

**APPENDIX E--EXCERPTS FROM CHAPTER 403, FLORIDA STATUTES AND
CHAPTERS 17-3 AND 17-312 ON THE DETERMINATIONS OF THE LANDWARD
EXTENT OF SURFACE WATERS OF THE STATE AND JURISDICTIONS FOR
DREDGE AND FILL ACTIVITIES**

(9)(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.

History.—s. 3, ch. 87-438; s. 1, ch. 78-96; ss. 1, 5, ch. 81-222; s. 4, ch. 84-79; s. 46, ch. 84-338; s. 11, ch. 85-289; s. 1, ch. 85-277.

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 alteration of the chemical, physical, biological, or radiological in-

tegrity 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.

(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 54½ 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), said 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 the 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 s. 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 s. 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 out-

side 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.

History.—s. 4, ch. 87-436, ss. 26, 35, ch. 89-106; s. 1, ch. 71-36, s. 2, ch. 71-137, s. 153, ch. 71-377; s. 1, ch. 73-48; 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.

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. 87-436; ss. 26, 35, ch. 89-106; 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. 74-308; 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 com-

ponents 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;
2. Blowdown from new power plants certified pursuant to the Florida Electrical Power Plant Siting Act; and
3. Discharges of water necessary for water management purposes which have been approved by the governing board of a water management district and, if required by law, by the secretary.

Nothing in this act shall be construed to invalidate any existing department rule relating to mixing zones. The department shall cooperate with the Department of Highway Safety and Motor Vehicles in the development of regulations required by s. 316.272(1).

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

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

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

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

(a) Notwithstanding any other provision of this chapter, the Department of Environmental Regulation may authorize, by rule, the Department of Transportation to perform any activity requiring a permit from the Department of Environmental Regulation covered by this chapter, upon certification by the Department of Transportation that it will meet all requirements imposed by statute, rule, or standard for environmental control and protection as such statute, rule, or standard applies to a governmental program. To this end, the Department of Environmental Regulation may accept such certification of compliance for programs of the Department of Transportation, may conduct investigations for compliance, and, if a violation is found to exist, may take all necessary enforcement action pertaining thereto, including, but not limited to, the revocation of certification. The authorization 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 conditioned upon compliance by the Department of Transportation with specific guidelines or requirements which are set forth in the formal acceptance and deemed necessary by the Department of Environmental Regulation to assure future compliance with this chapter and applicable department rules. The failure of the Department of Transportation to comply with any provision of the written acceptance shall constitute grounds for its revocation 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 Department 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

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 (2), 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) The department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of application for a general permit. If published, such public notice of application shall be published within 14 days after the applicant notifies the department; and, within 21 days after publication of notice, any person whose substantial interests are affected may request a hearing in accordance with s. 120.57. The failure to request a hearing within 21 days after publication of notice constitutes a waiver of any right to a hearing under s. 120.57. If notice is published, no person shall begin work pursuant to a general permit until after the time for requesting a hearing has passed or until after a hearing is held and a decision is rendered.

(3) The department is authorized to delegate any of its general permit authority to the district offices of the department or to water management districts.

(4) Notwithstanding the procedures set forth in subsections (1) and (2), the department may specify by rule alternative notice procedures for certain activities which are of a routine and repetitive nature and which are an integral part of agricultural activities or silvicultural activities or are activities of another state agency.

History.—s. 9, ch. 80-66; s. 12, ch. 82-27; s. 7, ch. 84-79.

403.815 Public notice; waiver of hearings.—The department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of application for a permit submitted under this chapter or chapter 253. The notice of application shall be published within 14 days after the application is filed with the department. Notwithstanding any provision of s. 120.60, the department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of proposed agency action on any permit application submitted under this chapter or chapter 253. The department shall require the applicant for a permit to construct or expand a solid waste facility to publish such notice. The notice of proposed agency action shall be published at least 14 days prior to final agency action. The 90-day time period specified in s. 120.60(2) shall be tolled by the request of the department for publication of notice of proposed agency action and shall resume 14 days after receipt by the department of proof of publication. However, if a petition is filed for a proceeding pursuant to s. 120.57, the time periods and 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

Note.—The words "a permit to" were substituted by the editors for the word "the."

403.816 Permits for maintenance dredging of deepwater ports.—

(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, and harbor berths. No charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority except as provided in s. 403.813(1)(f).

(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 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.

403.8163 Sites for disposal of spoil from maintenance dredge operations; selection.—It is the intent of the Legislature that lands created by spoil or used as dredge spoil sites be given priority consideration as sites for disposal of spoil in maintenance dredge operations.

History.—s. 48, ch. 84-338.

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 indices 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.—cs. 1, 2, ch. 77-170; s. 5, ch. 78-08; s. 5, ch. 85-289; s. 2, ch. 85-334.
Note.—Pursuant to s. 3, ch. 85-334, the Legislature ratified rules 17-4.04(9)(f), (h), and (i), Florida Administrative Code, as amended by the Environmental Regulation Commission on October 16, 1984.

403.8171 Ratification of Rule 17-4.022, Florida Administrative Code, with additions and deletions to the vegetation and soil indices 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*; *H. J. lebeaudei*; *Hypericum fasciculatum*; *Illicium floridanum*; *Liriodendron tulipifera* in all counties south of Taylor, Lafayette, Suwannee, Columbia, Baker, and Duval; *Lycopodium 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.; *Sch-*

izachyrium 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*; *Lycopodium 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 *Symplocos 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 Rule 17-4.022(1), Florida Administrative Code.

(5) In all areas of the state, the landward extent of waters shall be demarcated by 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 or 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.

PART VI

DRINKING WATER

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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 pro-

gram, 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, municipality, agency of the state, district, federal agency, or any other legal entity, or its legal representative, agent, or assigns.

(6) "Municipality" means a city, town, or other public body created by or pursuant to state law or an Indian tribal organization authorized by law.

(7) "Federal agency" means any department, agency, or instrumentality of the United States Government.

(8) "Supplier of water" means any person who owns or operates a public water system.

(9) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(10) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(11) "Federal act" means the Safe Drinking Water Act, Pub. L. No. 93-523.

(12) "Primary drinking water regulation" means a rule which:

- (a) Applies to public water systems;
- (b) Specifies contaminants which, in the judgment of the department, after consultation with the Department of Health and Rehabilitative Services, may have an adverse effect on the health of the public;
- (c) Specifies for each such contaminant either:

1. A maximum contaminant level if, in the judgment of the department, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems; or

2. Each treatment technique known to the department which leads to a reduction in the level of the contaminant sufficient to satisfy the requirements of s. 403.853 if, in the judgment of the department, it is not economically or technologically feasible to ascertain the level of such contaminant; and

(d) Contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including quality control and testing procedures to assure compliance with such levels and to ensure proper operation and maintenance of the system, and which contains requirements as to:

1. The minimum quality of water which may be taken into the system; and

2. Siting for new facilities for public water systems.

(13) "Secondary drinking water regulation" means a rule which:

- (a) Applies to public water systems; and
- (b) Specifies the maximum contaminant levels which, in the judgment of the department after public hearings, are requisite to protect the public welfare. Such regulation may apply to any contaminant in drinking water:

1. Which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use; or

2. Which may otherwise adversely affect the public welfare.

Such regulations may vary according to geographic and other circumstances.

(14) "National primary drinking water regulations" means primary drinking water regulations promulgated by the administrator pursuant to the federal act.

(15) "National secondary drinking water regulations" means secondary drinking water regulations promulgated by the administrator pursuant to the federal act.

(16) "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and

distributing safe drinking water.

History.—s. 3, ch. 77-337; s. 1, ch. 82-80.

403.853 Drinking water standards.—

(1) The department shall adopt and enforce:

(a)1. State primary drinking water regulations that shall be no less stringent at any given time than the complete interim or revised national primary drinking water regulations in effect at such time; and

2. State secondary drinking water regulations patterned after the national secondary drinking water regulations.

(b) Primary and secondary drinking water regulations for noncommunity water systems, which shall be no more stringent than the corresponding national primary or secondary drinking water regulations in effect at such time.

(2) Subject to the exceptions authorized pursuant to s. 403.854, state primary drinking water regulations apply to each public water system in the state, except that such regulations do not apply to any public water system which meets all of the following criteria; namely, that the system:

(a) Consists of distribution and storage facilities only and does not have any collection or treatment facilities;

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

(3) The department shall adopt and implement adequate rules specifying procedures for the enforcement of state primary and secondary drinking water regulations, including monitoring and inspection procedures, that comply with regulations established by the administrator pursuant to the federal act.

(4) The department shall keep such records and make such reports, with respect to its activities under subsections (1) and (3), as may be required by regulations established by the administrator pursuant to the federal act. Such records and reports shall be available for public inspection.

(5) No state primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to the contamination of drinking water.

(6) Upon the request of the owner or operator of a noncommunity water system serving businesses, other than restaurants or other public food service establishments, and using ground water as a source of supply, the department, or a local county health unit designated by the department, shall perform a sanitary survey of the facility. Upon receipt of satisfactory survey results according to department criteria, the department shall reduce the requirements of such owner or operator from monitoring and reporting on a quarterly basis to performing these functions on an annual basis. Any revised monitoring and reporting schedule approved by the department under this subsection shall apply until such time as a violation of applicable state or federal primary drinking water standards is determined by the system owner or operator, by the department, or by an agency

- 403.935 Restoration of unlawfully altered mangroves.
 403.936 Enforcement of provisions relating to mangroves.
 403.938 Variance relief.

403.91 Short title.—Sections 403.91-403.929 shall be known and may be cited as the "Warren S. Henson Wetlands Protection Act of 1984."

History.—s. 1, ch. 84-79.

403.911 Definitions of terms used in ss. 403.91-403.929.—As used in ss. 403.91-403.929:

(1) The term "department" means the Department of Environmental Regulation.

(2) The term "dredging" means excavation, by any means, in waters. It also means the excavation, or creation, of a water body which is, or is to be, connected to waters, directly or via an excavated water body or series of excavated water bodies.

(3) The term "estuary" means a semienclosed, naturally existing coastal body of water which has a free connection with the open sea and within which seawater is measurably diluted with fresh water derived from riverine systems.

(4) The term "filling" means the deposition, by any means, of materials in waters.

(5) The term "lagoon" means a naturally existing coastal zone depression which is below mean high water and which has permanent or ephemeral communications with the sea, but which is protected from the sea by some type of naturally existing barrier.

(6) The term "seawall" means a manmade wall or encroachment, except riprap, which is made to break the force of waves and to protect the shore from erosion.

(7) For purposes of dredge and fill permitting activities by the department, "wetlands" are defined as those areas within the jurisdiction of the department pursuant to s. 403.817.

History.—s. 1, ch. 84-79; s. 69, ch. 84-338.

