where there are no annual payments of principal and interest, but shall not exceed the maximum amount allowed pursuant to the Internal Revenue Code of 1986, as amended. In lieu of such debt service reserve, the Division of Bond Finance may obtain a letter of credit, insurance policy, or other credit enhancement facility at the required level.

History.—s. 1, ch. 72-723; s. 79, ch. 79-65; s. 20, ch. 86-166; s. 37, ch. 89-279.

403.1838 Small Community Sewer Construction Assistance Act.—

(1) This section may be cited as the "Small Community Sewer Construction Assistance Act."

(2)(a) There is established within the Department of Environmental Regulation the Small Community Sewer Construction Assistance Trust Fund.

(b) The funds shall be used by the department to assist small communities with their needs for adequate sewer facilities. The term "small community" means an incorporated municipality with a population of 35,000 or less, according to the latest decennial census.

(3) The department may provide grants to small communities. Grants shall be made from the Small Community Sewer Construction Assistance Trust Fund in accordance with rules adopted by the Environmental Regulation Commission. The department may grant up to $3 million to any small community.

(4) The Environmental Regulation Commission shall:

(a) Require a 45-percent nonstate match, except that, for a grant of less than $50,000, the commission may waive all or a part of the matching requirement:

1. Where water quality standards have been exceeded by an amount that constitutes an immediate health hazard; or

2. In a community where the gross per capita income is below the state average, as determined by the United States Department of Commerce, and where sewer systems have failed to meet department standards.

(b) Require appropriate user charges and connection fees sufficient to ensure the long-term operation and maintenance of the facility to be constructed under any grant.

(c) Require compliance with all water quality standards.

(d) Establish a system to determine eligibility and relative priority for applications for grants by small communities.

(e) Require applications for grants to be submitted on appropriate forms with appropriate supporting documentation, require construction to be in accordance with plans approved by the department, and require record-keeping.

(5) Any project satisfactorily planned and designed in accordance with the requirements of the United States Environmental Protection Agency is eligible for funding under this act.

(6) A grant may not be made unless the local governmental agency assures the department of the proper and efficient operation and maintenance of the project after construction. Revenue sufficient to ensure that the facility will be self-supporting shall be generated from sources which include, but are not limited to, service charges and connection fees. The revenue generated shall provide for financing future sanitary sewerage capital improvements. The grantee shall accumulate, during the design life of the grant-funded project, moneys in an amount equivalent to the grant amount adjusted for inflationary cost increases.

(7) Any local government agency which receives assistance under this section shall keep such records as the department prescribes, including records which fully disclose the amount and disposition by the recipient of the proceeds of such assistance, the total cost of the project, the amount of that portion of the project supplied by other sources, and such other records as will facilitate effective audit. The department and the Auditor General or any of their duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to grants received under this section. Upon project completion, the local government agency shall submit to the department a separate audit, by an independent certified public accountant, of the grant expenditures.

History.—s. 55, ch. 83-310; s. 29, ch. 84-338; s. 53, ch. 85-81; s. 38, ch. 89-279.

403.191 Construction in relation to other law.—

(1) It is the purpose of this act to provide additional and cumulative remedies to prevent, abate, and control the pollution of the air and waters of the state. Nothing contained herein shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, criminal or civil, nor shall any provisions of this act, or any act done by virtue thereof, be construed as estopping the state or any municipality, or person affected by air or water pollution, in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(2) No civil or criminal remedy for any wrongful action which is a violation of any rule or regulation of the department shall be excluded or impaired by the provisions of this chapter.

(3) This act shall limit and restrict the application of chapter 24952, 1947, Laws of Florida, to any person operating any industrial plant that has located in the State of Florida in reliance thereon and exercised rights and powers granted thereby on and before the effective date of this act; provided such person shall henceforth in the exercise of such rights and powers install and use treatment works or control measures generally equivalent to those installed and used by other similar industrial plants pursuant to the requirements of the department.

History.—s. 20, ch. 67-436, ss. 26, 35, ch. 69-106.

403.201 Variances.—

(1) Upon application, the department in its discretion may grant a variance from the provisions of this act or the rules and regulations adopted pursuant hereto. Variances and renewals thereof may be granted for any one of the following reasons:

(a) There is no practicable means known or available for the adequate control of the pollution involved.

(b) Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason shall prescribe a timetable for the taking of the measures required.

(c) To relieve or prevent hardship of a kind other than those provided for in paragraphs (a) and (b). Variances and renewals thereof granted under authority of this paragraph shall each be limited to a period of 24 months, except that variances granted pursuant to part II may extend for the life of the permit or certification.

(2) No variance shall be granted from any provision or requirement concerning hazardous waste management which would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except as provided in s. 403.7221.

(3) The department shall publish notice, or shall require a petitioner for a variance to publish notice, in the Florida Administrative Weekly and in a newspaper of general circulation in the area affected, of proposed agency action; and the department shall afford interested persons an opportunity for a hearing on each application for a variance. If no request for hearing is filed with the department within 14 days of published notice, the department may proceed to final agency action without a hearing.

(4) The department may require by rule a processing fee for and may prescribe such time limits and other conditions to the granting of a variance as it deems appropriate.

History.—s. 21, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 74-170; s. 14, ch. 78-95; s. 7, ch. 82-27; s. 21, ch. 86-186.

403.221 Pending proceedings.—No legal proceedings shall be abated because of any transfers made in this section, but the appropriate party exercising like authority or performing like duties or functions shall be substituted in said proceedings.

History.—s. 23, ch. 67-436.

1231 Department of Legal Affairs to represent the state.—The Department of Legal Affairs shall represent the state and its agencies as legal adviser in carrying out the provisions of this act.
History.—s. 24, ch. 67-436; ss. 11, 35, ch. 69-106.

403.251 Safety clause.—The Legislature hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health and safety.
History.—s. 27, ch. 67-436.

403.261 Provisions specifying jurisdiction repealed.—All rulemaking jurisdiction over air and water pollution matters held by other agencies within the state on September 1, 1967, is hereby repealed including, but without limitation, such jurisdiction held by the Florida State Board of Health, the Game and Fresh Water Fish Commission, the State Board of Conservation and the several water management districts within the state.
History.—s. 1, ch. 67-436.

403.265 Peat mining; permitting.—

(1) Definitions.—As used in this section, the term:

(a) "Agricultural use of peat" means the use of peat as a soil medium, additive, enhancer, or fertilizer.

(b) "Peat" means a dark brown or black residuum produced by the partial decomposition and disintegration of mosses, sedges, trees, and other plants that grow in marshes and other wet places.

(c) "Peat mining activity" means the extraction of peat or peat soils for sale or consumption or the disturbance of vegetation or soils in anticipation of the extraction of peat or peat soils for sale or consumption. For the purposes of this part, the term "peat mining activity" does not include the removal of peat or peat soils for construction activities or the removal of overburden for other mining activities.

(d) "Peat soil" means soil which contains at least 75 percent dry weight of peat material. Such soil is rich in humus and gives an acid reaction.

(2) Each department permit which authorizes the mining of peat or peat soils or any mining activity associated with the anticipation of the extraction of peat or peat soils for sale or consumption shall require the permittee to institute and complete a reclamation program for the area mined, which program must include the following factors:

(a) Control of the physical and chemical quality of the water draining from the mining area;

(b) Soil stabilization, including contouring and vegetation;

(c) Elimination of health and safety hazards;

(d) Conservation and preservation of remaining natural resources; and

(e) A time schedule for the completion of the program and the various phases thereof.

(3) The department may adopt rules which are consistent with the powers and duties listed in s. 403.912 to govern the mining of peat, including stricter permitting and enforcement provisions for the mining for sale or consumption of peat or peat soils within or contiguous to the areas which have been designated as Outstanding Florida Waters or which were under consideration by the Environmental Regulation Commission for such designation on April 1, 1984.

(4) The mining of peat or peat soils of less than 5 acres per year, and all peat mining activities for the agricultural use of peat, are exempt from the provisions of this section.

(5) Nothing in this section limits the permitting authority of the department to regulate peat mining pursuant to other provisions of this chapter.
History.—s. 2, ch. 84-79.

403.281 Definitions; weather modification law.—As used in this chapter relating to weather modification:

(1) "Department" means the Department of Environmental Regulation.

(2) "Person" includes any public or private corporation.
History.—s. 1, ch. 57-128; ss. 26, 35, ch. 69-106; s. 2, ch. 71-137; s. 156, ch. 71-377; s. 80, ch. 79-65.
Note.—Former s. 373.261.

403.291 Purpose of weather modification law.—The purpose of this law is to promote the public safety and welfare by providing for the licensing, regulation and control of interference by artificial means with the natural precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere.
History.—s. 2, ch. 57-128.
Note.—Former s. 373.271.

403.301 Artificial weather modification operation; license required.—No person without securing a license from the department, shall cause or attempt to cause by artificial means condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere, or shall prevent or attempt to prevent by artificial means the natural condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere.
History.—s. 3, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.281.

403.311 Application for weather modification; licensing; fee.—

(1) Any person desiring to do or perform any of the acts specified in s. 403.301 may file with the department an application for a license on a form to be supplied by the department for such purpose setting forth all of the following:

(a) The name and post-office address of the applicant.

(b) The education, experience, and qualifications of the applicant, or if the applicant is not an individual, the education, experience, and qualifications of the persons who will be in control and in charge of the operation of the applicant.

(c) The name and post-office address of the person on whose behalf the weather modification operation is to be conducted if other than the applicant.

(d) The nature and object of the weather modification operation which the applicant proposes to conduct, including a general description of such operation.

(e) The method and type of equipment and the type and composition of materials that the applicant proposes to use.

(f) Such other pertinent information as the department may require.

(2) Each application shall be accompanied by a filing fee in the sum of $1,000 and proof of financial responsibility as required by s. 403.321.

