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# Handbook of Florida Water Regulation: Private Regulation<sup>1</sup>

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## Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principle Federal and Florida laws that directly or indirectly relate to agriculture. This handbook should provide a basic overview of the many rights and responsibilities that farmers and farmland owners have under both Federal and Florida laws as well as the appropriate contact information to obtain more detailed information. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at anytime. Several details of cited laws are also left out due to space limitations.

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achieve compliance with the Federal and Florida laws and regulations governing water protection. For these reasons, the use of these materials by any person constitutes an agreement to hold harmless the authors, the Florida Cooperative Extension Service, the Institute of Food and Agricultural Sciences, and the University of Florida for any liability claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this handbook.

## Overview

Another form of water quality regulation occurs through private lawsuits. These lawsuits are often based on the nuisance and negligence principles of law. In addition, some federal statutes contain clauses allowing citizens to enforce laws through private lawsuits. It is important to understand how you may be held liable by other members of the public for your actions.

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## What Is Nuisance?

The theory of nuisance, a common law basis of pollution litigation, provides that one may not use one's own property in a way that causes harm to others. Nuisances are categorized as either public or private, depending upon whether the nuisance affects the rights of the public or only the rights of an individual. Public nuisance actions may be brought by a public official on behalf of the public-at-large; certain types of public nuisances may be criminal acts, as well.

In nuisance actions, the court will often balance the social value of the nuisance against the harm it causes. If the harm is slight and the social value is great, the suit will fail. But if the social value is small and the harm is great, the plaintiff may recover both monetary damages and stop the defendant from continuing the activity.

Concerning nuisance lawsuits, the Florida Legislature has passed the Florida Right-to-Farm Act (FRTFA) to protect reasonable farm operations from nuisance lawsuits (see FE99, Florida Right-to-Farm Act).

## What Is Negligence?

Negligence is the causing of harm to someone else by failing to do what a reasonable person would have done under the same circumstances. The harm may be economic, physical, or emotional. Anyone seeking to recover for someone else's negligence must prove four legal elements: duty, breach of duty, causation of damage, and value of damage.

1. Duty is an individual's responsibility to govern his own conduct so that others are not harmed.
2. Breach of duty occurs where one of the parties does not fulfill his duty of care. That is, he does not act with the degree of caution or foresight that a reasonably prudent person would have used in the same situation.
3. Causation occurs when the defendant's failure to use due care causes harm to the plaintiff. Proving this step may be difficult if the damage is only indirectly related to the defendant's act or if there are other possible causes for the harm.

4. The plaintiff must prove that he suffered actual damage from the defendant's act. If no damage resulted, even where the defendant's conduct was admittedly negligent, the plaintiff has no claim for negligence.

## What Is Negligence Per Se?

Where a defendant's acts subject him to private suit and, at the same time, violate a statute, the court will usually regard the violation of the statute as enough evidence of wrongful conduct to find the defendant guilty of negligence in the private suit as well. This rule applies, however, only if two conditions exist. First, the damage claimed in the lawsuit must be of the type the statute is intended to prevent. Second, the plaintiff must be a member of the class of persons the statute is intended to protect.

It should be noted that compliance with all statutes does not guarantee immunity from negligence actions, as lawful behavior may still be negligent.

## What Is Strict Liability?

Strict liability is liability imposed without evidence of negligence. That is, the defendant may be found guilty upon a showing that his action resulted in harm, without consideration of whether or not he acted reasonably. Strict liability is usually imposed upon those who engage in abnormally dangerous or "ultra hazardous" activities (e.g., handling explosives) or other activities defined by statute (e.g., CERCLA).

## What Is Joint and Several Liability?

Where two or more parties, acting independently, are the source of a plaintiff's injuries, the law (or the courts) may impose the principle of joint and several liability. This principle allows the plaintiff to recover from either defendant the full amount of his damage and forces the defendants to apportion the loss among themselves.

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