403.912 Powers and duties of department in permitting of activities in wetlands.—

(1) Consistent with the powers, jurisdiction, and duties listed in s. 403.061, the department is authorized to adopt rules to carry out the provisions of ss. 403.91-403.929, including appropriate regulatory provisions governing activities in waters to their landward extent pursuant to s. 403.817. Such rules may include stricter permitting and enforcement provisions within Outstanding Florida Waters, aquatic preserves, areas of critical state concern, and areas subject to chapter 380 resource management plans adopted by rule by the Administration Commission, when the plans for an area include waters that are particularly identified as needing additional protection, which provisions are not inconsistent with the applicable rules adopted for the management of such areas by the department and the Governor and Cabinet.

(2) The department shall periodically review and re-evaluate its application forms for permits for activities regulated by ss. 403.91-403.929 to ensure that such forms efficiently and effectively meet the needs of the department and of applicants for permits.

History.—s. 1, ch. 84-79.

403.913 Determination of jurisdiction over surface waters; criteria; when permits required.—

(1) No person shall dredge or fill in, on, or over surface waters without a permit from the department, unless exempted by statute or department rule.

(2) The landward extent of waters shall be determined as provided in s. 403.817, except that the department may exert its jurisdiction to the ordinary or mean high-water line of waters whenever the landward extent, if determined in accordance with Rule 17-4.022, Florida Administrative Code, occurs waterward of the ordinary or mean high-water line. The determinations made pursuant to this subsection shall be to establish the regulatory jurisdiction of the department and are not intended to be a delineation of the boundaries of lands for purposes of title.

(3) When the department determines its jurisdiction based on dominant vegetation, the permit applicant or person requesting the jurisdictional determination, at his option, may request that the department, in cooperation with the United States Department of Agriculture Soil Conservation Service, determine whether hydric soils at the site corroborate the finding of jurisdiction based on vegetation. A request by an applicant that a soils assessment be made pursuant to this section shall toll the 90-day time period provided in s. 403.0876 to approve or deny the permit; that time shall begin to run again upon receipt by the department of the information provided by the Soil Conservation Service. When the soils assessment indicates the presence of hydric soils in conjunction with dominant vegetation, the department shall be presumed to have jurisdiction. When the soils assessment indicates the absence of hydric soils, the department shall be presumed not to have jurisdiction.

(4) Within those areas of the state where a water management district has been delegated stormwater permitting by the department, no dredge or fill permit is required for the construction of, and dredging and filling in, irrigation or drainage ditches constructed in the uplands, including those connecting otherwise isolated areas owned entirely by one person and dominated by the plant indicator species adopted pursuant to s. 403.817. This exemption only applies to a ditch for which the point of connection to other waters of the state is no more than 35 square feet in total cross-sectional area and which normally has a water depth of no more than 3 feet. The total cross-sectional area at the point of connection to other waters of the state shall be maintained by the landowner so as not to exceed the design limitations of this exemption. This exemption does not authorize dredging in waters of the state other than in ditches as described in this subsection. All applicable permits except dredge and fill permits are required for discharges to these ditches or connected areas. This exemption does not apply to ditches in or connected to the waters described in s. 403.031(12)(a) and (b), Outstanding Florida Waters, Class I waters, or Class II waters.

(5) For the purposes of dredge and fill permitting, surface waters do not include intermittent streams or intermittent tributaries, unless there is a continuation of jurisdiction as determined pursuant to Rule 17-4.022, Florida Administrative Code. Standard hydrological methods shall be used to determine which streams constitute in-

intermittent streams and intermittent tributaries. An intermittent stream or intermittent tributary means a stream that flows only at certain times of the year, flows in direct response to rainfall, and is normally an influent stream except when the groundwater table rises above the normal wet season level. Those portions of a stream or tributary which are intermittent and are located upstream of all nonintermittent portions of the stream or tributary are not subject to dredge and fill permitting.

(6) The expanded dredge and fill jurisdiction and permitting criteria granted to the department under ss. 403.91-403.929 do not apply to any development in which 30 percent or more of the lots in a subdivision approved for sale as homesites subsequent to January 1, 1970, pursuant to chapter 498 have been sold; to any residential development for which a development order pursuant to s. 380.06 has been issued or which is exempt pursuant to s. 498.025(2)(a) and (4)(a); or to any activity for which a dredge and fill permit has been issued by the department prior to October 1, 1984. A development or activity which meets any of these conditions shall continue to be regulated pursuant to the dredge and fill jurisdiction of the department as such jurisdiction existed prior to January 24, 1984. Dredge and fill permit applications relating to such developments and activities which meet the conditions previously described shall be reviewed by the department using the permit criteria which existed prior to January 24, 1984, for 12 months after the department adopts a rule implementing ss. 403.91-403.929. Dredge and fill permit applications filed 12 months after the department adopts its rules implementing ss. 403.91-403.929 are subject to the permit criteria established by this chapter. The developer of a development or a permit holder for an activity which meets any of the conditions previously described and who asserts that the development or activity is qualified under this provision shall notify the department of such assertion within 180 days of the publication of a notice by the department of the existence of this provision. The failure to timely notify the department serves as a waiver of the benefits conferred by this provision.

(7) As to other developments the lands of which were approved for sale pursuant to chapter 498 prior to October 1, 1984, the department shall give special consideration to an application for a dredge and fill permit when the lands subject to the permit application constitute a part of the contractual obligations of the applicant incurred pursuant to land sales contracts and when there has been a continuing, bona fide effort since the date of recording of the plat to fulfill the plan of development set forth in the plat and ¹required to be undertaken by the terms of such contractual obligations. The department must be notified of any development or activity as to which it is asserted that it is qualified for the special consideration within 30 days of the publication of a notice by the department of the existence of this provision. The failure to timely notify the department serves as a waiver of the benefits conferred by this provision.

(8) The expanded dredge and fill jurisdiction granted to the department under ss. 403.91-403.929 does not apply to any sand, limerock, or limestone mining activity which is currently operating in compliance with department rules or for which the department has previously

determined that it has no jurisdiction in areas east of the Dade-Broward Levee or which holds a department permit on October 1, 1984. Such sand, limerock, or limestone mining activity shall continue to be regulated pursuant to the dredge and fill jurisdiction of the department as such jurisdiction existed prior to January 24, 1984, for a period of 10 years from October 1, 1984, provided such activity is continuous and carried out on land contiguous to mining operations which were in existence on or before October 1, 1984. Any lands acquired or leased subsequent to June 1, 1984, for such mining activity are not subject to the provisions of this subsection. Dredge and fill permit applications related to such activities shall be reviewed by the department using the existing permit criteria set forth in Rule 17-4, Florida Administrative Code, as of January 24, 1984, for 12 months after the department adopts a rule implementing ss. 403.91-403.929, at which time subsequently filed permit applications will be subject to the permit criteria of ss. 403.91-403.929. The department must be notified of any such mining activity as to which it is asserted that it is qualified under this provision within 180 days after the publication of a notice by the department of the existence of this provision. The failure to timely notify the department serves as a waiver of the benefits conferred by this provision. All such sand, limerock, or limestone mining activities are subject to jurisdiction under ss. 403.91-403.929 for any activities carried out after 10 years from October 1, 1984.

(9) The provisions of ss. 403.91-403.929 do not apply to any application which was complete prior to October 1, 1984, unless the applicant chooses to come under ss. 403.91-403.929.

¹History.—s. 1, ch. 84-79.

²Note.—The words "which streams constitute" were inserted by the editors.

³Note.—The words "required to be" were inserted by the editors.

403.914 Jurisdictional declaratory statements.—

(1) Before applying for a permit to dredge or fill, a property owner, an entity which has the power of eminent domain, or another person with a legal or equitable interest in property may petition the department for a declaratory statement of the dredge and fill jurisdiction of the department. The department shall, by rule, specify information which must be provided and may require authorization to enter upon the property. The department may require a fee of at least \$250 and not more than \$10,000 to cover the direct costs of acting upon the petition. The fee shall be based, by rule, upon the size and environmental complexity of the site for which the jurisdictional declaratory statement is sought.

(a) Within 30 days of the receipt of a petition for a jurisdictional declaratory statement, the department shall notify the applicant of any additional information which may be necessary. The department shall complete the assessment and issue notice of the proposed agency action within 60 days of receipt of a complete petition. The notice shall be published by the petitioner in the Florida Administrative Weekly. The provisions of ss. 120.57 and 120.59 are applicable to declaratory statements under this section. Any person whose substantial interests will be affected may petition for a hearing within 14 days of the publication of notice. If no peti-

tion for a hearing is filed, the department shall issue the jurisdictional declaratory statement within 10 days.

(b) Such jurisdictional declaratory statement is binding for a period of 24 months, so long as physical conditions on the site do not change so as to alter jurisdiction during this time period.

(c) A petitioner who disputes the proposed agency action may withdraw the petition without prejudice at any point prior to final agency action.

(d) The department may revoke a jurisdictional declaratory statement if it finds that the petitioner has submitted inaccurate information in the petition.

(2) The department also may issue informal preapplication jurisdictional determinations or otherwise institute jurisdictional determinations on its own initiative as provided by law.

(3) A jurisdictional declaratory statement obtained pursuant to this section is final agency action and is in lieu of a declaratory statement of jurisdiction obtainable pursuant to s. 120.565.

History.—s. 1, ch. 84-79.

403.916 Local participation in permitting process.

(1) Within 10 days after the receipt of an application for a permit pursuant to ss. 403.91-403.929, the department shall transmit a copy of the application by certified mail to the chief executive officer of each county and each municipality which has jurisdiction over the area for which the permit is requested.

(2) The county and municipality shall have the opportunity to file objections to a short-form dredge and fill permit application within 14 days after receipt of the application from the department, but shall have up to 60 days to file objections to any other dredge and fill permit application. The county and municipality shall have the opportunity to participate as a party to the proceeding and may request a hearing pursuant to s. 120.57 within 14 days after a notice of intent to issue a permit has been sent to the county and municipality by the department.

(3) Nothing in ss. 403.91-403.929 alters or modifies the powers of local government or precludes a local government from adopting a dredge and fill regulatory program, provided the local governmental program is first approved by the department pursuant to s. 403.182.

History.—s. 1, ch. 84-79.

403.918 Criteria for granting or denying permits.—

(1) A permit may not be issued under ss. 403.91-403.929 unless the applicant provides the department with reasonable assurance that water quality standards will not be violated. The department, by rule, shall establish water quality criteria for wetlands within its jurisdiction, which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

(2) A permit may not be issued under ss. 403.91-403.929 unless the applicant provides the department with reasonable assurance that the project is not contrary to the public interest. However, for a project which significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the project will be clearly in the public interest.

(a) In determining whether a project is not contrary to the public interest, or is clearly in the public interest, the department shall consider and balance the following criteria:

1. Whether the project will adversely affect the public health, safety, or welfare or the property of others;

2. Whether the project will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;

3. Whether the project will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;

4. Whether the project will adversely affect the fishing or recreational values or marine productivity in the vicinity of the project;

5. Whether the project will be of a temporary or permanent nature;

6. Whether the project will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061; and

7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

(b) If the applicant is unable to otherwise meet the criteria set forth in this subsection, the department, in deciding to grant or deny a permit, shall consider measures proposed by or acceptable to the applicant to mitigate adverse effects which may be caused by the project. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the department shall consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards. Reclamation and restoration programs conducted pursuant to s. 211.32 may be considered as mitigation to the extent that they restore or improve the water quality and the type, nature, and function of biological systems present at the site prior to the commencement of mining activities.