History.—s. 4, ch. 57-128; ss. 26, 35, ch. 69-106; s. 18, ch. 88-393.

*Note.—Section 20, ch. 88-393, provides that "the Department of Environmental Regulation shall begin rulemaking to implement the provisions of sections 17, 18, and 19 no later than 30 days after [July 6, 1988]."

Note.—Former s. 373.291.

403.321 Proof of financial responsibility.—

(1) No license shall be issued to any person until he has filed with the department proof of ability to respond in damages for liability on account of accidents arising out of the weather modification operations to be conducted by him in the amount of $10,000 because of bodily injury to or death of one person resulting from any one incident, and subject to said limit for one person, in the amount of $100,000 because of bodily injury to or death of two or more persons resulting from any one incident, and in the amount of $100,000 because of injury to or destruction of property of others resulting from any one incident.

(2) Proof of financial responsibility may be given by filing with the department a certificate of insurance or a bond in the required amount.

History.—s. 5, ch. 57-128; ss. 26, 35, ch. 69-106.

Note.—Former s. 373.301.

403.331 Issuance of license; suspension or revocation; renewal.—

(1) The department shall issue a license to each applicant who:

(a) By education, skill and experience appears to be qualified to undertake the weather modification operation proposed in his application.

(b) Files proof of his financial responsibility as required by s. 403.321.

(c) Pays filing fee required in s. 403.311.

(2) Each such license shall entitle the licensee to conduct the operation described in the application for the calendar year for which the license is issued unless the license is sooner revoked or suspended. The conducting of any weather modification operation or the use of any equipment or materials other than those described in the application shall be cause for revocation or suspension of the license.

(3) The license may be renewed annually by payment of a filing fee in the sum of $50.

History.—s. 6, ch. 57-128; ss. 26, 35, ch. 69-106.

Note.—Former s. 373.311.

403.341 Filing and publication of notice of intention to operate; limitation on area and time.—Prior to undertaking any operation authorized by the license, the licensee shall file with the department and cause to be published a notice of intention. The licensee shall then confine his activities substantially within the time and area limits set forth in the notice of intention.

History.—s. 7, ch. 57-128; ss. 26, 35, ch. 69-106.

Note.—Former s. 373.321.

403.351 Contents of notice of intention.—The notice of intention shall set forth all of the following:

(1) The name and post-office address of the licensee.

(2) The name and post-office address of the persons on whose behalf the weather modification operation is to be conducted if other than the licensee.

(3) The nature and object of the weather modification operation which licensee proposes to conduct, including a general description of such operation.

(4) The method and type of equipment and the type and composition of the materials the licensee proposes to use.

(5) The area in which and the approximate time during which the operation will be conducted.

(6) The area which will be affected by the operation as nearly as the same may be determined in advance.

History.—s. 8, ch. 57-128.

Note.—Former s. 373.331.

403.361 Publication of notice of intention.—The licensee shall cause the notice of intention to be published at least once a week for 2 consecutive weeks in a newspaper having general circulation and published within any county wherein the operation is to be conducted and in which the affected area is located, or if the operation is to be conducted in more than one county or if the affected area is located in more than one county or is located in a county other than the one in which the operation is to be conducted, then such notice shall be published in like manner in a newspaper having a general circulation and published within each of such counties. In case there is no newspaper published within the appropriate county, publication shall be made in a newspaper having a general circulation within the county.

History.—s. 9, ch. 57-128.

Note.—Former s. 373.341.

403.371 Proof of publication.—Proof of publication shall be filed by the licensee with the department 15 days from the date of the last publication of notice. Proof of publication shall be by copy of the notice as published, attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the notice.

History.—s. 10, ch. 57-128; ss. 26, 35, ch. 69-106.

Note.—Former s. 373.351.

403.381 Record and reports of operations.—

(1) Each licensee shall keep and maintain a record of all operations conducted by him pursuant to his license showing the method employed, the times and places of operation, the name and post office address of each person participating or assisting in the operation other than licensee and such other information as may be required by the department and shall report the same to the department at such times as it may require.

(2) The records of the department and the reports of all licensees shall be available for public examination.

History.—s. 11, ch. 57-128; ss. 26, 35, ch. 69-106.

Note.—Former s. 373.361.

403.391 Emergency licenses.—Notwithstanding any provisions of this act to the contrary, the department may grant a license permitting a weather modification operation without compliance by the licensee with the provisions of ss. 403.351-403.371, and without publication of notice of intention as required by s. 403.341 if the

) tion appears to the department to be necessary or desirable in aid of the extinguishment of fire, dispersal of fog, or other emergency.
History.—s. 12, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.371.

403.401 Suspension or revocation of license.—Any license may be revoked or suspended if the department finds that the licensee has failed or refused to comply with any of the provisions of this act.
History.—s. 13, ch. 57-128; s. 21, ch. 63-512; ss. 26, 35, ch. 69-106; s. 14, ch. 75-95.
Note.—Former s. 373.381.

403.411 Penalty.—Any person conducting a weather modification operation without first having procured a license, or who shall make a false statement in his application for license, or who shall fail to file any report or reports as required by this act, or who shall conduct any weather modification operation after revocation or suspension of his license, or who shall violate any other provision of this act, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; and, if a corporation, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each such violation shall be a separate offense.
History.—s. 14, ch. 57-128; s. 351, ch. 71-136.
Note.—Former s. 373.391.

403.412 Environmental Protection Act.—
(1) This section shall be known and may be cited as the "Environmental Protection Act of 1971."
(2)(a) The Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state may maintain an action for injunctive relief against:
1. Any governmental agency or authority charged by law with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations;
2. Any person, natural or corporate, or governmental agency or authority to enjoin such persons, agencies, or authorities from violating any laws, rules, or regulations for the protection of the air, water, and other natural resources of the state.
(b) In any suit under paragraph (a), the Department of Legal Affairs may intervene to represent the interests of the state.
(c) As a condition precedent to the institution of an action pursuant to paragraph (a), the complaining party shall first file with the governmental agencies or authorities charged by law with the duty of regulating or prohibiting the act or conduct complained of a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. Upon receipt of a complaint, the governmental agency or authority shall forthwith transmit, by registered or certified mail, a copy of such complaint to those parties charged with violating the laws, rules, and regulations for the protection of the air, water, and other natural resources of the state. The agency receiving such complaint shall have 30 days after the receipt thereof within which to take appropriate action. If such action is not taken within the time prescribed, the complaining party may institute the judicial proceedings authorized in paragraph (a). However, failure to comply with this subsection shall not bar an action for a temporary restraining order to prevent immediate and irreparable harm from the conduct or activity complained of.
(d) In any action instituted pursuant to paragraph (a), the court, in the interest of justice, may add as party defendant any governmental agency or authority charged with the duty of enforcing the applicable laws, rules, and regulations for the protection of the air, water, and other natural resources of the state.
(e) No action pursuant to this section may be maintained if the person (natural or corporate) or governmental agency or authority charged with pollution, impairment, or destruction of the air, water, or other natural resources of the state is acting or conducting operations pursuant to currently valid permit or certificate covering such operations, issued by the appropriate governmental authorities or agencies, and is complying with the requirements of said permits or certificates.
(f) In any action instituted pursuant to this section, other than an action involving a state NPDES permit authorized under s. 403.0885, the prevailing party or parties shall be entitled to costs and attorney's fees. Any award of attorney's fees in an action involving such a state NPDES permit shall be discretionary with the court. If the court has reasonable ground to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment which might be rendered against him in an action brought under this section, the court may order the plaintiff to post a good and sufficient surety bond or cash.
(3) The court may grant injunctive relief and impose conditions on the defendant which are consistent with and in accordance with law and any rules or regulations adopted by any state or local governmental agency which is charged to protect the air, water, and other natural resources of the state from pollution, impairment, or destruction.
(4) The doctrines of res judicata and collateral estoppel shall apply. The court shall make such orders as necessary to avoid multiplicity of actions.
(5) In any administrative, licensing, or other proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction, the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state shall have standing to intervene as a party on the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state.
(6) Venue of any causes brought under this law shall lie in the county or counties wherein the cause of action is alleged to have occurred.
History.—ss. 1, 2, 3, 4, 5, 6, ch. 71-343; s. 24, ch. 88-393.

403.413 Florida Litter Law.—
(1) SHORT TITLE.—This section may be cited as the "Florida Litter Law."
(2) DEFINITIONS.—As used in this section:
(a) "Litter" means any garbage; rubbish; trash; re-

fuse; can; bottle; box; container; paper; tobacco product; tire; appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

(b) "Person" means any individual, firm, sole proprietorship, partnership, corporation, or unincorporated association.

(c) "Law enforcement officer" means any officer of the Florida Highway Patrol, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department of Natural Resources, or the Game and Fresh Water Fish Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer.

(d) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly but does not include a parachute or any other device used primarily as safety equipment.

(e) "Commercial purpose" means for the purpose of economic gain.

(f) "Commercial vehicle" means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for a commercial purpose.

(g) "Dump" means to dump, throw, discard, place, deposit, or dispose of.

(h) "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor, or semitrailer combination or any other vehicle that is powered by a motor.

(i) "Vessel" means a boat, barge, or airboat or any other vehicle used for transportation on water.

(3) RESPONSIBILITY OF LOCAL GOVERNING BODY OF A COUNTY OR MUNICIPALITY.—The local governing body of a county or a municipality shall determine the training and qualifications of any employee of the county or municipality or any employee of the county or municipal park or recreation department designated to enforce the provisions of this section if the designated employee is not a regular law enforcement officer.

