UF UNIVERSITY of FLORIDA
IFAS Extension

FE610

Handbook of Florida Water Regulation: Northern Everglades and Estuaries Protection Program[1]

Michael T. Olexa 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decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time.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.

NEEPP Overview

The primary goal of the Northern Everglades and Estuaries Protection Program (NEEPP) is to improve the water quality of those natural waters by evaluating the quantity of water and pollutants in the waters. In 2007, the Florida Legislature enacted NEEPP to amend the Lake Okeechobee Protection Act (LOPA), which protected the Lake Okeechobee watershed, to also include the Caloosahatchee River watershed and the St. Lucie River watershed. NEEPP amended LOPA to include more watersheds because the state legislature recognized that improving the hydrology and water quality of more than just Lake Okeechobee is essential to the protection of the Everglades. LOPA was combined with the Caloosahatchee and St. Lucie River Watershed Protection Program restoration as part of the Comprehensive Everglades Restoration Program (CERP, http://www.evergladesplan.org/) to carry out the comprehensive goal of improving water quality in these watersheds. Under NEEPP, activities include the Lake Okeechobee Watershed Construction Project (LOWCP), and the Caloosahatchee and St. Lucie River Watershed Construction Project, River Watershed Pollutant Control Program, and River Watershed Research and Water Quality Monitoring Program. These programs are aimed

1. This is EDIS document FE610, 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, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL, and chair, Agricultural Law Committee, The Florida Bar, and Zachary Broome, student, Levin College of Law, University of Florida, Gainesville, FL 32611.

at constructing facilities and conducting research to establish the Total Maximum Daily Load (TMDL) levels for the water bodies (i.e., maximum discharge limits) as well as reducing the pollutant levels in those waters (see FE608, Florida Watershed Restoration Act). For additional overview information on NEEPP, see the FDEP website at http://www.dep.state.fl.us/water/wqssp/everglades/neepp.htm.

Nonpoint source pollution, especially from agricultural nonpoint sources, is addressed in NEEPP through the use of Best Management Practices (BMPs) and stormwater treatment areas (STAs).

Who Enforces NEEPP?

Under NEEPP, primary enforcement and regulatory power is vested in the Southwest Florida Water Management District (SFWMD), the Florida Department of Environmental Protection (FDEP), and the Florida Department of Agriculture and Consumer Services (FDACS) to be performed in a cooperative fashion. While each entity is given specific tasks under NEEPP, they must consult with the other entities to coordinate regulation and enforcement.

What Are the Duties of SFWMD, FDEP, and FDACS under NEEPP?

Under NEEPP, SFWMD, FDEP, and FDACS are required to maintain the Lake Okeechobee Protection Program (LOPP) and the two additional programs (LOWCP and the Caloosahatchee and St. Lucie River Watershed Protection Program).

For LOWCP, NEEPP requires SFWMD to implement, design, and construct a series of stormwater treatment facilities, reservoirs, and other installations (constructed in priority basins) necessary to treat the waters entering the Lake Okeechobee Watershed in cooperation with FDEP, FDACS, and ACE (Army Corps of Engineers). Periodically, SFWMD, FDEP, and FDACS are required to evaluate whether additional measures are necessary to achieve compliance with the TMDL established for Lake Okeechobee. SFWMD is tasked with identifying any modifications to these facilities if the TMDL for Lake Okeechobee is not met. All construction contracts are reviewed by FDEP.

Regarding the Lake Okeechobee Watershed Phosphorus Control Program under NEEPP, SFWMD, FDEP, and FDACS are required to enter into an interagency agreement to develop BMPs that complement existing regulatory programs. The agreement specifies how BMPs will be implemented and verified.

In dealing with agricultural nonpoint source pollution, FDACS, in consultation with SFWMD and FDEP, is required to initiate rule development for temporary measures, BMPs, conservation plans, nutrient management plans, and other measures necessary for Lake Okeechobee phosphorus load reduction. FDACS is further tasked with conducting an ongoing program for developing and improving agricultural nonpoint source BMPs and, in cooperation with SFWMD and FDEP, FDACS must provide technical and financial assistance for implementing agricultural BMPs. SFWMD and FDEP must conduct monitoring to verify the effectiveness of agricultural non-point source BMPs.