(3) It is the intent of the Legislature to provide for the use of certain waters as a natural means of stormwater management and to incorporate these waters into comprehensive stormwater management systems when such use is compatible with the ecological characteristics of such waters and with sound resource management. To accomplish this, within 6 months following October 1, 1984, the department shall, by rule, establish performance standards for the issuance of stormwater permits for the use of certain waters for stormwater management. The compliance with such standards creates a presumption in favor of the issuance of the stormwater management permit. Performance standards shall be adopted for waters which are dominated by those plant species listed pursuant to s. 403.817 and:

(a) Which are connected to other watercourses by artificial watercourse, or

(b) Which are connected to other waters solely by an intermittent watercourse.

(4) It is the intent of the Legislature to provide for the use of certain waters that are dominated by those plant species that are listed pursuant to s. 403.817 to receive and treat domestic wastewater that at a minimum has

been treated to secondary standards. No later than December 31, 1985, the department shall, by rule, establish criteria for this activity, which criteria protect the type, nature, and function of the wetlands receiving the wastewater.

(5)(a) It is the intent of the Legislature to protect estuaries and lagoons from the damage created by construction of vertical seawalls and to encourage construction of environmentally desirable shore protection systems, such as riprap and gently sloping shorelines which are planted with suitable aquatic and wetland vegetation.

(b) No permit for dredging or filling or other construction to create a vertical seawall may be issued by the department unless one of the following conditions exists:

1. The proposed construction is located within a port as defined in s. 315.02 or s. 403.021;

2. The proposed construction is necessary for the creation of a marina, the vertical seawalls are necessary to provide access to watercraft, or the proposed construction is necessary for public facilities;

3. The proposed construction is located within an existing manmade canal and the shoreline of such canal is currently occupied in whole or in part by vertical seawalls; or

4. The proposed construction is to be conducted by a public utility when such utility is acting in the performance of its obligation to provide service to the public.

(c) When considering an application for a permit to repair or replace an existing vertical seawall, the department shall generally require such seawall to be faced with riprap material, or to be replaced entirely with riprap material unless a condition specified in subparagraph 1., subparagraph 2., subparagraph 3., or subparagraph 4. of paragraph (b) exists.

(d) This subsection shall in no way hinder any activity previously exempt or permitted or those activities permitted pursuant to chapter 161.

History.—s. 1, ch. 84-78; ss. 70, 71, ch. 84-338; s. 8, ch. 85-288; s. 4, ch. 85-334.

403.919 Considerations in granting or denying permit for activity that will affect waters.—The department, in deciding whether to grant or deny a permit for an activity which will affect waters, shall consider:

(1) The impact of the project for which the permit is sought.

(2) The impact of projects which are existing or under construction or for which permits or jurisdictional determinations have been sought.

(3) The impact of projects which are under review, approved, or vested pursuant to s. 380.06, or other projects which may reasonably be expected to be located within the jurisdictional extent of waters, based upon land use restrictions and regulations.

History.—s. 1, ch. 84-79.

403.92 Notice of intent to deny a permit or notice of denial of a permit; contents.—In the event that the department issues a notice of intent to deny a permit or denies a permit required pursuant to ss. 403.91-403.929, such notice or denial shall contain an explanation by the department of the reasons for denial and an explanation, in general terms, of what changes, if any, in the permit

application are necessary in order for the department to approve the proposed project.

History.—s. 1, ch. 84-79.

403.921 Permits; duration; fees.—

(1)(a) A permit issued under ss. 403.91-403.929 shall be valid for a period not to exceed 10 years. However, the department may issue a permit for a period not to exceed 25 years if the applicant provides the department with reasonable assurances that:

1. The activity for which the permit is granted cannot reasonably be expected to be completed within 10 years after commencement of construction; or

2. The activity for which the permit is granted will cover an area of such size that it would not allow the department to accurately assess the total impact of the project and the potential for mitigation or restoration, if permitted by separate permits;

and the applicant supplies the department with sufficient information to allow the department to accurately assess the impact of the project for the permitted period.

(b) Notwithstanding the provisions of chapter 120, the department shall adopt by rule a timetable for processing permits which will be granted for periods of more than 10 years. In no event shall the timetable exceed 135 days after receipt of a complete application.

(c) Every permit issued for a period of time in excess of 5 years shall be reviewed at the expiration of the first 5-year period and every 5 years thereafter:

1. To ensure that the conditions of the permit are being met by the applicant, and

2. To automatically include as permit conditions all applicable rules adopted during the prior 5-year period. If the permit applicant has acted in reliance upon a permit which was issued for a period of 10 years or more, this subparagraph will not apply until the expiration of the initial 10-year period.

(d) This subsection does not apply to any permit issued pursuant to s. 403.813(1)(f) or s. 403.816.

(2) The department is authorized to establish a sliding scale of appropriate fees for projects which seek permits for a period of time which exceeds 5 years, based on the duration of the permit, with a minimum fee of \$1,250 and a maximum fee of \$25,000. Such funds shall be deposited in the Florida Permit Fee Trust Fund created by s. 403.0871.

History.—s. 1, ch. 84-79.

403.922 Applications for activities on state sovereignty lands or other state lands.—If sovereignty lands or other lands owned by the state are the subject of a proposed activity, the issuance of a permit by the department shall be conditioned upon the receipt by the applicant of all necessary approvals and authorizations from the Board of Trustees of the Internal Improvement Trust Fund prior to the undertaking of such activity. The department shall issue its permit conditioned upon the securing of the necessary consent or approvals from the Board of Trustees of the Internal Improvement Trust Fund by the applicant. If the approval or authorization of the board is required, the applicant may not commence any excavation, construction, or other activity until such

approval or authorization has been issued.

History.—s. 1, ch. 84-79.

403.923 Effect of issuance of permit on need to obtain other permits under this chapter.—The issuance of a permit under ss. 403.91-403.929 does not relieve the applicant from the requirement of obtaining any other permit which may be required under the other provisions of this chapter.

History.—s. 1, ch. 84-79.

403.924 Enforcement of ss. 403.91-403.929.—

(1) A violation of the requirements of ss. 403.91-403.929 or a rule, permit, or order issued hereunder by the department or of an approved local program is punishable by a civil penalty as provided in s. 403.141 or a criminal penalty as provided in s. 403.161.

(2) The department or any approved local program may seek to enjoin the violation of or to enforce compliance with the provisions of ss. 403.91-403.929, or any rule, permit, or order issued hereunder, as provided in ss. 403.121, 403.131, 403.141, and 403.161.

(3) A permit issued under ss. 403.91-403.929 may be revoked upon the same grounds as are provided in s. 403.087.

(4) The department or the Board of Trustees of the Internal Improvement Trust Fund has the authority to direct an abutting upland owner to remove from submerged sovereignty lands or state-owned lands any fill created in violation of ss. 403.91-403.929, except that the department or the board may consider the time at which the submerged land was filled, the length of upland ownership by the current owner, and any other equitable consideration. In the event that the abutting upland owner does not remove such fill as directed, the department or board may remove it at its own expense, and the costs of removal will become a lien upon the property of such abutting upland owner. However, the department and board may, if they choose, allow such fill to remain as state-owned land and may employ a surveyor to determine the boundary between such state land and that of the abutting upland owner. The amount of the cost of such survey will become a lien on the property of the abutting upland owner. Nothing herein may be construed to grant the department or the board authority to direct an upland owner to adjust, alter, or remove silt, fill, or other solid material which has accumulated or has been deposited seaward of his property, through no fault of the owner.

History.—s. 1, ch. 84-79.

403.925 Review of departmental action.—Final actions of the department under ss. 403.91-403.929 shall be reviewed pursuant to chapter 120.

History.—s. 1, ch. 84-79.

403.927 Use of water in farming and forestry activities.—

(1) The Legislature recognizes the great value of farming and forestry to this state and that continued agricultural activity is compatible with wetlands protection. In order to avoid unnecessary expense and delay from duplicative programs, it is the intent of the Legislature to provide for the construction and operation of agricul-

tural water management systems under authority granted to water management districts and to control, by the department or by delegation of authority to water management districts, the ultimate discharge from agricultural water management systems.

(2) Agricultural activities and agricultural water management systems are authorized by this section and are not subject to the provisions of s. 403.087 or ss. 403.91-403.929, nor shall the department enforce water quality standards within an agricultural water management system. The department may require a stormwater permit or appropriate discharge permit at the ultimate point of discharge from an agricultural water management system or a group of connected agricultural water management systems. Impacts of agricultural activities and agricultural water management systems on groundwater quality shall be regulated by water management districts.

(3) If land served by a water management system is converted to a use other than an agricultural use, the water management system, or the portion of the system which serves that land, will be subject to the provisions of this chapter.

(4) As used in this section, the term:

(a) "Agricultural activities" includes all necessary farming and forestry operations which are normal and customary for the area, such as site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, harvesting, construction of access roads, and placement of bridges and culverts, provided such operations do not impede or divert the flow of surface waters.

(b) "Agricultural water management systems" means farming and forestry water management or irrigation systems and farm ponds which are permitted pursuant to chapter 373 or which are exempt from the permitting provisions of that chapter.

History.—s. 1, ch. 84-79.

403.929 Wetlands monitoring system.—

(1) The department, in cooperation with the water management districts and other state agencies, shall establish a central wetlands monitoring system that will:

(a) Determine the general location and acreages of wetland areas in the state.

(b) Identify impacts to and losses of wetlands due to permits issued by either the department or the water management districts and identify known losses of wetlands from unregulated or exempted activities or from changes in natural conditions.

(c) Compile and maintain a statistical record of all action taken on permits, including the number granted, denied, or withdrawn; the area permitted to be disturbed; and, where applicable, the acreage preserved or restored as a result of mitigation or permit conditions.

(2) It is the intent of the Legislature that the department utilize existing, available information to the greatest extent practicable in developing this inventory of wetlands, including Landsat digital data, federal agency data, and data currently in the possession of the department, the water management districts, and other state, regional, or local agencies. The department shall annually prepare a report reflecting the information requested

in paragraphs (1)(b) and (c), to be delivered to the Legislature on or before February 1 of each year. The information contained in this report shall not be used for regulatory purposes.

History.—s. 1, ch. 84-79; s. 57, ch. 85-81.

403.93 Definitions of terms used in ss. 403.93-403.938.—For the purposes of ss. 403.93-403.938, the term:

(1) "Alter" means to cut, remove, defoliate, or otherwise destroy but does not mean selective trimming which does not eliminate the biological integrity of the individual plant.

(2) "Mangrove" means any specimen of the species *Laguncularia racemosa* (white mangrove), *Rhizophora mangle* (red mangrove), or *Avicennia germinans* (black mangrove).

History.—s. 50, ch. 84-338.