(4) DUMPING LITTER PROHIBITED.—Unless otherwise authorized by law or permit, it is unlawful for any person to dump litter in any manner or amount:

(a) In or on any public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor. When any litter is thrown or discarded from a motor vehicle, the operator or owner of the motor vehicle, or both, shall be deemed in violation of this section;

(b) In or on any freshwater lake, river, canal, or stream or tidal or coastal water of the state, including canals. When any litter is thrown or discarded from a boat, the operator or owner of the boat, or both, shall be deemed in violation of this section; or

(c) In or on any private property, unless prior consent of the owner has been given and unless such litter will not cause a public nuisance or be in violation of any other state or local law, rule, or regulation.

(5) PENALTIES; ENFORCEMENT.—

(a) Any person who dumps litter in violation of subsection (4) in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes is guilty of a noncriminal infraction, punishable by a civil penalty of $50. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

(b) Any person who dumps litter in violation of subsection (4) in an amount exceeding 15 pounds in weight or 27 cubic feet in volume, but not exceeding 500 pounds in weight or 100 cubic feet in volume and not for commercial purposes is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the court shall require the violator to pick up litter or perform other community service commensurate with the offense committed. Further, if the violation involves the use of a motor vehicle, upon a finding of guilt, whether or not adjudication is withheld or whether imposition of sentence is withheld, deferred, or suspended, the court shall forward a record of the finding to the Department of Highway Safety and Motor Vehicles, which shall record a penalty of three points on the violator's driver's license pursuant to the point system established by s. 322.27.

(c) Any person who dumps litter in violation of subsection (4) in an amount exceeding 500 pounds in weight or 100 cubic feet in volume or in any quantity for commercial purposes, or dumps litter which is a hazardous waste as defined in s. 403.703, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the court may order the violator to:

1. Remove or render harmless the litter that he dumped in violation of this section;

2. Repair or restore property damaged by, or pay damages for any damage arising out of, his dumping litter in violation of this section; or

3. Perform public service relating to the removal of litter dumped in violation of this section or to the restoration of an area polluted by litter dumped in violation of this section.

(d) A court may enjoin a violation of this section.

(e) A motor vehicle, vessel, aircraft, container, crane, winch, or machine used to dump litter that exceeds 500 pounds in weight or 100 cubic feet in volume is declared contraband and is subject to forfeiture in the same manner as provided in ss. 932.703 and 932.704.

(f) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or $200, whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees. A final judgment rendered in a criminal proceeding against a defendant under this section estops the defendant from asserting any issue in a subsequent civil action under this paragraph which he would be estopped from asserting if such judg-

were rendered in the civil action unless the criminal judgment was based upon a plea of no contest or nolo contendere.

(g) For the purposes of this section, if a person dumps litter from a commercial vehicle, that person is presumed to have dumped the litter for commercial purposes.

(h) In the criminal trial of a person charged with violating this section, the state does not have the burden of proving that the person did not have the right or authority to dump the litter or that litter dumped on private property causes a public nuisance. The defendant has the burden of proving that he had authority to dump the litter and that the litter dumped does not cause a public nuisance.

(i) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(6) ENFORCEMENT BY CERTAIN COUNTY OR MUNICIPAL EMPLOYEES.—Employees of counties or municipalities whose duty it is to ensure code compliance or to enforce codes and ordinances may be designated by the governing body of the county or the municipality to enforce the provisions of this section. Designation of such employees shall not provide the employees with the authority to bear arms or to make arrests.

(7) ENFORCEMENT OF OTHER REGULATIONS.—This section does not limit the authority of any state or local agency to enforce other laws, rules, or ordinances relating to litter or solid waste management.

History.—ss. 1, 2, 3, 4, 4A, ch. 71-239; s. 1, ch. 75-266; s. 1, ch. 77-82; s. 1, ch. 78-202; s. 7, ch. 80-382; s. 1, ch. 82-63; s. 1, ch. 88-79; s. 56, ch. 88-130; s. 12, ch. 89-175; s. 14, ch. 89-268.

[1]Note.—Section 775.084 was amended by s. 6, ch. 88-131, deleting all reference to misdemeanors.

403.4131 "Keep Florida Beautiful, Incorporated"; Clean Florida Commission; placement of signs.—

(1) It is the intent of the Legislature that a coordinated effort of interested state and local agencies of government and other public and private organizations and interests be developed to plan for and implement a solution to the litter problems in this state and that the state provide financial assistance for the establishment of a nonprofit organization with the name of "Keep Florida Beautiful, Incorporated" which shall be registered, incorporated, and operated in compliance with chapter 617. This nonprofit organization shall operate as the grassroots arm of the state's effort and shall serve as an umbrella organization for volunteer-based community programs dedicated to a cleaner environment through sustained litter prevention. The membership of the board of directors of this nonprofit organization may include representatives of the following organizations: the Florida League of Cities, the Florida Association of Counties, the Florida Chapter of the National Solid Waste Management Association, the Florida Audubon Society, the Florida Nature Conservancy, the Florida Chapter of the Sierra Club, the Associated Industries of Florida, the Florida Soft Drink Association, the Florida Petroleum Council, the Florida Retail Grocers Association, the Florida Retail Federation, the Pulp and Paper Association, the Florida Automobile Dealers Association, the Beer Industries of Florida, the Florida Beer Wholesalers Association, and the Distilled Spirits Wholesalers.

(2) As used in this section:

(a) "Department" means the Department of Transportation.

(b) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, container, paper, lighted or unlighted cigarette or cigar, or flaming or glowing material.

(c) "Littering" means the act of throwing, discarding, placing, depositing, or otherwise disposing of litter improperly along public highways, on public or private lands, or in public waters.

[1](3) There is created within the Department of Transportation the Clean Florida Commission, which shall be responsible for coordinating a statewide litter prevention program involving state agencies, local governments, local organizations, and individuals. The Clean Florida Commission shall consist of the following members or their designees:

(a) The Secretary of Environmental Regulation, who shall be the chairman.

(b) The Secretary of Transportation.

(c) The Executive Director of the Department of Natural Resources.

(d) The Commissioner of Education.

(e) The Secretary of Commerce.

These members shall serve as ex officio members of the commission and shall be considered as the base members of the commission. Additional members from interested state agencies, local governments, and state and local organizations may serve on the commission by unanimous consent of the commission's base members.

[1](4) The commission shall have the following powers and duties:

(a) To appoint an executive director, who may employ such other administrative staff and clerical staff as are necessary to carry out the purpose of litter prevention in this state as identified in this section. Such employment by the commission may be pursuant to contract with a public or private entity.

(b) To establish an "adopt-a-highway" program to allow local organizations to be identified with specific highway cleanup and beautification projects.

(c) To contract for the development of a highly visible antilitter campaign which shall at a minimum:

1. Identify groups that habitually litter.

2. Design appropriate advertising to promote proper disposal of litter by groups that habitually litter.

3. Foster public awareness of the litter problem in this state and the litter prevention program.

4. Develop educational programs and materials to promote proper disposal of litter.

5. Use talent, equipment or expertise donated from the private sector for producing multimedia materials.

(d) To make and execute contracts necessary to the exercise of its powers, including interagency agreements.

(e) To engage in the planning of a litter prevention program.

(f) To conduct, direct, encourage, coordinate, and organize a continuous program of public education relating to litter prevention.

(g) To review, upon request, all plans and activities pertinent to reducing litter and littering and to coordi-

nate these activities with the various levels of government as well as other local organizations.

(h) To coordinate with state and local organizations to market programs promoting litter prevention and to facilitate the exchange of such programs between local organizations through annual conferences.

(i) To make available to elementary and secondary schools and other public forums educational programs and materials to promote proper disposal of litter.

(j) To develop and implement statewide incentive programs designed to motivate individual citizens, local organizations, local governments, and other groups interested in participating in litter prevention program activities.

(k) To provide grants to local governments and nonprofit organizations to be used to implement litter prevention programs through education and broad-based citizen involvement at the community level. Except as specifically appropriated, such grants may provide up to one-half of the first year costs to initiate and operate such programs, or $25,000, whichever is less. Such grants shall be awarded on a priority basis with applicants requesting funding for the establishment of local litter prevention systems receiving first priority.

(l) To monitor the effectiveness of the litter prevention program on an annual basis and to prepare an annual report of operations that includes the results of such monitoring. The annual report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than February 1 of each year, beginning on February 1, 1990.

(5) The department shall place signs discouraging litter at all off-ramps of the interstate highway system in the state. The department shall place other highway signs as necessary to discourage littering through use of the antilitter program developed by the commission.

History.—s. 55, ch. 88-130; s. 1, ch. 89-37; s. 2, ch. 89-296.

*Note.—Repealed effective October 1, 1996, by s. 2, ch. 89-296, and scheduled for review pursuant to s. 11.611.

403.4132 Litter pickup and removal.—The Florida Youth Conservation Corps and local governments are encouraged to initiate programs to supplement the existing litter removal program for public places and highway systems operated by the Department of Transportation. To the extent that funds are available from the department for litter pickup and removal programs beyond those annually available to the Department of Corrections, priority shall be given to contracting for supplemental litter removal programs that use youth employment programs.

History.—s. 58, ch. 88-130.

403.4135 Litter receptacles.—

(1) DEFINITIONS.—As used in this section "litter" and "vessel" have the same meanings as provided in s. 403.413.

(2) RECEPTACLES REQUIRED.—All ports, terminal facilities, boatyards, marinas, and other commercial facilities which house vessels and from which vessels disembark shall provide or ensure the availability of litter receptacles of sufficient size and capacity to accommodate the litter and other waste materials generated on board the vessels using its facilities, except for large quantities of spoiled or damaged cargos not usually discharged by a ship. The Department of Environmental Regulation may enforce violations of this section pursuant to ss. 403.121 and 403.131.

History.—s. 13, ch. 89-175.

403.414 Pollution control awards program.—

(1) There is hereby created a pollution control awards program to be administered by the Department of Commerce.