Under NEEPP, SFWMD, FDEP, and FDACS are required to establish the Lake Okeechobee Research and Water Quality Monitoring Program, which will:

- Develop a Lake Okeechobee water quality model that reasonably represents phosphorus dynamics of the lake and incorporates an uncertainty analysis associated with model predictions
- Determine the relative contribution of phosphorus from all identifiable sources and all primary and secondary land uses
- Assess current water management practices within the Lake Okeechobee Watershed and develop recommendations for improvements

Regarding the Lake Okeechobee Exotic Species Control Program, SFWMD, FDEP, and FDACS are tasked with identifying exotic species that threaten native species within the Lake Okeechobee watershed and develop and implement measures to protect those native species.

Under LOPP, SFWMD, FDEP, and FDACS continue collecting data and designing and constructing stormwater treatment facilities. In addition, FDEP acquired new responsibilities, including the enforcement of NPDES permits for confined animal feeding operations (CAFO).

LOPP was created to reduce the level of phosphorus in the Lake Okeechobee watershed to meet the 140-metric-ton TMDL requirement through: owner-implemented BMPs (primarily operational changes), cost-share BMPs (primarily structural changes), and regional projects outside of CERP in addition to the regional solutions contained in the CERP/LOWCP.

Under LOPP, farmers are expected to implement cost-sharing BMPs to reduce the level of phosphorus in the Lake Okeechobee watershed. BMPs for each farm are identified through LOPP assessments performed by FDACS (nutrient management plans are assessed trhough the federal program administrated by the Natural Resources Conservation Service of the United States Department of Agriculture). BMPs include internal fencing to keep cows out of wetlands and streams, on-site retention facilities, and/or stormwater management systems.

Farmers who do not take part in BMPs are required to monitor the levels of phosphorus leaving their property and entering the watershed to ensure that the TMDL of phosphorus for the watershed is met. The levels of phosphorus leaving these properties are monitored and verified by SFWMD and FDEP. If the phosphorus TMDL is not met and it is determined that it is due to phosphorus from these properties, the farmers are sanctioned by SFWMD accordingly.

The Caloosahatchee and St. Lucie River Watershed Protection Program, which includes the River Watershed Construction Project, the River Watershed Pollutant Control Program, and the River Watershed Research and Water Quality Monitoring Program, is very similar to LOPP. Under the River Watershed Construction Project, SFWMD is responsible for implementing the Caloosahatchee and St. Lucie River Protection Plans. These Protection Plans are coordinated by SFWMD, FDEP, and FDACS to improve the hydrology, water quality, and aquatic habitats within the watersheds.

Furthermore, under the River Watershed Pollutant Control Program, the relevant agencies are tasked with cooperating to lower pollutant sources in both rivers by implementing regulations and BMPs, improving natural hydrological function, and using alternative technologies. Also, under the program, domestic wastewater can no longer be dumped in either river unless an applicant can affirmatively show that the wastewater will not contribute to the nutrient load in the watersheds. Similarly, the Florida Department of Health (FDOH) is now required to limit septic applications in both watersheds unless the applicant can show that the septic releases will not violate SFWMD regulations.

Under the River Watershed Research and Water Quality Monitoring Program, SFWMD is required to coordinate with other agencies to ensure that water quality research continues to develop in both watersheds. In addition, SFWMD is tasked with working with other agencies to assess the success of the other elements of the program to ensure that efforts are sufficient to carry out the goals of NEEPP.

Annually, SFWMD is required to prepare a report on the status of the NEEPP projects, including LOPP and the River Watershed Protection Programs. These annual reports include the status of the projects as well as the water quality in each water body.

Contact the individual agencies for more information on the requirements of SFWMD, FDEP, and FDACS under NEEPP.

For more information on NEEPP, see the NEEPP website at http://www.dep.state.fl.us/water/wqssp/everglades/neepp.htm.

Source

Chapter 373, Florida Statutes, Sections 373.451 to 373.459 and 373.4595

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.