403.931 Alteration of mangroves; permit procedure.—

(1) No person may alter or cause to be altered any mangrove in waters where a permit is required for dredging or filling except pursuant to a permit issued by the department or as otherwise provided by ss. 403.93-403.938. Any violation of this section shall be presumed to have occurred with the knowledge and consent of any owner, trustee, or other person who directly or indirectly has charge, control, or management, either exclusively or with others, of the property upon which such violation occurs. However, this presumption may be rebutted by competent, substantial evidence that the violation was not authorized by the owner, trustee, or other person.

(2) No separate application is required for an alteration permit if the alteration is addressed in an application for a dredge or fill permit or certification or application for boat dock or walkway under this chapter; the procedures for dredge or fill permitting will control in such instances.

(3) The department shall adopt a general permit in accordance with s. 403.814, which permit authorizes the alteration of mangroves in accordance with procedures designed to protect the integrity of mangrove trees.

(4) The provisions of ss. 403.93-403.938 do not apply to any alteration that was addressed in a dredge and fill application which was complete prior to July 1, 1984, unless the applicant chooses to come under this act.

(5) Notwithstanding the provisions in subsection (3), a landowner has the right to selectively trim individual mangrove plants in order to better enjoy the coastal water vistas and other aesthetic qualities associated with the ownership of riparian lands.

History.—s. 51, ch. 84-338.

403.932 Exceptions and authorized alterations of mangroves.—The provisions of this act do not apply to:

(1) The alteration of mangrove trees by a duly constituted communication, water, sewerage, electrical, or other utility company or a federal, state, or county agency, or engineers or surveyors working under a contract with such utility company or agency, when such alteration is done as a governmental function of such agency.

(2) The alteration of mangrove trees by a duly constituted communication, water, sewerage, electrical, or other utility company in or adjacent to a public or private easement or right-of-way, provided such alteration is limited to those areas where it is necessary for the maintenance of existing lines or facilities or for the construction of new lines or facilities in furtherance of providing utility service to its customers and provided such alteration is conducted so as to avoid any unnecessary alteration of mangrove trees.

(3) The alteration of mangrove trees by a duly constituted communication, water, sewer, or electrical utility company on the grounds of a water treatment plant, sewage treatment plant, or electric power plant or substation in furtherance of providing utility service to its customers, provided such alteration is conducted so as to avoid any unnecessary alteration of mangrove trees.

(4) The alteration of a mangrove tree by a state-licensed land surveyor in the performance of his duties provided such alteration is to individual trees. The alteration of mangrove trees by a surveyor, which alteration requires trimming a swath greater than 3 feet in width requires approval by the department prior to such alteration.

History.—s. 56, ch. 84-338.

403.933 Alteration of mangroves; criteria.—By June 1, 1985, the department shall adopt a rule which specifies criteria for altering mangroves and a procedure for issuing permits to do so. Such criteria shall be based solely upon the dredge and fill permit criteria set forth in this chapter.

History.—s. 54, ch. 84-338.

403.935 Restoration of unlawfully altered mangroves.—In the event that a violator does not restore altered mangroves to the standards of the Department of Environmental Regulation, the department may restore the altered mangroves at its own expense, and the cost of the restoration will become a lien upon the property of the violator.

History.—s. 52, ch. 84-338.

403.936 Enforcement of provisions relating to mangroves.—The responsibility of the department for the enforcement of the provisions of ss. 403.93-403.938 shall be pursuant to ss. 403.141 and 403.161.

History.—s. 53, ch. 84-338.

403.938 Variance relief.—Upon application, the department may grant a variance from the provisions of ss. 403.93-403.938 if compliance therewith would impose a unique and unnecessary hardship on the owner or any other person in control of the affected property. Relief may be granted only upon demonstration that such hardship is peculiar to the affected property and is not self-imposed and that the grant of the variance will be consistent with the general intent and purpose of ss. 403.93-403.938. The department may grant variances as it deems appropriate.

History.—s. 55, ch. 84-338.

(b) Under the approach taken in the formulation of the rules adopted in this proceeding:

1. These revisions to Chapters 17-3, 17-4 and adoption of Chapter 17-6, F.A.C., are based upon the best scientific knowledge related to the protection of the various designated uses of waters of the State; and

2. The mixing zone, zone of discharge, site specific alternative criteria, exemption, and equitable allocation provisions are designed to provide an opportunity for the future consideration of factors relating to localized situations which could not adequately be addressed in this proceeding, including economic and social consequences, attainability, irretrievable conditions, natural background, and detectability.

(c) This is an even-handed and balanced approach to attainment of water quality objectives. The Commission has specifically recognized that the social, economic and environmental costs may, under certain special circumstances, outweigh the social, economic and environmental benefits if the numerical criteria are enforced statewide. It is for that reason that the Commission has provided for mixing zones, zones of discharge, site specific alternative criteria, exemptions and other provisions in Chapters 17-3, 17-4, and 17-6, F.A.C. Furthermore, the continued availability of the moderating provisions is a vital factor providing a basis for the Commission's determination that water quality standards applicable to water classes in the rule are attainable taking into consideration environmental, technological, social, economic and institutional factors. The companion provisions of Chapters 17-4 and 17-6, F.A.C., approved simultaneously with these Water Quality Standards are incorporated herein by reference as a substantive part of the State's comprehensive program for the control, abatement and prevention of water pollution.

(d) Without the moderating provisions described in (b)2. above, the Commission would not have adopted the revisions described in (b)1. above nor determined that they are attainable as generally applicable water quality standards.

Specific Authority: 403.061, 403.062, 403.087, 403.504, 403.704, 403.804, 403.805, F.S.
Law Implemented: 403.021, 403.061, 403.085, 403.086, 403.087, 403.101, 403.141, 403.161, 403.182, 403.502, 403.702, 403.708, 403.802, F.S.
History: Formerly 28-5.01, 17-3.01, Amended and Renumbered 3-1-79, Amended 2-1-83.

17-3-020 Minimum Conditions of All Waters, Times and Places.

Specific Authority: 403.061, F.S.

Law Implemented: 403.021, 403.031, 403.061, 403.101(1), F.S.

History: Formerly 28-5.02, Amended 10-28-70, Amended and Renumbered as 17-3.051, 3-1-79.

PART II DEFINITIONS

17-3.021 Definitions.

(1) "Acute Toxicity" shall mean the presence of one or more substances or characteristics or components of substances in amounts which:

(a) Are greater than one-third (1/3) of the amount lethal to 50% of the test organisms in 96 hours (96 hr LC50) where the 96 hr LC50 is the lowest value which has been determined for a species significant to the indigenous aquatic community; or

(b) May reasonably be expected, based upon evaluation by generally accepted scientific methods, to produce effects equal to those of the concentration of the substance specified in (a) above.

(2) "Aquifer" shall mean a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells, springs or surface water.

(3) "Background" shall mean the condition of waters in the absence of the activity or discharge under consideration, based on the best scientific information available to the Department.

(4) "Chronic Toxicity" shall mean the presence of one or more substances or characteristics or components of substances in amounts which:

(a) Are greater than one-twentieth (1/20) of the amount lethal to 50% of the test organisms in 96 hrs (96 hr LC50) where the 96 hr LC50 is the lowest value which has been determined for a species significant to the indigenous aquatic community; or

(b) May reasonably be expected, based upon evaluation by generally accepted scientific methods, to produce effects equal to those of the concentration of the substance specified in (a) above.

(5) "Commission" shall mean the Environmental Regulation Commission.

(6) "Compensation Point for Photosynthetic Activity" shall mean the depth at which one percent of the light intensity at the surface remains unabsorbed. The light intensities at the surface and subsurface shall be measured simultaneously by irradiance meters such as the Kahlesco Underwater Irradiometer, Model No. 268 WA 310 or other devices having a comparable spectral response.

(7) "Confined Aquifer" shall mean an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself.

(8) "Department" shall mean the Department of Environmental Regulation.

(9) "Designated Use" shall mean the present and future most beneficial use of a body of water as designated by the Environmental Regulation Commission by means of the classification system contained in this Chapter.

(10) "Dominance" shall mean the presence of species or communities in greater numbers, biomass, or areal extent than competing species or communities, or a scientifically accepted tendency of species or communities to achieve such a status under existing or reasonably anticipated conditions.

(11) "Effluent Limitation" shall mean 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.

(12) "Exceptional Ecological Significance" shall mean that a water body is a part of an ecosystem of unusual value. The exceptional significance may be in unusual species, productivity, diversity, ecological relationships, ambient water quality, scientific or educational interest, or in other aspects of the ecosystem's setting or processes.

(13) "Exceptional Recreational Significance" shall mean unusual value as a resource for outdoor recreation activities. Outdoor recreation activities include, but are not limited to, fishing, boating, canoeing, water skiing, swimming, scuba diving, or nature observation. The exceptional significance may be in the intensity of present recreational usage, in an unusual quality of recreational experience, or in the potential for unusual future recreational use or experience.

(14) "Ground water" shall mean water beneath the surface of the ground within a zone of saturation, whether or not flowing through known and definite channels.

(15) "Landward extent of waters of the state as defined prior to October 1, 1984" is, pursuant to Section 403.817, F.S., that portion of a surface water body indicated by the presence of one or a combination of the following as the dominant species:

Submerged Marine species:

Batis
Big cordgrass
Black mangrove
Black rush
Cuban shoalweed
Leather fern
Manatee grass
Red mangrove
Rubber vine
Smooth cordgrass
Turtle grass
Widgeon grass
White mangrove

Batis maritima
Spartina cynosuroides
Avicennia germinans
Juncus roemerianus
Diplanthera (Halodule) wrightii
Acrostichum aureum
Syringodium filiformis
Rhizophora mangle
Rhizophora biflora
Spartina alterniflora
Thalassia testudinum
Ruppia maritima
Laguncularia racemosa

Submerged Freshwater species:

Alligator weed
Arrowhead
Arrowroot lily
Bald cypress
Beak rush
Bladder wort
Blue green algal mats
Bullrush

Alternanthera philoxeroides
Sagittaria spp.
Thalia geniculata
Taxodium distichum
Rhynchospora tracyi
Utricularia vulgaris

Scirpus americanus
Scirpus validus
Typha latifolia
Typha angustifolia
Typha domingensis
Ceratophyllum demersum

Cattail

Coontail

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Duck weed
Florida elodea
Golden club
Leather fern
Malden cane
Naiad
Ogeche tupelo
Pickerelweed
Pond apple
Pond cypress
Pondweed
Royal fern
Saw grass
Spatter dock
Spike rush
Soft rush
Swamp lily
Swamp tupelo
Tape grass
Water ash
Water fern
Water hyssop
Water lily
Water shield
Water tupelo
Water willow

Lemna spp.
Hydrilla verticillata
Orontium aquaticum
Acrostichum danaeifolium
Panicum hermitomom
Najas spp.
Nyssa ogeche
Poncideria lanceolata
Annona glabra
Taxodium ascendens
Potamogeton ilinoensis
Osmunda regalis
Cladium jamaicensis
Nuphar spp.
Eleocharis cellulosa
Juncus effusus
Crinum americanum
Nyssa biflora
Vallisneria neotropicalis
Fraxinus caroliniana
Salvinia rotundifolia
Bacopa caroliniana
Nymphaea spp.
Brasenia schreberi
Nyssa aquatica
Justicia ovata

or that portion of a surface water body up to the waterward first fifty (50) feet or the waterward quarter (1/4) of the entire area, whichever is greater, where one or a combination of the following are the dominant species:

Transitional Marine species:

Aster
Beach carpet
Button wood
Glasswort Annual
Glasswort Perennial
Key grass
Salt grass
Sea blite
Sea daisy

Aster tenuifolius
Phloxerus vernicularis
Concarpus erecta
Salicornia bigelovii
Salicornia virginica
Monanthochloe littoralis
Distichlis spicata
Suaeda lindaris

Sea grape
Sea lavender
Sea purslane
Switch grass
Railroad vine
Button bush
Dahoon

Borrchia frutescens
Borrchia arborescens
Coccoloba uvifera
Limonium carolinianum
Sesuvium portulacastrum
Spartina patens
Ipomoea pes-caprae

Transitional Freshwater species:

Cephalanthus occidentalis
Ilex cassine

Giant reed
Primrose willow
St. John's wort
Switch grass
Willow

Phragmites communis
Ludwigia peruviana
Hypericum fasciculatum
Panicum virgatum
Salix caroliniana

(16) "Landward extent of waters of the state" is, pursuant to Section 403.817, F.S., that portion of a surface water body indicated by the presence of one or a combination of the species listed in Section 17-3.022, F.A.C., as the dominant species as determined pursuant to Section 17-3.022, F.A.C.