(2) Awards under the pollution control awards program may be granted to agencies, municipalities, counties, or other governmental units and private organizations, institutions, industries, communication media, and residents of the state for efforts in preventing or cleaning up pollution as provided by rules and regulations promulgated by the Department of Commerce. Special awards may be granted to those agencies, municipalities, counties, or other governmental units and private organizations, institutions, industries, communication media, and residents of the state who have made an outstanding effort to prevent or clean up pollution as provided by rules and regulations promulgated by the Department of Commerce. All awards and special awards must be approved by the Department of Commerce, but the Department of Environmental Regulation shall have the power to veto any award which, in the opinion of the Department of Environmental Regulation, would be so controversial as to be unadvisable.

(3) Awards or special awards may be presented in the following categories:

(a) Water pollution.

(b) Air pollution.

(c) Noise pollution.

(d) Communication media on pollution problems.

(4) Any agency, municipality, county, or other governmental unit or private organization, institution, industry, communication medium, or resident of the state may submit to the Department of Commerce at any time the name of any agency, municipality, county, or other governmental unit or private organization, institution, industry, communication medium, or resident of the state for consideration for an award or special award. Prior to consideration by the Department of Commerce, nominees shall be required to submit to the department such additional information as the department may require, including, but not limited to, a list of all plant operations and subsidiaries in Florida. The Department of Commerce shall consider such nominations at least twice a year.

(5) The Department of Commerce shall adopt reasonable rules and regulations to carry out the intent and purposes of this act in accordance with chapter 120.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 74-60; s. 81, ch. 79-65; s. 264, ch. 81-259.

403.415 Motor vehicle noise.—

(1) SHORT TITLE.—This act shall be known and may be cited as the "Florida Motor Vehicle Noise Prevention and Control Act of 1974."

(2)(a) LEGISLATIVE INTENT.—The intent of the Legislature is to implement the state constitutional mandate of s. 7, Art. II of the State Constitution to improve the quality of life in the state by limiting the noise of new mo-

[illegible]vehicles sold in the state and the noise of motor vehi[illegible] used on the highways of the state.

(b) It is also the intent of the Legislature to recognize the proposed United States Environmental Protection Act Noise Commission Standards Regulations for medium and heavy-duty trucks as being the most comprehensive available and in the best interest of Florida's citizenry and, further, that such regulation shall preempt all state standards not identical to such regulation.

(3) DEFINITIONS.—The following words and phrases when used in this section shall have the meanings respectively assigned to them in this subsection, except where the context otherwise requires:

(a) "dB A" means the composite abbreviation for A-weighted sound level, and the unit of sound level, the decibel.

(b) "Gross combination weight rating" or "GCWR" means the value specified by the manufacturer as the loaded weight of a combination vehicle.

(c) "Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the loaded weight of a single vehicle.

(d) "Motor vehicle" means any vehicle which is self-propelled and any vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(e) "Motorcycle" means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor or a moped.

(f) "Moped" means any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground, and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.

(g) "Sound level" means the A-weighted sound pressure level measured with fast response using an instrument complying with the specification for sound level meters of the American National Standards Institute, Inc., or its successor bodies, except that only A-weighting and fast dynamic response need be provided.

(h) "Vehicle" means any device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

(i) "Department" means the Department of Environmental Regulation.

(4) NEW VEHICLE NOISE LIMITS.—No person shall [illegible]offer for sale, or lease a new motor vehicle that produces a maximum sound level exceeding the following limits at a distance of 50 feet from the center of the lane of travel under test procedures established under subsection (5):

(a) For motorcycles:

Date of manufacture	Sound level limit
From January 1, 1973, to December 31, 1974	86 dB A
On or after January 1, 1975	83 dB A

(b) For any motor vehicle with a GVWR over 10,000 pounds, for any school bus; and for any multipurpose passenger vehicle, which is defined as a motor vehicle with motive power designed to carry 10 persons or less and constructed either on a truck chassis or with special features for occasional off-road operation:

Date of manufacture	Sound level limit
From January 1, 1973, to December 31, 1976	86 dB A
On or after January 1, 1977	83 dB A

(5) TEST PROCEDURES.—The test procedures for determining compliance with this section shall be established by regulation of the Department of Environmental Regulation and in cooperation with the Department of Highway Safety and Motor Vehicles in substantial conformance with applicable standards and recommended practices established by the Society of Automotive Engineers, Inc., or its successor bodies, and the American National Standards Institute, Inc., or its successor bodies, for the measurement of motor vehicle sound levels. Regulations establishing these test procedures shall be promulgated no later than December 1, 1974.

(6) CERTIFICATION.—The manufacturer, distributor, importer, or designated agent thereof shall file a written certificate with the department stating that the specific makes and models of motor vehicles described thereon comply with the provisions of this section. No new motor vehicle shall be sold, offered for sale, or leased unless such certificate has been filed.

(7) NOTIFICATION OF CERTIFICATION.—The department shall notify the Department of Highway Safety and Motor Vehicles of all makes and models of motor vehicles for which valid certificates of compliance with the provisions of this section are filed.

(8) REPLACEMENT EQUIPMENT.—

(a) No person shall sell or offer for sale for use as a part of the equipment of a motor vehicle any exhaust muffler, intake muffler, or other noise abatement device which, when installed, will permit the vehicle to be operated in a manner that the emitted sound level of the vehicle is increased above that emitted by the vehicle as originally manufactured and determined by the test procedures for new motor vehicle sound levels established under this section.

(b) The manufacturer, distributor, or importer, or designated agent thereof, shall file a written certificate with the department that his products sold within this state comply with the requirements of this section for their intended applications.

(9) OPERATING VEHICLE NOISE MEASUREMENTS.—The department shall establish, with the cooperation of the Department of Highway Safety and Motor Vehicles, measurement procedures for determining compliance of operating vehicles with the noise limits of s. 316.293(2). The department shall advise the Depart-

ment of Highway Safety and Motor Vehicles on technical aspects of motor vehicle noise enforcement regulations, assist in the training of enforcement officers, and administer a sound-level meter loan program for local enforcement agencies.

(10) ENACTMENT OF LOCAL ORDINANCES LIMITED.—The provisions of this section shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this section unless expressly authorized. However, this subsection shall not prevent any local authority from enacting an ordinance when such enactment is necessary to vest jurisdiction of violation of this section in the local court.

History.—ss. 1, 2, 3, ch. 74-110; ss. 1, 2, ch. 75-59; s. 1, ch. 76-289; s. 1, ch. 76-280; s. 82, ch. 79-65; s. 96, ch. 79-164; s. 1, ch. 80-338; s. 1, ch. 82-49; s. 22, ch. 87-161.

403.4151 Exempt motor vehicles.—The provisions of this act shall not apply to any motor vehicle which is not required to be licensed under the provisions of chapter 320.

History.—s. 7, ch. 74-110.

403.4153 Federal preemption.—On and after the date of promulgation of noise emission standards by the administrator of the United States Environmental Protection Agency for a class of new motor vehicles as described in paragraphs 403.415(4)(a), (b), or [1](c), the state sound level limits in effect at that time for that class of vehicles shall be maintained until the federal standards become effective.

History.—s. 2, ch. 76-289.

[1]Note.—Paragraph (4)(c) of s. 403.415 was repealed by s. 22, ch. 87-161. Note, however, that generally a specific cross-reference is unaffected by subsequent amendments to or repeal of the statute. See Preface.

PART II

ELECTRICAL POWER PLANT SITING

403.501 Short title.—Sections 403.501–403.517 shall be known and may be cited as the "Florida Electrical Power Plant Siting Act."

History.—s. 1, ch. 73-33; s. 1, ch. 76-76.

403.502 Legislative intent.—The Legislature finds that the present and predicted growth in electric power demands in this state requires the development of a procedure for the selection and utilization of sites for electrical generating facilities and the identification of a state position with respect to each proposed site. The Legislature recognizes that the selection of sites and the routing of associated transmission lines will have a significant impact upon the welfare of the population, the location and growth of industry, and the use of the natural resources of the state. The Legislature finds that the efficiency of the permit application and review process at both the state and local level would be improved with the implementation of a process whereby a permit application would be centrally coordinated and all permit decisions could be reviewed on the basis of standards and recommendations of the deciding agencies. It is the policy of this state that, while recognizing the pressing need for increased power generation facilities, the state shall ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. It is the intent to seek courses of action that will fully balance the increasing demands for electrical power plant location

(c) For violation of the provisions of ss. 403.78–403.7893 or rules or orders issued thereunder.

(2) Any certification may be modified by the board upon request of the department or the applicant whenever the applicant proposes, after certification, to significantly expand the size of the facility or to significantly alter the type of hazardous waste management activity conducted at the facility. The department may modify a certification without board action if the department and the applicant stipulate to the modification.

History.—s. 4, ch. 89-285.

403.7892 Enforcement of compliance.—Failure to obtain a certification, or to comply with the conditions thereof, or to comply with this part constitutes a violation of, and shall be enforceable pursuant to, this chapter.

History.—s. 4, ch. 89-285.

403.7893 Superseded laws, regulations, and certification power.—

(1) If any provision of ss. 403.78–403.7893 is in conflict with any other provision, limitation, or restriction which is now in effect under any law of this state or any ordinance of a local government, political subdivision, or municipality, or any rule or regulation adopted thereunder, ss. 403.78–403.7893 shall control.

(2) The state hereby preempts the certification of statewide multipurpose hazardous waste treatment, storage, and disposal facilities sited pursuant to ss. 403.78–403.7893.

(3) The board and the department shall have the power to adopt reasonable procedural rules to carry out their duties under ss. 403.78–403.7893 and to give effect to the legislative intent that ss. 403.78–403.7893 provide an efficient, expedited, centrally coordinated, one-stop permitting process.

