UF UNIVERSITY of FLORIDA
IFAS Extension

FE608

Handbook of Florida Water Regulation: Florida Watershed Restoration Act[1]

Michael T. Olexa, Tatiana Borisova, and Zachary Broome[2]

Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principal federal and state (Florida) laws that directly or indirectly relate to agriculture. This handbook provides a basic overview of the many rights and responsibilities that farmers and farmland owners have under both federal and state 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decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time. Several details of cited laws are also left out due to space limitations.

This handbook is distributed with the understanding that the authors are not engaged in rendering legal or other professional advice, and the information contained herein should not be regarded as a substitute for professional advice. This handbook is not all inclusive in providing information to achieve compliance with the federal and state 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.

FWRA Overview

The Florida Legislature enacted the Florida Watershed Restoration Act (FWRA) in 1999 to protect Florida's waters through the Total Maximum Daily Load (TMDL) program for state ground and surface waters as required by the Clean Water Act (CWA). The TMDL program protects state waters by coordinating the control of pollution from point sources (i.e., sources discharging through a discrete conveyance, such as a pipe, as well as urban stormwater conveyance outfalls) and nonpoint sources (i.e., sources contributing to pollution caused by rainfall moving over and through the ground). FWRA also establishes a process to identify and list impaired waters throughout the state.

TMDL is the total of the individual discharge allocations for point sources and the discharge allocations for nonpoint sources and natural background. In other words, TMDL is the total amount of pollution discharge from all sources that a water body can assimilate and still meet water quality standards. Furthermore, TMDL can also refer to a document that describes the discharge allocations. An implementation plan must be developed describing how the point and nonpoint sources are planning to meet their

1. This is EDIS document FE608, a publication of the Food and Resource Economics Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL. Published December 2005, revised June 2011. Please visit the EDIS website at http://edis.ifas.ufl.edu.

2. Michael T. Olexa, professor, Food and Resource Economics Department, and director, Agricultural Law Center, University of Florida, and chair, Agricultural Law Committee, The Florida Bar; Tatiana Borisova, assistant professor, Food and Resource Economics Department, University of Florida; and Zachary Broome, student, Levin College of Law, University of Florida, Gainesville, FL; Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL 32611.

discharge allocations. Usually, this implementation plan is referred to as Basin Management Action Plan, or BMAP.

For the list of TMDLs and BMAPs adopted in Florida, as well as for the schedule of public meetings related to TMDL and BMAP development, see the FDEP TMDL program website at http://www.dep.state.fl.us/water/tmdl/.

Who Enforces FWRA?

Under FWRA, while the Florida Department of Environmental Protection (FDEP) is the lead agency in establishing TMDLs, the primary enforcement power is actually split between FDEP and the Florida Department of Agriculture and Consumer Services (FDACS). FDEP is the lead agency for enforcing FWRA when addressing point source and nonagricultural nonpoint source pollution. FDACS is the lead agency for enforcing FWRA when it comes to agricultural nonpoint source pollution.

FWRA is unique in the establishment of TMDLs because it allows FDEP to address TMDLs through a watershed management approach in which water resources are managed based on natural boundaries instead of political or regulatory boundaries.

What Are the Duties of FDEP and FDACS under FWRA?

Under FWRA, FDEP is required to coordinate with the Florida water mangement districts (FWMD), FDACS, Soil and Water Conservation Districts, environmental groups, regulated parties, and local stakeholders during all phases of the TMDL process, which includes:

• The listing of waters for which TMDL assessments will be conducted

- The assessment methodology for determining those waters which are impaired (fail to met the water quality standards assigned to them)
- The calculation methodology, including determining what information is required for the TMDL assessment, the acceptable methods of data collection, and analysis and quality control requirements
- Pollution load reduction goals to implement basin action plans and TMDLs, and implement and evaluate Best Management Practices (BMPs) and temporary measures

FDEP must adopt assessment methodology by rule. This rule must provide for consideration of whether water quality standards are being exceeded based on credible data, studies, and reports. The rule must also set the following:

- Water quality sample collection and analysis requirements
- Approved methodologies
- Quality assurance and quality control protocols
- Data modeling
- Other appropriate water quality assessment measures

FDEP can implement TMDLs under existing water quality protection programs which may include:

- Permitting and other existing regulatory programs, such as water-quality-based effluent limitations
- Pollutant trading or other agreements
- Public works, including capital facilities
- Land acquisition

TMDLs may also be implemented through NDPES permit conditions that provide a compliance schedule.

To implement and evaluate BMPs and temporary measures, FDEP must consult with the appropriate FWMD and interested parties to develop suitable temporary measures, BMPs, or other measures to achieve the level of pollution reduction established by FDEP for nonagricultural nonpoint pollutant sources. These practices and measures may be adopted by rule by FDEP and FWMDs, and when adopted in this manner, the parties responsible for the nonagricutlural nonpoint source pollution must implement these practices and measures.

FDACS may develop and adopt by rule suitable temporary measures, BMPs, or other measures to achieve the level of pollution reduction established by FDEP for agricultural nonpoint sources. FDACS must consult with FDEP, FDOH (Florida Department of Health), FWMDs, affected farmers, and environmental groups in this development process. These practices and measures may be implemented by those parties responsible for agricultural pollutant sources in coordination with FDEP, FDACS, and FWMDs. BMP implementation is mandatory for agricultural operations in the areas with an established TMDL. In such areas, farmers

are required to file a Notice of Intent (NOI) abourt BMP implementation to FDACS (see AE388, Total Maximum Daily Loads and Agricultural BMPs in Florida).

For the list of BMP manuals adopted by FDAC for different agricultural operations and geographical regions, see the FDACS Office of Agricultural Water Policy website at http://floridaagwaterpolicy.com/BestManagementPractices.html.

What Are the Requirements under FWRA?

Point sources discharging pollutants into Florida waters need to have NPDES permits. For nonpoint sources, the parties responsible do not have to implement BMPs and temporary measures *not* adopted by rule since they are voluntary. There are advantages to the implementation of BMPs and temporary measures adopted by rule. If BMPs are adopted by rule and their effectiveness is verified by FDEP, implementation will provide a presumption of compliance with state water quality standards and a release from liability such that FDEP cannot institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of ground or surface water caused by the pollutant. Under BMAP, a point or nonpoint source that achieves a greater pollutant reduction than required can trade those water quality credits to other sources in the area addressed by the same action plan. Currently, credit trading is only permitted in the Lower St. Johns River BMAP. However, a source generating excess credits is still required to meet all other applicable requirements, including NPDES technology requirements and BMPs.

If parties discharge pollutants into Florida waters without NPDES permits and without implementing BMPs, FDEP can institute proceedings against the parties to recover costs or damages associated with the contamination of ground or surface water caused by the pollutant.

For more information on FWRA duties of FDEP and FDACS, and FWRA requirements, contact FDEP and/or FDACS.

Source

Chapter 403, Florida Statutes, Section 304.067

Acknowledgments

The authors are indebted to the personnel of both state and federal agencies who provided their time and advice in the preparation of this handbook.