(17) "Man-induced conditions which cannot be controlled or abated" shall mean conditions that have been influenced by human activities, and

(a) would remain after removal of all point sources,

(b) would remain after imposition of best management practices for non-point sources, and

(c) cannot be restored or abated by physical alteration of the water body, or there is no reasonable relationship between the economic, social and environmental costs and the benefits of restoration or physical alteration.

(18) "Natural Background" shall mean the condition of waters in the absence of man-induced alterations based on the best scientific information available to the Department. The establishment of natural background for an altered waterbody may be based upon a similar unaltered waterbody or on historical pre-alteration data.

(19) "Nuisance Species" shall mean species of flora or fauna whose noxious characteristics or presence in sufficient number, biomass, or areal extent may reasonably be expected to prevent, or unreasonably interfere with, a designated use of those waters.

(20) "Nursery Area of Indigenous Aquatic Life" shall mean any bed of the following aquatic plants, either in monoculture or mixed: Halodule spp., Halophila engelmannii, Potamogeton spp. (pondweed), Ruppia maritima (wideon-grass), Sagittaria spp. (arrowhead), Syringodium filiforme (manatee-grass), Thalassia testudinum (turtle grass), or Vallisneria spp. (eel-grass), or any area used by the early-life stages, larvae and post-larvae, of aquatic life during the period of rapid growth and development into the juvenile states.

(21) "Pollution" shall mean the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of air or water in quantities or levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, including outdoor recreation.

(22) "Predominantly Fresh Waters" shall mean surface waters in which the chloride concentration at the surface is less than 1,500 milligrams per liter.

17-3.021(15) -- 17-3.021(22)

(23) "Predominantly Marine Waters" shall mean surface waters in which the chloride concentration at the surface is greater than or equal to 1,500 milligrams per liter.

(24) "Propagation" shall mean reproduction sufficient to maintain the species' role in its respective ecological community.

(25) "Secretary" shall mean the Secretary of the Department of Environmental Regulation.

(26) "Shannon-Weaver Diversity Index" shall mean: negative summation (from $i=1$ to s) of $(n_i/N) \log_2 (n_i/N)$ where s is the number of species in a sample, N is the total number of individuals in a sample, and n_i is the total number of individuals in species i .

(27) "Single source aquifer" shall mean an aquifer or a portion of an aquifer which, pursuant to Sections 17-3.403(5) & (6), F.A.C., is determined by the Commission to be the only reasonably available source of potable water to a significant segment of the population.

(28) "Site" shall mean the area within an installation's property boundary where effluents are released or applied to the ground water.

(29) "Special Waters" shall mean water bodies designated in accordance with Section 17-3.041, F.A.C., by the Environmental Regulation Commission for inclusion in the Special Waters Category of Outstanding Florida Waters, as contained in Section 17-3.041, F.A.C. A Special Water may include all or part of any water body.

(30) "Surface Water" means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface.

(31) "Unconfined Aquifer" shall mean an aquifer other than a confined aquifer.

(32) "Waters" shall be as defined in Section 403.031(3), Florida Statutes.

(33) "Zone of Discharge" shall mean a volume underlying or surrounding the site and extending to the base of a specifically designated aquifer or aquifers, within which an opportunity for the treatment, mixture or dispersion of wastes into receiving ground water is afforded.

(34) "Zone of Mixing" or "Mixing Zone" shall mean a volume of surface water containing the point or area of discharge and within which an opportunity for the mixture of wastes with receiving surface waters has been afforded.

(35) "Zone of Saturation" shall mean a subsurface zone in which all of the interstices are filled with water.

Specific Authority: 403.061, 403.062, 403.087, 403.504, 403.704, 403.804, 403.805, F.S.

Law Implemented: 403.021, 403.031, 403.061, 403.085, 403.086, 403.087, 403.088, 403.502, 403.802, F.S.

History: Formerly 28-5.12, 17-3.12, Amended and Renumbered 3-1-79, Amended 1-1-83, 2-1-83, 4-26-87, 8-30-88

17-3.021(23) -- 17-3.021(History)

17-3.022 Determination of the Landward Extent of Surface Waters of the State.
 (1) The line demarcating the landward extent of surface waters, as defined in Section 403.031, F.S., shall be established for any water body, pursuant to Section 403.817, F.S., by dominant plant species. Dominance shall be determined in a plant stratum (canopy, subcanopy, or ground cover). The canopy is composed of all woody plants with a trunk 4 inches or greater in diameter at breast height (dbh). Dbh is measured at 4.5 feet above the ground. The subcanopy is composed of all woody plants with a trunk or stem dbh between 1 and 4 inches and a height greater than 3 feet. The ground cover includes all other plants. The top stratum shall be used in the determination of dominance unless the top stratum constitutes less than 10% areal extent or unless a preponderance of the evidence establishes that the top stratum is not indicative of normal hydrologic conditions, for example, as a result of artificial alteration. In these cases a more representative stratum shall be used. The burden of proof shall be with the party asserting that a stratum other than the top stratum should be used to determine dominance.

(a) The existence of a surface water, as defined in Section 403.031, F.S., shall first be identified. Vegetation shall then be inspected moving landward. In all cases the Department shall attempt to locate the line demarcating the landward extent of waters of the state by visual methods or by aerial photointerpretation. The line demarcating the landward extent of the waters shall be the boundary of the area where, using the submerged and transitional species listed in paragraphs (2) and (3) below:

1. the areal extent of submerged and transitional species or any combination thereof, in the selected stratum, is greater than 50% of all the plant species for that stratum, and
 2. the areal extent of the submerged species in the selected stratum is greater than 10% of the areal extent of all the plant species in that stratum, and
 3. the areal extent of the submerged species in the selected stratum is greater than the areal extent of upland species in that stratum.
- (b) The landward extent of a surface water shall include any other area where:
1. the areal extent of the transitional species in the selected stratum is greater than 80% of all the plant species in that stratum, and
 2. the areal extent of the submerged species in the selected stratum is less than 10% of all the plant species in that stratum, and
 3. the areal extent of the upland species in the selected stratum is less than 10% of all the plant species in that stratum, and
4. the Department establishes by competent, substantial evidence by using such factors as hydrology, swollen buttresses, lichen lines, or other indicators that the area is subject to regular and periodic inundation.

17-3.022(1) -- 17-3.022(1)(b)4.

(c) If the line demarcating the landward extent of waters of the state cannot be determined visually or by aerial photointerpretation, the following methods shall be used in a manner that ensures sufficient representative data will be generated. The percentages generated shall be substituted for areal extent in paragraph (a) or (b) above.

1. In areas where a canopy is used, a series of belt transects shall be established and divided into intervals. Dominance will be determined by relative basal area. Relative basal area in the canopy shall be recorded as submerged, transitional or upland within each interval as follows:

$$\text{Relative Basal Area} = \frac{\text{Total basal area of submerged, transitional or upland species.}}{\text{Total basal area of all species.}} \times 100$$

2. In areas where a subcanopy is used, a series of belt transects shall be established and divided into intervals. Within each interval the percentages of submerged, transitional, or upland species shall be determined by relative density using the formula below:

$$\text{Relative Density} = \frac{\text{Number of individuals of submerged, transitional or upland species.}}{\text{Total number of individuals}} \times 100$$

3. In areas where a ground cover is used, either of the following methods shall be used:

a. A series of line transects shall be established and ground cover shall be sampled in 0.25 square meter plots at interval points. There shall be a sufficient number of plots to determine accurately the line demarcating the landward extent of waters of the state. Within each plot the percentages of submerged, transitional or upland species shall be determined visually by cover, or the number of individuals categorized as submerged, transitional or upland shall be counted and results expressed as percentages of the total number of individuals within that plot; or

b. A series of line transects shall be established, divided into appropriate intervals, and ground cover shall be determined by measuring the linear portion of each interval (at the ground surface) occupied by plants categorized as submerged, transitional or upland. These measurements by category shall then be expressed as a percentage of the total measurements of vegetative cover within each interval.

17-3.022(1)(c) -- 17-3.022(1)(c)3.b.