(4) Nothing in ss. 403.78–403.7893 prohibits a local government from assessing reasonable impact fees, special assessments, service charges, or user fees with respect to the proposed project, provided that those fees are specifically set forth in the certification.

(5) Sections 403.78–403.7893 do not preempt the department's authority under s. 403.726.

History.—s. 4, ch. 89-285.

PART V

ENVIRONMENTAL REGULATION

403.801 Short title.—Chapter 75-22, Laws of Florida, shall be known and may be cited as the "Florida Environmental Reorganization Act of 1975."

History.—s. 1, ch. 75-22.

403.802 Declaration of policy.—Reasserting the policies of the Governmental Reorganization Act of 1969 and the Florida Environmental Reorganization Act of 1975 which recognize that structural reorganization should be a continuing process, and recognizing that many years have passed since the passage of those acts, it is the intent of the Legislature to promote more efficient, effective, and economical operation of certain environmental agencies by transferring decisionmaking authority to environmental district centers and delegating to the water management districts permitting functions related to water quality. Further, it is the intent of this act to promote proper administration of Florida's landmark environmental laws.

History.—s. 2, ch. 75-22; s. 61, ch. 83-310.

403.803 Definitions.—When used in this act, the term, phrase, or word:

(1) "Branch office" means a geographical area, the boundaries of which may be established as a part of a district.

(2) "Canal" is a manmade trench, the bottom of which is normally covered by water with the upper edges of its sides normally above water.

(3) "Channel" is a trench, the bottom of which is normally covered entirely by water, with the upper edges of its sides normally below water.

(4) "Commission" means the Environmental Regulation Commission.

(5) "Department" means the Department of Environmental Regulation.

(6) "District" or "environmental district" means one of the geographical areas, the boundaries of which are established pursuant to this act.

(7) "Drainage ditch" or "irrigation ditch" is a manmade trench dug for the purpose of draining water from the land or for transporting water for use on the land and is not built for navigational purposes.

(8) "Environmental district center" means the facilities and personnel which are centralized in each district for the purposes of carrying out the provisions of this act.

9) "Headquarters" means the physical location of offices of the secretary and the division directors of department.

10) "Insect control impoundment dikes" means artifi- structures, including earthen berms, constructed used to impound waters for the purpose of insect ntrol.

(11) "Manager" means the head of an environmental trict or branch office who shall supervise all environ- ental functions of the department within such environ- ental district or branch office.

(12) "Secretary" means the secretary of the Depart- ent of Environmental Regulation.

(13) "Standard" means any rule of the Department of vironmental Regulation relating to air and water quali- noise, solid-waste management, and electric and agnetic fields associated with electrical transmission d distribution lines and substation facilities. The term tandard" does not include rules of the department hich relate exclusively to the internal management of e department, the procedural processing of applica- ons, the administration of rulemaking or adjudicatory oceedings, the publication of notices, the conduct of earings, or other procedural matters.

(14) "Swale" means a manmade trench which:

(a) Has a top width-to-depth ratio of the cross- ection equal to or greater than 6:1, or side slopes equal or greater than 3 feet horizontal to 1 foot vertical;

(b) Contains contiguous areas of standing or flowing ater only following a rainfall event;

(c) Is planted with or has stabilized vegetation suit- ble for soil stabilization, stormwater treatment, and nu- ient uptake; and

(d) Is designed to take into account the soil erodibili- , soil percolation, slope, slope length, and drainage rea so as to prevent erosion and reduce pollutant con- entration of any discharge.

History.—s. 3, ch. 75-22; s. 62, ch. 83-310; s. 40, ch. 84-338; s. 9, ch. 86-173; 56, ch. 86-186.

403.804 Environmental Regulation Commission; wers and duties.—

1) The commission shall exercise the exclusive tandard-setting authority of the department, except as rovided in subsection (2) and ss. 120.54(9) and 73.114. The commission may adopt procedural rules overning the conduct of its meetings and hearings.

(2) The department shall have a study conducted of he economic and environmental impact which sets orth the benefits and costs to the public of any pro- osed standard that would be stricter or more stringent han one which has been set by federal agencies pursu- ant to federal law or regulation. Such study as is provid- ed for in this subsection shall be submitted to the com- mission, which shall initially adopt the standard. Final ac- tion shall be by the Governor and Cabinet, who shall ac- cept, reject, modify, or remand for further proceedings the standard within 60 days from the submission. Such review shall be appellate in nature. Hearings shall be in accordance with the provisions of chapter 120.

(3) The commission shall establish priorities and have final state approval on applications for, and dis- bursements of, federal and state grants for the construc- tion of wastewater or water treatment works. In estab- lishing priorities for state grants under this act, an appli- cation shall not receive a lower priority solely because the proposed project includes reserve capacity for which the incremental costs will be paid by the applicant in accordance with s. 403.1826(6).

History.—s. 6, ch. 75-22, ss. 4, 5, ch. 80-66, s. 54, ch. 83-310, s. 41, ch. 84-338, s. 1, ch. 86-343.

403.805 Secretary; powers and duties.—The secre- tary shall have the powers and duties of heads of depart- ments set forth in chapter 20, including the power to adopt rules under chapter 253, chapter 373, chapter 376, and this chapter, except that the Environmental Regulation Commission shall exercise the exclusive standard-setting authority of the department pursuant to s. 403.804. The secretary shall employ legal counsel to represent the department in matters affecting the de- partment. Except for appeals on permits specifically as- signed by this act to the Governor and Cabinet, and un- less otherwise prohibited by law, the secretary may del- egate the authority assigned to the department by this act to the assistant secretary, division directors, and dis- trict and branch office managers and to the water man- agement districts.

History.—s. 6, ch. 75-22; s. 6, ch. 80-66; s. 2, ch. 80-394; s. 63, ch. 83-310; s. 3, ch. 87-337; s. 10, ch. 87-374; s. 13, ch. 88-393.

403.8055 Department adoption of federal stand- ards.—Notwithstanding ss. 120.54 and 403.804, the secretary is empowered to adopt rules substantively identical to regulations adopted in the Federal Register by the United States Environmental Protection Agency pursuant to federal law, in accordance with the following procedures:

(1) The secretary shall publish notice of intent to adopt a rule pursuant to this section in the Florida Ad- ministrative Weekly at least 21 days prior to filing the rule with the Department of State. The secretary shall mail a copy of the notice of intent to adopt a rule to the Ad- ministrative Procedures Committee at least 21 days pri- or to the date of filing with the Department of State. Prior to filing the rule with the Department of State, the secre- tary shall consider any written comments received with- in 21 days after the date of publication of the notice of intent to adopt a rule. The rule shall be adopted upon fil- ing with the Department of State. Substantive changes from the rules as noticed shall require republishing of no- tice as required in this section.

(2) Any rule adopted pursuant to this section shall become effective upon the date designated in the rule by the secretary; however, no such rule shall become ef- fective earlier than the effective date of the substantive- ly identical United States Environmental Protection Agency regulation.

(3) The secretary shall stay any terms or conditions of a permit implementing department rules adopted pur- suant to this section if the substantively identical provi- sions of a United States Environmental Protection Agen- cy regulation have been stayed under federal judicial re- view. A stay issued pursuant to this subsection shall ter- minate upon completion of federal judicial review.

(4) Any domestic for-profit or nonprofit corporation or association formed, in whole or in part:

(a) To promote conservation or natural beauty;
(b) To protect the environment, personal health, or other biological values;
(c) To preserve historical sites;
(d) To promote consumer interests;
(e) To represent labor, commercial, or industrial groups; or
(f) To promote orderly development;

and any other substantially affected person may, within 14 days after the date of publication of the notice of intent to adopt a rule, file an objection to rulemaking with the Environmental Regulation Commission. The objection shall specify the portions of the proposed rule to which the person objects and the reasons for the objection. The secretary shall not have the authority under this section to adopt those portions of a proposed rule specified in such objection. Objections which are frivolous shall not be considered sufficient to prohibit the secretary from adopting rules under this section.

(5) Whenever all or part of any rule proposed for adoption by the department is substantively identical to a regulation adopted in the Federal Register by the United States Environmental Protection Agency pursuant to federal law, such rule shall be written in a manner so that the rule specifically references such regulation whenever possible.

History.—s. 7, ch. 80-65; s. 11, ch. 82-27; s. 38, ch. 86-130.

403.809 Environmental districts; establishment; managers; functions.—

(1) The secretary shall establish environmental districts. The boundaries of the environmental districts shall coincide with the boundaries of the water management districts, and a water management district may be divided into more than one environmental district. The secretary has the authority to adjust the environmental district boundaries upon a determination that exceptional circumstances require such adjustment in order to more properly serve the needs of the public or the environment. The secretary may establish branch offices for the purpose of making services more accessible to the citizens of each district. In the Suwannee River Water Management District, a branch office may serve as the environmental district center. By July 1, 1984, the department shall collocate part of its permitting operations with each of the central offices of the water management districts, and the water management districts shall collocate part of their permitting operations with each of the district offices of the department.

(2) There shall be a manager for each environmental district who shall be appointed by, and serve at the pleasure of, the secretary. The district manager shall maintain his office in the environmental district center, which shall be collocated with an office of a water management district. Each branch office shall have a branch office manager. The water management districts are encouraged to collocate part of their permitting operations with the branch offices of the department to the maximum extent practicable.

(3)(a) Field services and inspections required in support of the decisions of the department relating to the issuance of permits, licenses, certificates, or exemptions shall be accomplished at the environmental district center level to the maximum extent practicable, except where otherwise delegated by the secretary.