(d) Methods other than those described above may be used as long as the Department and the applicant both agree, in writing, to the method used. 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 area ext. it in paragraph (a) or paragraph (b) above. When a combination of strata is used, the following shall be added to Rule 17-3.022(2), Florida Administrative Code:

Blechnum serrulatum swamp fern
Carex leptalea sedge
Carex stipitata sedge
Crataegus viridis green haw
Osmunda spp. osmunda ferns
Pluchea spp. marsh fleabanes
Woodwardia spp. chain ferns

Concurrently the following shall be added to Rule 17-4.022(3), Florida Administrative Code:

Axonopus furcatus big carpet grass
Flaveria spp. yellowtops
Metopium toxiferum poison tree
Myrica cerifera wax myrtle
Sabal minor dwarf palmetto
Symplocos tinctoria horse sugar

(7)

Submerged Species:
Alisma subcordatum
Alnus serrulata
Alternanthera philoxeroides
Annona glabra
Aster carolinianus
Aster elliptii
Aster subulatus
Aster tenuifolius
Avicennia germinans
Azolla caroliniana
Bacopa spp.
Batis maritima
Betula nigra
Bidens laevis
Bidens mitis
Borreria arborescens
Borreria frutescens

leather ferns
water plantain
hazel alder
alligator weed
pigweed
pond apple
climbing aster
aster
aster
saltmarsh aster
black mangrove
mosquito fern
water hyssops
saltwort
river birch
bur-marigold
bur-marigold
sea daisy
sea daisy

17-3.022(1Xd) -- 17-3.022(2)

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Brachelyma spp. water moss
Brasenia schreberi water shield
Cabomba caroliniana fanworts
Canna spp. cannas
Carex decumbens sedge
Carex hovei sedge
Carex walteriana sedge
Cephalanthus occidentalis butonbush
Ceratophyllum spp. hornworts
Ceratopteris spp. floating ferns
Chamaecyparis spp. white cedars
Cicuta mexicana musk grasses
Cladium jamaicense water hemlock
Colocasia esculenta saw-grass
Coreopsis nudata wild taro
Crataegus aestivalis tickseed
Crataegus marshallii apple haw
Crinum americanum parsley haw
Cyperus alternifolius swamp lily
Cyperus articulatus umbrellia flatsedge
Cyperus haspan umbrellia sedge
Decodon verticillatus flat sedge
Distichlis spicata swamp loosestrife
Echinodorus spp. burheads
Egeria densa waterweed
Eichhornia crassipes water hyacinth
Eleocharis spp. spikerushes
Elodea spp. waterweeds
Eriocaulon spp. hat-pins
Fimbristylis, all species fringe-rushes
except: F. annua
F. puberula

Fontinalis spp. water mosses
Fraxinus, all species ashes

except: F. americana
Fuirena scirpoides rush fuirena
Fuirena squarrosa lake rush
Gordonia lasianthus loblolly bay
Habenaria repens water-spider orchid
Hibiscus grandiflorus big rose-mallow
Hydrilla verticillata hydrilla
Hydrochloa carolinensis watergrass

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Hydrocotyle ranunculoides
Hydrolea spp.
Hydrophila lacustris
Hydrophila polysperma
Hymenocallis spp.
Hypericum chapmanii
Hypericum lissophloeus
Hypericum nitidum
Ilex cassine
Ilex myrtifolia
Iris hexagona
Iris virginica
Itea virginica
Iva, all species
except: I. imbricata
Juncus spp.
Justicia americana
Justicia ovata
Kosteletzkya spp.
Lachnocaulon, all species
except: L. anceps
L. digynum
Laguncularia racemosa
Leersia spp.
Lemna spp.
Leptodictyonum spp.
Lilaeopsis spp.
Limnolobium spongiosa
Limonium carolinianum
Lindernia dubia
Lindernia grandiflora
Litsea aestivalis
Lobelia cardinalis
Lobelia glandulosa
Ludwigia, all species
except: L. hirtella
L. maritima
L. virginica
Magnolia virginiana
Mikania scandens
Monanthochloe littoralis
Muhlenbergia capillaris
Muhlenbergia schreberi
Myriophyllum spp.
Najas spp.
Nasturtium spp.

swamp loosestrife
 sky flower
 lake hygrophila
 East Indian hygrophila
 spider lilies
 St. John's wort
 St. John's wort
 St. John's wort
 dahoon
 myrtle-leaved holly
 anglepod blue flag
 southern blue flag
 Virginia willow
 marsh elders
 bog rushes
 water willow
 water willow
 marsh-mallow
 bog buttons
 white mangrove
 southern cutgrass
 duckweeds
 water moss
 lilaeopsis
 frog's bit
 sea lavender
 false pimpernel
 false pimpernel
 pond-spice
 cardinal-flower
 lobelia
 ludwigias
 sweet bay
 climbing hempvine
 key grass
 gulf muhly
 nimblewill
 water milfoils
 water naiads
 water cresses

lotuses
 stoneworts
 spatterdocks
 water lilies
 floating hearts
 water tupelo
 Ogeechee tupelo
 swamp tupelo
 golden club
 royal fern
 water dropwort
 savannah panicum
 maidencane
 redtop panicum
 knot-grass
 water paspalum
 spoon flowers
 swamp bay
 giant reed
 fever tree
 water lettuce
 water elm
 smartweeds
 pickerelweeds
 swamp poplar
 pondweeds
 mermaid weeds
 overcup oak
 meadow beauty
 meadow beauty
 red mangrove
 horned beak rush
 beak rush
 inundated beak rush
 small-fruited beak rush
 beak rush
 beak rush
 Tracy's beak rush
 swamp rose
 widgeon grass
 marsh pink
 arrowheads
 glassworts
 willows
 water spangles
 water pimpernels
 lizard's tail
 common three-square

Nelumbo spp.
Nitella spp.
Nuphar spp.
Nymphaea spp.
Nymphoides spp.
Nyssa aquatica
Nyssa ogechee
Nyssa sylvatica var. biflora
Oenothera aquatica
Osmunda regalis
Oxypolis filiformis
Panicum gymnocarpon
Panicum hemiltoni
Panicum rigidulum
Paspalum distichum
Paspalum repens
Peltandra spp.
Persea palustris
Phragmites australis
Pinguicula bracteata
Pistia stratiotes
Planera aquatica
Polygonum spp.
Pontederia spp.
Populus heterophylla
Potamogeton spp.
Proserpinaca spp.
Quercus lyrata
Rhexia parviflora
Rhexia salicifolia
Rhizophora mangle
Rhynchospora corniculata
Rhynchospora divergens
Rhynchospora inundata
Rhynchospora microcarpa
Rhynchospora miliacea
Rhynchospora mixta
Rhynchospora tracyi
Rosa palustris
Ruppia maritima
Sabatia dodecandra
Sagittaria spp.
Salicornia spp.
Salix spp.
Salvinia rotundifolia
Samolus spp.
Saururus cernuus
Scirpus americanus

Scirpus californicus
Scirpus cubensis
Scirpus cyperinus
Scirpus erismanae
Scirpus etuberculatus
Scirpus Olneyi
Scirpus robustus
Scirpus validus
Slum suave
Smilax laurifolia
Smilax walteri
Spartanium americanum
Spartina, all species
 except: S. bakeri

Sphagnum spp.
Spirodela spp.
Sporobolus virginicus
Suaeda spp.
Taxodium spp.
Thalia geniculata
Triadenum virginicum
Typha spp.
Utricularia spp.
Vallisneria spp.
Wolffia spp.
Wolffielia spp.
Xyris, all species
 except: X. caroliniana
X. lupical

Zizania aquatica
Zizaniopsis millacea

(3) Transitional Species:
Acer negundo
Acer rubrum
Acer saccharinum
Aletris spp.
Ampelopsis arborea
Arundinaria gigantea
Baccharis angustifolia
Blechnum serrulatum
Boehmeria cylindrica
Carex, all species
 except: C. decomposita
C. howei
C. walteriana

southern bulrush
 bulrush
 woolgrass bulrush
 bulrush
 bulrush
 Olney's three-square
 saltmarsh bulrush
 giant bulrush
 water parsnip
 bamboo-vine
 coral greenbriar
 bur-reed
 cordgrasses

sphagnum mosses
 duckmeat
 seashore dropseed
 sea blights
 cyresses
 arrowroot
 St. John's wort
 cattails
 bladderworts
 tape-grasses
 water meals
 bog-mats
 yellow-eyed grasses

annual wild rice
 southern wild rice

box-elder
 red maple
 silver maple
 colic roots
 pepper vine
 cane
 false willow
 swamp fern
 bog hemp
 sedges

17-3.022(3)

Carpinus caroliniana
Carya aquatica
Celtis laevigata
Centella asiatica
Chrysobalanus icaco
Clethra alnifolia
Conocarpus erectus
Cornus foemina
Crataegus viridis
Cyperus odoratus
Dichromena spp.
Diodia virginiana
Dryopteris ludoviciana
Forestiera acuminata
Gleditsia aquatica
Gratiola ramosa
Hydrocotyle umbellata
Hypericum fasciculatum
Hypericum myrtifolium
Ilex coriacea
Ilex decidua
Ilex opaca var. opaca
Illicium floridanum
Lachnanthes caroliniana
Lachnocaulon anceps
Lachnocaulon digynum
Leucothoe spp.
Liquidambar styraciflua
Liriodendron tulipifera
Ludwigia hirtella
Ludwigia maritima
Ludwigia virginata
Lycopus rubellus
Lyrodium japonicum
Lyonia lucida
Myrica inodorata
Osmunda cinnamomea
Ostrya virginiana
Panicum repens
Panicum virginatum
Persea borbonia
Phloxeris vermicularis
Pinus glabra
Pinus serotina
Platanus occidentalis
Pluchea spp.
Polygonia cymosa
Populus deltoides

ironwood
 water hickory
 hackberry
 coinwort
 cocoplum
 sweet pepperbush
 buttonwood
 stiff cornel
 green haw
 umbrella sedge
 white-tops
 buttonweed
 southern shield fern
 swamp privet
 water locust
 hedge hyssop
 water pennywort
 St. John's wort
 St. John's wort
 sweet galberry
 possum haw
 A American holly
 purple anise
 red-root
 bog-button
 bog-button
 fetterbush
 sweetgum
 yellow poplar
 ludwigia
 ludwigia
 ludwigia
 water hoarhound
 Japanese climbing fern
 fetterbush
 odorless wax myrtle
 cinnamon fern
 hop hornbeam
 torpedo grass
 switch grass
 redbay
 beach carpet
 spruce pine
 pond pine
 sycamore
 marsh fleabanes
 milkwort
 eastern cottonwood

17-3.022(3)

swamp laurel oak
swamp chestnut oak
water oak
needle palm
meadow beauties

Quercus laurifolia
Quercus michauxii
Quercus nigra
Rhapidophyllum hystrix
Rhexia, all species
except: R. parviflora
R. salicifolia

marsh pink
marsh pink
elderberry
pitcher plants
South Florida bluestem
black sedge
nut-rushes
sea purslane
sea purslane
cordgrass
storax
shield ferns
elms

Sabatia bartramii
Sabatia calycina
Sambucus canadensis
Sarracenia spp.
Schizachyrium rhizomatum
Schoenus nigricans
Scleria spp.
Sesuvium maritimum
Sesuvium portulacastrum
Spartina bakeri
Syrax americana
Thelypteris spp.
Ulmus, all species
except: U. rubra

black haws
chain ferns
(4) Upland species: All plant species not listed in (2) and (3) above, except for:
buckwheat tree
titi
punk tree
cabbage palm
Brazilian pepper

Viburnum spp.
Woodwardia spp.
(4) Upland species: All plant species not listed in (2) and (3) above, except for:
Cliftonia monophylla
Cyrilla racemiflora
Melaleuca quinquenervia
Sabal palmetto
Schinus terebinthifolius

(5) 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 Rule 17-4.022(1), Florida Administrative Code.

(6) In no case shall the landward extent of waters of the state extend above the elevation of the one 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, this subsection shall not apply to waters which are saline or brackish, or for rivers whose major source of flow is from springs. The provisions of this subsection shall not operate to reduce the landward extent of the jurisdiction of the Department as it existed prior to January 24, 1984.

(7) Common names are included in the above lists for information purposes only. Determination of the landward extent of waters of the state is to be based solely on plants as specified identified by the scientific names. Any uncertainty as to the plants included by a given scientific name, for nomenclatural or taxonomic reasons, shall be resolved on the basis of:

Godfrey, R.K., and J.W. Wooten. 1979. Aquatic and Wetland Plants of Southeastern United States: Monocotyledons. Univ. Ga. Press, Athens. 1981. Aquatic and Wetland Plants of Southeastern United States: Dicotyledons. Univ. Ga. Press, Athens. Lakela, O. and R. W. Long. 1976. Ferns of Florida. Banyan Books, Miami. The manuals listed above by name are adopted and made a part of this rule by reference. Copies of these documents may be inspected at all Department of Environmental Regulation offices. Any plants not contained in those references shall be identified and named on the basis of the best available biological information. A named species in the above lists includes all varieties or subspecies within that species. The abbreviation "spp." in the above lists means all species, varieties, or subspecies within the named genus which are not otherwise named on the lists.

(8) The landward extent of waters of the state shall be determined using the vegetative index adopted June 10, 1975, as amended March 11, 1981, for all complete applications filed with the Department before October 1, 1984. For all other areas where the Department made a determination of the landward extent of the waters of the state using the vegetative index adopted June 10, 1975, as amended March 11, 1981, before October 1, 1984, the Department shall, within 90 days of a request therefore, validate the determination if:

(a) The determination is graphically displayed on a map, drawing, or aerial photograph, or written in the form of a narrative description sufficient to identify the areas in question; and

(b) The determination was based on a site verification made by the Department; and

(c) The document purporting to be the determination is signed by an employee of the Department in the course of his official duties; and

(d) The document purporting to be a site verified written determination shall be submitted by certified mail within six months of October 1, 1984 to the Department for validation.

Specific Authority: 403.061, 403.805, F.S. Law Implemented: 403.021, 403.031, 403.061, 403.087, 403.088, 403.802, 403.817, F.S. History: Previously 17-4.02(17), Amended 10-1-84, 10-16-84. Formerly 17-4.022.

17-3.022(7) -- 17-3.022(History)

17-3.022(3) -- 17-3.022(6)

17-12.030 Jurisdiction.

(1) Pursuant to Section 403.913, F.S., dredging and filling conducted in, on, or over those surface waters of the state listed in Section 17-12.030(2), F.A.C., require a permit from the department unless specifically exempted in Sections 403.813, 403.913, 403.927, F.S., or Section 17-12.050, F.A.C.

(2) For the purposes of dredging or filling, surface waters of the state to their landward extent are those waters listed below and excavated water bodies, except for waters exempted by Section 17-12.050, F.A.C., which connect directly or via an excavated water body or series of excavated water bodies to those waters listed below:

- (a) rivers and natural tributaries thereto;
- (b) streams and natural tributaries thereto;
- (c) bays, bayous, sounds, estuaries, lagoons and natural tributaries thereto;
- (d) natural lakes except those owned entirely by one person other than the state;
- (e) natural lakes except those that become dry each year and are without standing water;
- (f) natural lakes except those that have no more than 10 acres of water area at a maximum average depth of 2 feet existing throughout the year;
- (g) Atlantic Ocean out to the seaward limit of the state's territorial boundaries;
- (h) Gulf of Mexico out to the seaward limit of the state's territorial boundaries;
- (i) The waters as defined in Section 403.031(3)(a) and Section 403.031(3)(b), F.S.

(3) For the purposes of dredging or filling, surface waters of the state do not include those streams, tributaries, or portions thereof defined in Subsection 403.913(5), F.S.

(4) The landward extent of surface waters of the state, for the purpose of this chapter, shall be determined in accordance with Section 17-3.022, F.A.C. and Sections 403.817 and 403.913, F.S.

Specific Authority: 403.061, 403.912, F.S.

Law Implemented: 403.031, 403.061, 403.813, 403.817, 403.911, 403.912, 403.913, 403.914, F.S.

History: New 12-10-84.

17-12.040 Jurisdictional Declaratory Statements.

(1) Pursuant to Section 403.914(1), F.S., a property owner, an entity having power of eminent domain, or any other person with a legal or equitable interest in a property may petition the department for a formal jurisdictional determination. The petition shall contain:

- (a) A vicinity map showing the location and extent of the property in question.
- (b) Written authorization to enter the property signed by the property owner.

17-12.030(1) -- 17-12.040(1)(b)

(c) Three copies of blue line prints of aerial photographs which accurately reflect the current conditions on the site upon which the jurisdictional line will be drawn.

(d) A statement as to whether the petitioner desires that the line between the upland and the area of department jurisdiction be staked.

(2) The petition for a jurisdictional declaratory statement shall be processed by the department in accordance with Section 403.914, F.S. In certain instances, the department may request and the petitioner shall furnish:

(a) A topographic map of the site with the contours at intervals to be determined by the department. Specific areas may have to be surveyed by the petitioner.

(b) Hydrological data which may be required to determine connections between water bodies or to determine the presence of intermittent streams. If required, the hydrological data requested may include rainfall data, data on duration and volume of water flow, ground water level data, and similar information.

(c) Recent aerial photographs of sufficient detail to determine the dominant vegetation on a site using photointerpretation. Black and white or color glossy photographs, blue line prints of aerial photographs, or false color infrared photographs may be required, depending upon the site.

(d) If the line is to be staked, the petitioner shall provide the services of a registered surveyor who shall be available to accompany the department representative for the purpose of surveying the staked line. The department shall be provided a copy of the survey properly certified in accordance with Chapter 472, F.S.

(3) If the line is not to be staked and surveyed, it shall be drawn by the department on the blue line prints of aerial photographs. However, it shall be understood by the department and the petitioner that the line so drawn may represent only an approximation of the actual demarcation of jurisdiction because of inherent characteristics in drafting or cartography. The accuracy of the demarcation will be commensurate with the level of detail and accuracy of the information provided.

(4) Each person who receives a proposed jurisdictional declaratory statement may publish, or may be required to publish, and provide proof of publication to the Department, at his own expense, a notice of the proposed declaratory statement to the newspaper of general circulation in the area affected, using the format prescribed in Subsection 17-103.150(3), F.A.C. Publication of a Notice of Proposed Jurisdictional Declaratory Statement shall be required for those areas where the environmental sensitivity of the area is reasonably expected to result in heightened public concern or request for administrative proceedings. Failure of the petitioner to publish a required notice within 30 days of the Department's request shall constitute withdrawal of the petition. The Department shall also publish a notice of the proposed jurisdictional declaratory statement in the Florida Administrative Weekly.

17-12.040(1)(c) -- 17-12.040(4)

(5) Petitions for jurisdictional declaratory statements shall be accompanied by the following fees based upon the entire property for which the petition is filed:

- (a) For property 0 - 50 acres in size \$ 250
- (b) For property 50+ - 10+ acres in size \$ 500
- (c) For property 100+ - 500 acres in size \$ 1,000
- (d) For property 500+ - 750 acres in size \$ 2,000
- (e) For property 750+ - 1000 acres in size \$ 2,500
- (f) For property greater than 1000 acres in size \$ 2,500 (plus \$500 for each 500 acres over 1000 acres, up to a maximum of \$10,000)

(g) If, due to the environmental complexity of the area, extensive evaluation by department personnel is necessary, the department may charge additional fees based on the actual salary rate of the personnel providing the services plus actual expenses of the department. Provided, however, total fees charged may not exceed \$10,000.

(h) A subsequent petition for a jurisdictional declaratory statement on the same property that has previously received a jurisdictional declaratory statement when minimal field investigation is required on the department's part \$250

Specific Authority: 403.061, 403.912, F.S.
 Law Implemented: 403.061, 403.817, 403.912, 403.913, 403.914, F.S.
 History: New 10-16-84.

17-12.045 Jurisdictional Intent.

The department recognizes that the natural border of certain water bodies listed in Section 17-12.030, F.A.C., may be difficult to establish because of seasonal fluctuations in water levels and other characteristics unique to a given terrain. The intent of the vegetation indices in Sections 17-3.021(15) and 17-3.022, F.A.C., is to guide in the establishment of the border of the water bodies listed in Section 17-12.030, F.A.C. It is the intent of this rule to include in the boundaries of such water bodies areas which are customarily submerged and which are contiguous to a recognizable water body (i.e., areas within the landward extent of waters of the state as defined in Sections 17-3.021(15) and (16), F.A.C.). Isolated areas, because they infrequently flow into or otherwise exchange water with a described water body, are not intended to be included within the dredge and fill jurisdiction of the department. The vegetation indices in Sections 17-3.021(15) and 17-3.022, F.A.C., are presumed to accurately delineate the landward extent of such water bodies.

Specific Authority: 403.031, 403.061, 403.062, 403.087, F.S.
 Law Implemented: 403.031, 403.061, 403.062, 403.087, F.S.
 Chapter 84-79, Laws of Florida.
 History: New 12-10-84.

17-12.050 Exemptions.

(1) No permit shall be required under this chapter for dredging or filling specified in Section 403.813(2), F.S., or Sections 17-4.040(1Xa) or (b), F.A.C., or for dredging or filling which has been approved pursuant to Chapters 17-17, 17-23, or 17-45, F.A.C., or for which there is an applicable general permit provided in Part III of Chapter 17-4, F.A.C., or for the following types of projects:

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

(b) The installation of aids to navigation and buoys associated with such aids, provided that the devices are marked pursuant to Section 327.40, F.S.

(c) The installation and repair of mooring pilings and dolphins associated with private docking facilities and the installation of private docks of five hundred (500) square feet or less of over-water surface area, or one thousand (1000) square feet or less of over-water surface area for docks which are not located in Outstanding Florida Waters and which are used for recreational, non-commercial activities, constructed on pilings so as not to involve filling or dredging other than that necessary to install the pilings. The dock shall not substantially impede the flow of water or create a navigational hazard. A private dock is a single pier at a parcel of property. Provided, that for the purposes of this rule, multi-family living complexes and other types of complexes or facilities associated with the proposed private dock shall be treated as one parcel of property regardless of the legal division of ownership or control of the associated property. Construction of a private dock under this exemption does not require the Department to issue a subsequent permit to construct a channel to provide navigational access to the dock. Activities associated with a private dock shall include the construction of structures attached to the pier which are only suitable for the mooring or storage of boats (i.e., boatlifts).

(d) 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 canal, channels, and intake and discharge structures to original design specifications and provided that control devices are utilized to prevent turbidity and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This exemption shall apply 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 shall not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent waters of the state. Where 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.

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(f) The waters as defined in Section 403.031(12)(a) and Section 403.031(12)(b), F.S.

(3) The landward extent of surface waters of the state, for the purpose of this chapter, shall be determined in accordance with Section 17-3.022, F.A.C. and Sections 403.817, 403.8171 and 403.913, F.S.

Specific Authority: 403.061, 403.912, F.S.

Law Implemented: 403.031, 403.061, 403.813, 403.817, 403.911, 403.912, 403.913, 403.914, F.S.

History: New 12-10-84, Amended 3-26-89, Transferred from 17-12.030.

17-312.040 Jurisdictional Declaratory Statements.

(1) Pursuant to Section 403.914(1), F.S., a property owner, a person who has power of eminent domain, or any other person with a legal or equitable interest in a property may petition the department for a formal jurisdictional determination. The petition shall contain:

(a) A vicinity map showing the location including Section, Township and Range, and areal extent of the property in question;

(b) Written authorization to enter the property signed by the property owner;

(c) Four copies of blue line prints of recent aerial photographs which accurately reflect the current conditions on the site with the property boundaries to be inspected clearly delineated, along with identification of all major roads and the north bearing;

(d) A statement indicating whether the petitioner wants the line between the upland and the area of department jurisdiction to be staked.