(b) The processing of all applications for permits, licenses, certificates, and exemptions shall be accomplished at the district center or the branch office, except for those applications specifically assigned elsewhere in the department pursuant to s. 403.805 or to the water management districts under s. 403.812 and those applications assigned by interagency agreement as provided in this act. However, the secretary, as head of the department, may not delegate to district or subdistrict managers, water management districts, or any unit of local government the authority to act on the following types of permit applications:

1. Certification of national pollutant discharge elimination system permits pursuant to Pub. L. No. 92-500, s. 401.
2. Construction of major air pollution sources.
3. Certifications under the Florida Electrical Power Plant Siting Act or the Transmission Line Siting Act.

History.—ss. 4, 6, ch. 75-22; s. 67, ch. 83-310; s. 42, ch. 84-338; s. 15, ch. 88-393.

403.812 Dredge and fill permitting ir stormwater management systems.—The department shall not require dredge and fill permits for stormwater management systems where such systems are located landward of the point of connection to waters of the state and are designed, constructed, operated, and maintained for stormwater treatment, flood attenuation, or irrigation. The waters within such systems, unless designed, constructed, operated, and maintained for in-water recreational uses, such as swimming and boating, shall not be considered waters of the state; however, if the system provides other incidental uses and is accessible to the public, then the department may require reasonable assurance that water quality within the system will not adversely impact public health, fish and wildlife in adjacent waters, or adjacent waters. The department shall not require dredge and fill permits for structures designed solely to connect stormwater management systems to waters of the state provided that the connection of such system to waters of the state is regulated pursuant to chapter 373. The department shall initiate rulemaking to implement the provisions of this section.

History.—s. 6, ch. 75-22; s. 68, ch. 83-310; s. 6, ch. 84-79; s. 3, ch. 85-154; s. 39, ch. 89-279.

403.813 Permits issued at district centers; exceptions.—

(1) The secretary shall adopt procedural rules providing for a short-form application for, and issuance at the district centers of, permits for:

(a) Projects which affect less than 10 acres of jurisdictional area and are within the landward extent of waters of the state that are directly impacted by dredging or filling, including other areas severed from or connected to waters of the state as a result of dredge and fill activities.

(b) Docking facilities of less than 10 wet slips, which facilities do not provide commercial or marine supplies or services.

(c) New seawalls or similar structures which do not exceed 500 linear feet of shoreline.

(d) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms waters of the state carrying water, electricity, communication cables, oil, and gas, except as exempted by paragraph (2)(m) or paragraph (2)(n).

(e) Other similar projects that are limited in scope as specified by rule.

(2) No permit under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 27270, Laws of Florida, 1949, shall be required for activities associated with the following types of projects; however, nothing in this subsection relieves an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or any water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(a) The installation of overhead transmission lines, with support structures which are not constructed in waters of the state and which do not create a navigational hazard.

(b) The installation and repair of mooring pilings and dolphins associated with private docking facilities and the installation of private docks, any of which docks:

1. Has 500 square feet or less of over-water surface area for a dock which is located in an area designated as Outstanding Florida Waters or 1,000 square feet or less of over-water surface area for a dock which is located in an area which is not designated as Outstanding Florida Waters;

2. Is constructed on or held in place by pilings or is a floating dock which is constructed so as not to involve filling or dredging other than that necessary to install the pilings;

3. Shall not substantially impede the flow of water or create a navigational hazard;

4. Is used for recreational, noncommercial activities associated with the mooring or storage of boats and boat paraphernalia; and

5. Is the sole dock constructed pursuant to this exemption as measured along the shoreline for a distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot.

Nothing in this paragraph shall prohibit the department from taking appropriate enforcement action pursuant to this chapter to abate or prohibit any activity otherwise exempt from permitting pursuant to this paragraph if the department can demonstrate that the exempted activity has caused water pollution in violation of this chapter.

(c) The installation and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists or the installation of boat ramps open to the public in any waters of the state where navigational access to the proposed ramp exists and where the construction of the proposed ramp will be less than 30 feet wide and will involve the removal of less than 25 cubic yards of material from the waters of the state, and the maintenance to design specifications of such ramps; however, the material to be removed shall be placed upon a self-contained upland site so as to prevent the escape of the spoil material into the waters of the state.

(d) The replacement or repair of existing docks, except that no fill material is to be used and provided that the replacement or repaired dock is in the same location and of the same configuration and dimensions as the dock being replaced or repaired.

(e) The restoration of seawalls at their previous locations or upland of, or within 1 foot waterward of, their previous locations. However, this shall not affect the permitting requirements of chapter 161, and department rules shall clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

(f) The performance of maintenance dredging of existing manmade canals, channels, and intake and discharge structures where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into the waters of the state, provided that no more dredging is to be performed than is necessary to restore the canals, channels, and intake and discharge structures to original design specifications and provided that control devices are utilized to prevent turbidity and prevent toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This exemption applies to all canals constructed prior to April 3, 1970, and to those canals constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption does not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent waters. When no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund or the United States Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below mean low water. The Board of Trustees of the Internal Improvement Trust Fund may fix and recover from the permittee an amount equal to the difference between the fair market value and the actual cost of the maintenance dredging for material removed during such maintenance dredging. However, no charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority. The removing party may subsequently sell such material; however, proceeds from such sale that exceed the costs of maintenance dredging shall be remitted to the state and deposited in the Internal Improvement Trust Fund.

(g) The maintenance of existing insect control structures, dikes, and irrigation and drainage ditches, provided that spoil material is deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into waters of the state. In the case of insect control structures, if the cost of using a self-contained upland spoil site is so excessive, as determined by the Department of Health and Rehabilitative Services, pursuant to s. 403.088(1), that it will inhibit proposed insect control, then existing spoil sites or dikes may be used, upon notification to the department. In the

case of insect control where upland spoil sites are not used pursuant to this exemption, turbidity control devices shall be used to confine the spoil material discharge to that area previously disturbed when the receiving body of water is used as a potable water supply, is designated as shellfish harvesting waters, or functions as a habitat for commercially or recreationally important shellfish or finfish. In all cases, no more dredging is to be performed than is necessary to restore the dike or irrigation or drainage ditch to its original design specifications.

(h) The repair or replacement of existing functional pipes or culverts the purpose of which is the discharge or conveyance of stormwater. In all cases, the invert elevation, the diameter, and the length of the culvert shall not be changed. However, the material used for the culvert may be different from the original.

(i) The construction of private docks and seawalls in artificially created waterways where such construction will not violate existing water quality standards, impede navigation, or affect flood control.

(j) The construction and maintenance of swales.

(k) The installation of aids to navigation and buoys associated with such aids, provided the devices are marked pursuant to s. 327.40.

(l) The replacement or repair of existing open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width, provided that no more dredging or filling of submerged lands is performed other than that which is necessary to replace or repair pilings and that the structure to be replaced or repaired is the same length, the same configuration, and in the same location as the original bridge. No debris from the original bridge shall be allowed to remain in the waters of the state.

(m) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters in the state, except in Class I and Class II waters and aquatic preserves, provided no dredging or filling is necessary.

(n) The replacement or repair of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state.

(o) The construction of private seawalls in waters of the state where such construction is between and adjoins at both ends existing seawalls, follows a continuous and uniform seawall construction line with the existing seawalls, is no more than 150 feet in length, and does not violate existing water quality standards, impede navigation, or affect flood control. However, this shall not affect the permitting requirements of chapter 161, and department rules shall clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

(p) The restoration of existing insect control impoundment dikes which are less than 100 feet in length. Such impoundments shall be connected to tidally influenced waters for 6 months each year beginning September 1 and ending February 28 if feasible or operated in accordance with an impoundment management plan approved by the department. A dike restoration may involve no more dredging than is necessary to restore the dike to its original design specifications. For the purposes of this paragraph, restoration does not include maintenance of impoundment dikes of operating insect control impoundments.

(q) The construction, operation, or maintenance of stormwater management facilities which are designed to serve single family residential projects, including duplexes, triplexes, and quadruplexes, if they are less than 10 acres total land and have less than 2 acres of impervious surface and if the facilities:

1. Comply with all regulations or ordinances applicable to stormwater management and adopted by a city or county;

2. Are not part of a larger common plan of development or sale; and

3. Discharge into a stormwater discharge facility exempted or permitted by the department under this chapter which has sufficient capacity and treatment capability as specified in this chapter and is owned, maintained, or operated by a city, county, special district with drainage responsibility, or water management district; however, this exemption does not authorize discharge to a facility without the facility owner's prior written consent.

(3) The provisions of subsection (2) are superseded by general permits established pursuant to ss. 373.118 and 403.814 which include the same activities. Until such time as general permits are established, or should general permits be suspended or repealed, the exemptions under subsection (2) shall remain or shall be reestablished in full force and effect.

History.—s. 7, ch. 75-22; s. 143, ch. 77-104; s. 4, ch. 78-98; s. 1, ch. 78-146; s. 86, ch. 79-65; s. 1, ch. 80-44; s. 8, ch. 80-65; s. 3, ch. 82-80; s. 6, ch. 82-185; s. 65, ch. 83-218; s. 69, ch. 83-310; s. 43, ch. 84-338; s. 39, ch. 85-55; s. 12, ch. 86-138; s. 44, ch. 86-186; ss. 1, 3, ch. 89-324.

403.8135 Citation of rule.—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

History.—s. 9, ch. 79-161.

403.814 General permits; delegation.—

(1) The secretary is authorized to adopt rules establishing and providing for a program of general permits under chapters 253 and 403 for projects, or categories of projects, which have, either singly or cumulatively, a minimal adverse environmental effect. Such rules shall specify design or performance criteria which, if applied, would result in compliance with appropriate standards adopted by the commission. Except as provided for in subsection (3), any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the department without any agency action by the department.