(2) The petition for a jurisdictional declaratory statement shall be processed by the department in accordance with Section 403.914(1) and (3), F.S. If additional information is necessary to determine jurisdiction, the department shall request and the petitioner shall furnish any or all of these items:

(a) An original U.S.G.S. 7.5 minute series or a more detailed topographic map of the site with the contours at intervals specified by the department which are appropriate to the specific site. Specific areas may have to be surveyed by the petitioner.

(b) Hydrological data needed to determine connections between water bodies or to determine the presence of intermittent streams, including rainfall data, data on duration and volume of water flow, ground water level data, data on the location of natural or man-made watercourses on or abutting the site, including locations of culverts and sizes, and similar information.

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(18) "Vertical seawall" is a seawall the waterward face of which is at a slope greater than 75 degrees to the horizontal. A seawall with sloping riprap on the waterward face shall not be considered a vertical seawall.

Specific Authority: 403.061, 403.912, F.S.

Law Implemented: 403.031, 403.061, 403.803, 403.911, 403.912, F.S.

History: New 12 10-84, Amended 8-30-88, 3-26-89, Transferred from 17-12.020.

17-312.030 Jurisdiction.

(1) Pursuant to Sections 403.031(12) and 403.913, F.S., dredging and filling conducted in, on, or over those surface waters of the state as provided in this rule, require a permit from the department unless specifically exempted in Sections 403.813, 403.913, 403.927, F.S., or Section 17-312.050, F.A.C.

(2) For the purposes of this rule, surface waters of the state are those waters listed below and excavated water bodies, except for waters exempted by Rule 17-312.050(4), F.A.C., which connect directly or via an excavated water body or series of excavated water bodies to those waters listed below:

(a) Atlantic Ocean out to the seaward limit of the state's territorial boundaries;

(b) Gulf of Mexico out to the seaward limit of the state's territorial boundaries;

(c) bays, bayous, sounds, estuaries, lagoons and natural channels and natural tributaries thereto;

(d) rivers, streams and natural tributaries thereto, excluding those intermittent streams, tributaries or portions thereof defined in Subsection 403.913(5), F.S. Standard hydrological methods shall be used to determine which streams constitute intermittent streams and intermittent tributaries. An intermittent stream or intermittent tributary means a stream that flows only at certain times of the year, flows in direct response to rainfall, and is normally an influent stream except when the ground water table rises above the normal wet season level. Those portions of a stream or tributary which are intermittent and are located upstream of all nonintermittent portions of the stream or tributary are not subject to dredge and fill permitting unless there is a continuation of jurisdiction as determined pursuant to F.A.C. Rule 17-3.022.

(e) natural lakes, except:

1. those owned entirely by one person other than the state; or
2. those that become dry each year and are without standing water; or
3. those of no more than 10 acres in landward extent with a maximum average depth of 2 feet or less existing throughout the year;

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- (c) Recent aerial photographs of sufficient detail to determine the dominant vegetation on a site by photointerpretation. Black and white or color glossy photographs, blue line prints of aerial photographs, or false color infrared photographs may be required, depending upon the site.
- (d) If the line is to be staked, the services of a registered surveyor or representative thereof shall be available to accompany the department representative to survey the staked line. The department shall be provided a copy of the survey properly certified in accordance with Chapter 472, F.S.
- (3) If the line is not to be staked and surveyed, it shall be drawn by the department on the blue line prints of aerial photographs. However, the line so drawn may represent only an approximation of the actual jurisdiction because of inherent characteristics in drafting or cartography. The accuracy of the determination will be dependent upon the level of detail and accuracy of the information provided.
- (4) Each person who receives a proposed jurisdictional declaratory statement may publish, or may be required to publish, and provide proof of publication to the Department, at his own expense, a notice of the proposed declaratory statement in a newspaper of general circulation in the area affected, using the format prescribed in Subsection 17-103.150(3), F.A.C. Publication of a Notice of Proposed Jurisdictional Declaratory Statement shall be required for areas where the environmental sensitivity of the area is reasonably expected to result in heightened public concern or a request for administrative proceedings. Failure of the petitioner to publish a required notice within 30 days of the Department's request shall constitute withdrawal of the petition. The Department shall also publish a notice of the proposed jurisdictional declaratory statement in the Florida Administrative Weekly.
- (5) Petitions for jurisdictional declaratory statements shall be accompanied by the following fees which shall be based on the entire property for which the petition is filed:
- | | |
|--|---------|
| (a) For property 0 - 50 acres in size | \$ 250 |
| (b) For property 50+ - 100 acres in size | \$ 500 |
| (c) For property 100+ - 500 acres in size | \$1,000 |
| (d) For property 500+ - 750 acres in size | \$2,000 |
| (e) For property 750+ - 1000 acres in size | \$2,500 |
| (f) For property greater than 1000 acres in size | \$2,500 |
- (plus \$500 for each 500 acres over 1000 acres, up to a maximum of \$10,000).
- (g) If the environmental complexity of the area requires extensive evaluation the department may charge additional fees based on the actual salary

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rate of the staff who provide the services, plus the actual expenses of the department. However, the total fee may not exceed \$10,000.

(h) The fee for a later petition for a jurisdictional declaratory statement on property for which a jurisdictional declaratory statement exists and which requires minimal field investigation by the department is \$250.

(6) (a) Within 30 days of the receipt of a petition for a jurisdictional declaratory statement, the department shall notify the applicant of any additional information which may be necessary. The department shall complete the assessment and issue notice of the proposed agency action within 60 days of receipt of a complete petition. The notice shall be published by the Department in the Florida Administrative Weekly and by the petitioner in a newspaper of general circulation in the area affected. The provisions of ss. 120.57 and 120.59, F.S. are applicable to declaratory statements under this section. Any person whose substantial interests will be affected may petition for a hearing within 14 days after the publication of notice. If no petition for a hearing is filed, the department shall issue the jurisdictional declaratory statement within 10 days after termination of the 14-day waiting period.

(b) A jurisdictional declaratory statement is binding for 24 months, if physical conditions on the site do not change to alter jurisdiction.

(c) A petitioner who disputes the proposed agency action may withdraw the petition without prejudice at any point before final agency action.

(d) The department may revoke a jurisdictional declaratory statement if it finds that the petitioner has submitted inaccurate information in the petition.

(e) A jurisdictional declaratory statement obtained pursuant to this section is final agency action and is in lieu of a declaratory statement of jurisdiction obtainable pursuant to s. 120.565, F.S.

(7) The department also may issue informal preapplication jurisdictional determinations or otherwise institute jurisdictional determinations on its own initiative as provided by law.

Specific Authority: 403.061, 403.912, F.S.

Law Implemented: 403.061, 403.817, 403.912, 403.913, 403.914, F.S.

History: New 10-16-84, Amended 3-26-89, Transferred from 17-12.040.

17-312.045 Jurisdictional Intent. The department recognizes that the natural border of certain water bodies listed in Section 17-312.030, F.A.C., may be difficult to establish because of seasonal fluctuations in water levels and other characteristics unique to a given terrain. The intent of the vegetation indices in Sections 17-3.021(15) and 17-3.022, F.A.C., is to guide in the establishment of the border of the water bodies listed in Section 17-312.030, F.A.C. It is the intent of this rule to include, in the boundaries of such water bodies, areas

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which are customarily submerged and which are contiguous to a recognizable water body (i.e., areas within the landward extent of waters of the state as defined in Sections 17-3.021(15) and (16), F.A.C.). Isolated areas that infrequently flow into or otherwise exchange water with a described water body are not intended to be included within the dredge and fill jurisdiction of the department. The vegetation indices in Sections 17-3.021(15) and 17-3.022, F.A.C., are presumed to accurately delineate the landward extent of such water bodies.

Specific Authority: 403.031, 403.061, 403.062, 403.087, F.S.

Law Implemented: 403.031, 403.061, 403.062, 403.087, 403.912, F.S.; Section 9, Chapter 84-79, Laws of Florida.

History: New 12-10-84, Amended 3-26-89, Transferred from 17-12.045.

17-312.050 Exemptions.

(1) No permit shall be required under this chapter for dredging or filling specified in Section 403.813(2), F.S., or Sections 17-4.040(1)(a) or (b), F.A.C., or for dredging or filling which has been approved pursuant to Chapters 17-17, 17-23, or 17-45, F.A.C., or for dredging and filling approved by one or more of the general permits in Part V of Chapter 17-312, F.A.C., or for the following types of projects:

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

(b) The installation of aids to navigation, including bridge fender piles, "No Wake" and similar regulatory signs, and buoys associated with such aids, provided that the devices are marked pursuant to Section 327.40, F.S.

(c) The installation and repair of mooring pilings and dolphins associated with private docking facilities.

(d) The installation of private docks of 500 square feet or less of surface area over the landward extent of waters of the State or 1000 square feet or less of surface area over the landward extent of waters of the State for docks which are not located in Outstanding Florida Waters and any of which:

1. is used for recreational, non-commercial activities, associated with the mooring or storage of boats and boat paraphernalia; and
2. is constructed or held in place by pilings, including floating docks, so as not to involve filling or dredging other than that necessary to install the pilings; and
3. does not substantially impede the flow of water or create a navigational hazard; and
4. is the sole dock constructed pursuant to this exemption as measured along the shoreline for a minimum distance of 65 feet, unless the parcel

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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. For the purposes of this rule, multi-family living complexes and other types of complexes or facilities associated with the proposed private dock shall be treated as one parcel of property regardless of the legal division of ownership or control of the associated property. Construction of a private dock under this exemption does not require the Department to issue a subsequent permit to construct a channel to provide navigational access to the dock. Activities associated with a private dock shall include the construction of structures attached to the pier which are only suitable for the mooring or storage of boats (i.e., boatlifts).

(e) The performance of maintenance dredging of existing man-made 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 and return water from the spoil site into surface waters of the state, provided no more dredging is performed than is necessary to restore the canal, channels, and intake and discharge structures to original design specifications, and provided that control devices are used at the dredge site to prevent turbidity and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This exemption shall apply to all canals constructed before April 3, 1970, and to those canals constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption shall not apply to the removal of a natural or man-made barrier separating a canal or canal system from adjacent waters of the state. Where 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 man-made 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.

(f) 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 and maintenance to design specifications of boat ramps open to the public in any waters of the state where navigational access to the proposed ramp exists and where 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. All material removed shall be placed upon a self-contained upland site so as to prevent the escape of the spoil material and return water from the spoil site into the waters of the state. For the purpose of this exemption, artificial bodies of water shall include, but not be limited to, residential canal systems, canals permitted by a water management district created under Section 373.069, F.S. and artificially created portions of the Florida Intracoastal Waterway.

(g) Construction of seawalls or riprap, including only that backfilling needed to level the land behind the seawalls or riprap, in artificially created waterways where such construction will not violate existing water