(2) After giving public notice and, upon the request of any person, holding a public hearing in the area affected, the department may issue a general permit in the Biscayne Bay Aquatic Preserve for the placement of riprap waterward of vertical seawalls or as replacement for vertical seawalls, for the purpose of enhancing the water

lity and fish and wildlife habitats of the Biscayne Bay a. No other general permits shall be issued within the serve. Nothing herein shall be construed to abrogate rights of any person under the provisions of chapter). In addition to the public notice required by this sub-tion, public notice shall be provided by United States il to any person who requests, in writing, to have his ne placed on a mailing list by the department. Notice activities allowed pursuant to such general permit ill also be mailed, at least monthly, to all persons on list.

3) The department may publish or by rule require applicant to publish, or the applicant may elect to blish, in a newspaper of general circulation in the area ected, notice of application for a general permit. If blished, such public notice of application shall be blished within 14 days after the applicant notifies the partment; and, within 21 days after publication of no-e, any person whose substantial interests are affect-may request a hearing in accordance with s. 120.57. e failure to request a hearing within 21 days after pub-ation of notice constitutes a waiver of any right to a aring under s. 120.57. If notice is published, no person all begin work pursuant to a general permit until after e time for requesting a hearing has passed or until af-a hearing is held and a decision is rendered.

(4) The department is authorized to delegate any of general permit authority to the district offices of the partment or to water management districts.

(5) Notwithstanding the procedures set forth in sub-ctions (1) and (3), the department may specify by rule ternative notice procedures for certain activities which e of a routine and repetitive nature and which are an tegral part of agricultural activities or silvicultural activi-es or are activities of another state agency.

History.—s. 9, ch. 80-66; s. 12, ch. 82-27; s. 7, ch. 84-79; s. 60, ch. 86-186; s. ch. 86-295.

403.815 Public notice; waiver of hearings.—The epartment may publish or by rule require the applicant o publish, or the applicant may elect to publish, in a ewspaper of general circulation in the area affected, otice of application for a permit submitted under this hapter or chapter 253. The notice of application shall e published within 14 days after the application is filed ith the department. Notwithstanding any provision of . 120.60, the department may publish or by rule require he applicant to publish, or the applicant may elect to ublish, in a newspaper of general circulation in the area ffected, notice of proposed agency action on any per-nit application submitted under this chapter or chapter 53. The department shall require the applicant for a ermit to construct or expand a solid waste facility to ublish such notice. The notice of proposed agency ac-ion shall be published at least 14 days prior to final gency action. The 90-day time period specified in s. 20.60(2) shall be tolled by the request of the depart-nent for publication of notice of proposed agency action nd shall resume 14 days after receipt by the depart-nent of proof of publication. However, if a petition is filed or a proceeding pursuant to s. 120.57, the time periods nd tolling provisions of s. 120.60 shall apply. The cost of publication of notice under this section shall be paid by the applicant. The secretary may, by rule, specify the format and size of such notice. Within 14 days after publication of notice of proposed agency action, any person whose substantial interests are affected may request a hearing in accordance with s. 120.57. The failure to request a hearing within 14 days after publication of notice of proposed agency action constitutes a waiver of any right to a hearing on the application under s. 120.57.

History.—s. 10, ch. 80-66; s. 13, ch. 82-27; s. 44, ch. 84-338; s. 46, ch. 87-225

403.816 Permits for maintenance dredging of deepwater ports and beach restoration projects.—

(1) The department shall establish a permit system under this chapter and chapter 253 which provides for the performance, for up to 25 years from the issuance of the original permit, of maintenance dredging of permitted navigation channels, port harbors, turning basins, harbor berths, and beach restoration projects approved pursuant to chapter 161. However, permits issued for dredging river channels which are not a part of a deepwater port shall be valid for no more than five years. No charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority.

(2) The provisions of s. 253.77 do not apply to a permit for maintenance dredging and spoil site approval when there is no change in the size or location of the spoil disposal site and when the applicant provides documentation to the department that the appropriate lease, easement, or consent of use for the project site issued pursuant to chapter 253 is recorded in the county where the project is located.

(3) The provisions of this section relating to ports apply only to the port waters, spoil disposal sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation in the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Port Bartow, Florida Power Corporation's Crystal River Canal, Boca Grande, Green Cove Springs, and Pensacola.

History.—ss. 3, 5, ch. 81-228; s. 8, ch. 84-79; s. 2, ch. 85-296; s. 13, ch. 86-138; s. 20, ch. 89-175; s. 4, ch. 89-324.

403.8163 Sites for disposal of spoil from maintenance dredge operations; selection.—Lands created by spoil or used as dredge spoil sites must be given priority consideration as sites for disposal of spoil in maintenance dredge operations, except when the Division of Beaches and Shores of the Department of Natural Resources determines that the spoil, or some substantial portion thereof, may be placed as compatible sediment into the littoral system of an adjacent sandy beach or coastal barrier dune system for the preservation and protection of such beach or dune system.

History.—s. 45, ch. 84-338; s. 14, ch. 86-138.

403.817 Legislative intent; determination of the natural landward extent of waters for regulatory purposes.—

(1) It is recognized that the levels of the waters of the state naturally rise and fall, depending upon tides and other hydrological, meteorological, and geological circumstances and features. The natural rise and fall of

the waters is essential to good water quality, but often makes it difficult to determine the natural landward extent of the waters. Therefore, it is the intent of the Legislature that the Department of Environmental Regulation establish a method of making such determinations, based upon ecological factors which represent these fluctuations in water levels.

(2) In order to accomplish the legislative intent expressed in subsection (1), the department is authorized to establish by rule, pursuant to chapter 120, the method for determining the landward extent of the waters of the state for regulatory purposes. Such extent shall be defined by species of plants or soils which are characteristic of those areas subject to regular and periodic inundation by the waters of the state. The application of plant indicators to any areas shall be by dominant species. However, no landowner shall suffer any property loss or gain because of vegetation changes due to mosquito control activities conducted upon his property, provided these activities are or have been undertaken as part of a governmental mosquito control program. To the extent that certain lands have come within department jurisdiction pursuant to this section or chapter 253 solely due to insect control activities, these lands shall not be subject to permitting requirements for the discharge of dredge or fill material.

(3) Amendments adopted after April 5, 1977, to the rules of the department adopted before April 5, 1977, relating to dredging and filling and which involve additions or deletions of the vegetation or soil indexes or the addition or deletion of exemptions shall be submitted in bill form to the Speaker of the House of Representatives and to the President of the Senate for their consideration and referral to the appropriate committees. Such rule amendments shall become effective only upon approval by act of the Legislature. However, whenever the Legislature amends any exemption relating to dredging and filling, the department may amend its rules to make them consistent with changes made by the Legislature.

(4) To the extent that any plant or soil indicators are enacted into law by the Legislature for the purpose of defining the landward extent of the waters of the state for regulatory purposes, the plant or soil indicators adopted by the department regarding areas covered by legislation shall be consistent with said legislation.

(5) The landward extent of waters as determined by the rules authorized by this section shall be for regulatory purposes only and shall have no significance with respect to sovereign ownership.

History.—ss. 1, 2, ch. 77-170; s. 5, ch. 78-98; s. 5, ch. 85-269; s. 2, ch. 85-334.

403.8171 Ratification of 'Rule 17-4.022, Florida Administrative Code, with additions and deletions to the vegetation and soil indexes and with limitations on the determination of landward extent of waters.—Pursuant to s. 403.817, the Legislature ratifies the rule adopted on January 25, 1984, by the Environmental Regulation Commission with the following changes:

(1)(a) In 'Rule 17-4.022(2), Florida Administrative Code, the following shall be removed: *Blechnum serrulatum*; *Carex leptalea*; *Carex stipata*; *Carya aquatica*; *Conocarpus erectus*; *Crataegus viridis*; *Cymodocea filiformis*; *Cyperus odoratus*; *Dichromena spp.*; *Dryopteris ludoviciana*; *Gleditsia aquatica*; *Gratiola ramosa*; *Halodule beaudettei*; *Hypericum fasciculatum*; *Illicium floridanum*; *Liriodendron tulipifera* in all counties south of Taylor, Lafayette, Suwannee, Columbia, Baker, and Duval; *Lycopus rubellus*; *Myrica inodora*; *Osmunda spp.*; *Panicum repens*; *Panicum virgatum*; *Pluchea spp.*; *Polygala cymosa*; *Populus deltoides*; *Rhexia*, all species except *R. alifanus*, *R. lutea*, *R. mariana*, *R. petiolata*, and *R. virginica*; *Sabatia bartramii*; *Sarracenia spp.*; *Schizachyrium rhizomatum*; *Sesuvium maritimum*; *Sesuvium portulacastrum*; *Spartina spp.*; *Thalassia testudinum*; and *Woodwardia spp.*

(b) In 'Rule 17-4.022(2), Florida Administrative Code, the following shall be added: *Muhlenbergia capillaris*; *Muhlenbergia schreberi*; *Osmunda regalis*; *Rhexia parviflora*; *Rhexia salicifolia*; and *Spartina*, all species except *S. bakerii*.

(2)(a) In 'Rule 17-4.022(3), Florida Administrative Code, the following shall be removed: *Acer spp.*; *Baccharis halimifolia*; *Carya glabra* in all counties west of Dixie, Gilchrist, and Columbia; *Cliftonia monophylla*; *Cyrilla racemiflora*; *Liriodendron tulipifera* in all counties north and west of and including Taylor, Lafayette, Suwannee, Columbia, Baker, and Duval; *Melaleuca quinquenervia*; *Muhlenbergia spp.*; *Rhexia alifanus*; *Rhexia lutea*; *Rhexia mariana*; *Rhexia petiolata*; *Rhexia virginica*; *Sabal palmetto*; *Schinus terebinthifolius*; and *Ulmus spp.*

(b) In 'Rule 17-4.022(3), Florida Administrative Code, the following shall be added: *Acer rubrum*; *Acer saccharinum*; *Acer negundo*; *Blechnum serrulatum*; *Carex leptalea*; *Carex stipata*; *Carya aquatica*; *Conocarpus erectus*; *Crataegus viridis*; *Cyperus odoratus*; *Dichromena spp.*; *Dryopteris ludoviciana*; *Gleditsia aquatica*; *Gratiola ramosa*; *Hypericum fasciculatum*; *Illicium floridanum*; *Liriodendron tulipifera*; *Lycopus rubellus*; *Myrica inodora*; *Osmunda cinnamomea*; *Panicum repens*; *Panicum virgatum*; *Pluchea spp.*; *Polygala cymosa*; *Populus deltoides*; *Rhexia*, all species except *R. parviflora* and *R. salicifolia*; *Sabatia bartramii*; *Sarracenia spp.*; *Schizachyrium rhizomatum*; *Sesuvium maritimum*; *Sesuvium portulacastrum*; *Spartina bakerii*; *Ulmus*, all species except *U. rubra*; and *Woodwardia spp.*

(3) In 'Rule 17-4.022(1)(d), Florida Administrative Code, the following sentences shall be added: "If both parties agree to use more than one stratum, the following methods for a combination of strata shall be used in a manner to ensure that sufficient representative data will be generated. The methods described in subparagraphs (c)1., 2., and 3. shall be used for the appropriate strata. The percentages obtained shall be added and the sum divided by the number of strata examined. The number generated by this procedure shall be substituted for areal extent in paragraph (a) or paragraph (b) above. When a combination of strata is used, the following shall be added to 'Rule 17-4.022(2), Florida Administrative Code: *Blechnum serrulatum*, *Carex leptalea*, *Carex stipata*; *Crataegus viridis*, *Osmunda spp.*, *Pluchea spp.*, and *Woodwardia spp.* Concurrently the following shall be added to 'Rule 17-4.022(3), Florida Administrative Code: *Axonopus furcatus*, *Flaveria spp.*, *Metopium toxiferum*, *Myrica cerifera*, *Sabal minor*, and *Sympolcos tinctoria*."

(4) *Cliftonia monophylla*, *Cyrilla racemiflora*, *Melaleuca quinquenervia*, *Sabal palmetto*, and *Schinus terebinthifolius* shall not be considered submerged, transitional, or upland species. In areas vegetated by any of these five species, the department shall determine the landward extent of waters using the remaining plant species or other indicators of regular and periodic inundation as provided in [1]Rule 17–4.022(1), Florida Administrative Code.

(5) In all areas of the state, the landward extent of waters shall be demarcated by [1]Rule 17–4.022, Florida Administrative Code; however, in no case shall the landward extent of such waters extend above the elevation of the 1-in-10-year recurring flood event or the area of land with standing or flowing water for more than 30 consecutive days per year calculated on an average annual basis, whichever is more landward. The extent of the flood line shall be developed by appropriate engineering techniques, and a description of the surveyed line shall be prepared and certified by a professional land surveyor registered in this state. The burden for determining the surveyed flood line shall be with the party wishing to use this alternative. Notwithstanding the above, for waters which are saline or brackish, or for rivers the major sources of flow of which are from springs, the landward extent of waters shall be demarcated solely by Rule 17–4.022, Florida Administrative Code. The provisions of this subsection shall not operate to reduce the landward extent of the jurisdiction of the department as such jurisdiction existed prior to January 24, 1984.

History.—s. 9, ch. 84-79.

[1]Note.—Rule 17–4.022, Florida Administrative Code, was transferred to Rule 17-3.022, Florida Administrative Code.

PART VI

DRINKING WATER

403.850 Short title.—This act may be cited as the "Florida Safe Drinking Water Act."

History.—s. 1, ch. 77-337.

403.851 Declaration of policy; intent.—It is the policy of the state that the citizens of Florida shall be assured of the availability of safe drinking water. Recognizing that this policy encompasses both environmental and public health aspects, it is the intent of the Legislature to provide a water supply program operated jointly by the Department of Environmental Regulation, in a lead-agency role of primary responsibility for the program, and by the Department of Health and Rehabilitative Services and its units, including county health departments, in a supportive role with specific duties and responsibilities of its own. Without any relinquishment of Florida's sovereign powers and responsibilities to provide for the public health, public safety, and public welfare of the people of Florida, the Legislature intends:

(1) To give effect to Pub. L. No. 93-523 promulgated under the commerce clause of the United States Constitution, to the extent that interstate commerce is directly affected.

(2) To encourage cooperation between federal, state, and local agencies, not only in their enforcement role, but also in their service and assistance roles to city and county elected bodies.

(3) To provide for safe drinking water at all times throughout the state, with due regard for economic factors and efficiency in government.

History.—s. 2, ch. 77-337; s. 162, ch. 79-400.

403.852 Definitions.—As used in ss. 403.850–403.864:

(1) "Department" means the Department of Environmental Regulation, which is charged with the primary responsibility for the administration and implementation of the Florida Safe Drinking Water Act.

(2) "Public water system" means a community or noncommunity system for the provision to the public of piped water for human consumption, provided that such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. The term includes:

(a) Any collection, treatment, storage, and distribution facility or facilities under control of the operator of such system and used primarily in connection with such system.

(b) Any collection or pretreatment storage facility or facilities not under control of the operator of such system but used primarily in connection with such system.

(3) "Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(4) "Noncommunity water system" means a public water system for provision to the public of piped water for human consumption, which serves at least 25 individuals daily at least 60 days out of the year, but which is not a community water system; except that a water system for a wilderness educational camp is a noncommunity water system.

(5) "Person" means an individual, public or private corporation, company, association, partnership, munici-

EXHIBIT III

REQUEST FOR REVISION OF PERMIT CONDITIONS

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April 29, 1991

Mr. Clair Fancy
Division of Air Resources Management
Bureau of Air Quality Management
Department of Environmental Regulation
2600 Blair Stone Road
Tallahassee, FL 32399-2400

RE: Request for Interpretation of Permit Conditions and Order Authorizing Research and Testing; Florida Power & Light Company; Orimulsion Test Burn; Sanford Unit No. 4

Dear Clair:

As I relayed to you earlier, Florida Power & Light Company's generating system is experiencing unusually high peak demands at the present time. Last week, because of unusually hot weather at this time of year, record electricity demands led to a request by the Company that its customers voluntarily conserve power for the rest of the week, especially during late afternoons (see attached press release). The situation is particularly delicate because five of the Company's 31 major generating units are undergoing scheduled maintenance this month to prepare for the normally much-higher electricity demands that occur during the summer. In addition, three units experienced forced outages last week due to major equipment problems. Because of this situation, the ability to operate Sanford Unit No. 5 could be critical in FPL's efforts to meet demand.

The original Orimulsion test relief granted by your order dated October 4, 1990, allowed Sanford Unit No. 5 to be utilized during the Unit No. 4 testing as long as 1% or less sulfur content fuel oil was combusted in Unit No. 5. In February, 1991, the Department and the Environmental Protection Agency relaxed, until May 31, 1991, the original Orimulsion test burn opacity emission limitations (from 60%

steady state to 80% steady state, and from 3 hours per day excess emissions to 5 hours per day excess emissions) in order to allow the Company to cope with the unusual and unexpected combustion characteristics of Orimulsion. As part of that further relaxation of opacity limitations, the Company agreed to drop Unit No. 5 off-line entirely while Orimulsion was combusted in Unit No. 4 under the relaxed limits. That agreement was reflected in the approvals of the two agencies, as well.

The relaxed test burn limits that went into effect at the end of February will expire on May 31, 1991, some five weeks from now. The Company has a substantial inventory of Orimulsion fuel at this time and wishes to continue testing Orimulsion until the end of May in efforts to complete the test on schedule and to reduce Orimulsion inventory to allow receipt of oil for operation subsequent to completion of the test burn. During that time, it may also need to bring Unit No. 5 on line from time to time to meet unusually high customer demand. Further experience with Orimulsion fuel has shown that the Company can meet the original, more stringent, Unit No. 4 Orimulsion test burn opacity burn limitations (i.e. the 60% steady state emissions/3 hours per day excess emissions) at reduced loads.

We have reviewed the agency documentation in this matter and believe that it would be consistent with the intent of both the Department and the Environmental Protection Agency to interpret the February, 1991 approvals as presently allowing the Company two options prior to May 31, 1991, depending upon whether Unit No. 5 is operated:

(1) during any day that Unit No. 5 is not operated, the 1991 further relaxed opacity emission limitations would apply to Unit No. 4. (80% steady state/5 hours per day excess emissions), or

(2) during any day that Unit No. 5 is operated with 1% or less sulfur content oil, Unit No. 4 must comply with the pre-February, 1991 test burn opacity emission limitations (60% steady state/3 hours per day excess emissions).

Under this interpretation, the Company would have the flexibility that it needs to continue the test on schedule and still meet system demand. The intent of the February, 1991 approvals was to assure that Unit No. 5 was not operated when the highest opacity emissions were allowed at Unit No. 4. Our interpretation satisfies that goal.

We would like to ask the Department and the Environmental Protection Agency to confirm the correctness of our interpretation. If you agree with our interpretation, then no further permit modifications or State Implementation Plan revisions would be required in order to allow the Company to operate under the terms of either permit condition as required to complete the testing and to meet system load requirements through May 31, 1991. Clearly, such an interpretation would greatly assist Florida Power & Light Company and the customers it serves without increasing the environmental impacts above levels that have already been approved for the test burn.

We would appreciate your consideration and guidance on this interpretation at your earliest convenience so that system dispatch may react accordingly.

Respectfully submitted,

Angela R. Morrison

for William H. Green
Attorney for Florida Power & Light Company

WHG/bjh:ltrfancy2
Enclosure.

cc: Mr. Tom Hanson, EPA
Mr. Alex Alexander, DER