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# Department of Environmental Protection

Lawton Chiles  
Governor

Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

Virginia B. Wetherell  
Secretary

October 18, 1996

Ms. Blanca S. Bayó  
Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0870

Dear Ms. Bayó:

I am enclosing an original and 15 copies of the Department's comments and exhibits concerning proposed Rule 25-30.431, Margin Reserve, Florida Administrative Code, under Docket Number 960258-WS.

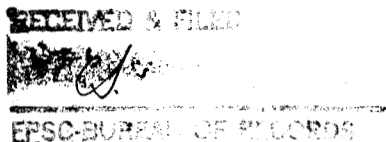
If you have any questions about the enclosed comments and exhibits, please call Van R. Hoofnagle, P.E., Administrator of the Drinking Water Section, at 487-1762; Elsa A. Potts, P.E., Administrator of the Domestic Wastewater Section, at 488-4524; or David W. York, Ph.D., P.E., Reuse Coordinator in the Domestic Wastewater Section, at 488-4524.

Sincerely,

*Elsa A. Potts*  
Richard D. Drew *for*  
Chief  
Bureau of Water Facilities  
Regulation  
Division of Water Facilities

JK \_\_\_\_\_  
TA \_\_\_\_\_  
sp 1 Enclosures  
WF \_\_\_\_\_ cc: Wayne L. Schiefelbein, Esquire  
AU \_\_\_\_\_ Brian P. Armstrong, Esquire  
R \_\_\_\_\_ Harold McLean, Esquire  
\_\_\_\_\_ Mark F. Kramer

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Docket Number 960258-WS

Proposed Rule 25-30.431, Margin Reserve, Florida Administrative Code

**COMMENTS OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

Filed October 18, 1996



1 capacity of a facility will be equaled or exceeded within the  
2 next three years, the permittee shall submit to the DEP, within  
3 30 days after submittal of the capacity analysis report, a permit  
4 application for the needed expansion.

5 Clearly, the above schedule sets a five-year time period for installing  
6 needed expansions of wastewater facilities.

7 Rule 62-600.405, F.A.C., has been effective and has been generally  
8 well received by permittees. The DEP intends to implement a similar rule  
9 regulating community public water systems in order to ensure the timely  
10 planning, design, and construction of water facilities necessary to provide  
11 proper supply and treatment of drinking water.

12 Because the DEP and the Public Service Commission (PSC) share  
13 regulatory responsibilities for many investor-owned water and wastewater  
14 utilities in the State, the DEP believes it is essential that the DEP and the  
15 PSC be consistent in their rules and policies. The PSC is defining the term  
16 "margin reserve period" as the time period needed to install the next  
17 needed expansion of a water or wastewater facility. Therefore, the DEP  
18 strongly recommends that the PSC adopt a margin reserve period of five  
19 years for water supply and treatment facilities and wastewater treatment  
20 and disposal facilities to be consistent with the DEP's Rule 62-600.405,  
21 F.A.C. If the PSC adopts a margin reserve period of less than five years,  
22 the PSC will create a disincentive for complying with the DEP's rules  
23 regarding public health and water quality protection.

24 **COMMENT 2.** Reuse facilities need to be addressed in the PSC's  
25 proposed Rule 25-30.431, F.A.C. The following comments detail the DEP's

1 concerns.

2 (1) Sections 367.0817 and 403.064, Florida Statutes (F.S.), which  
3 are attached as Exhibits 2 and 3, respectively, require the PSC  
4 to allow utilities to recover the full, prudently incurred cost of  
5 reuse facilities through their rate structure. This is consistent  
6 with the State objectives of encouraging and promoting reuse,  
7 as established in Section 373.250, F.S., which is attached as  
8 Exhibit 4, and Section 403.064, F.S. Section 403.064, F.S.,  
9 establishes that all feasible reuse facilities are to be considered  
10 100 percent used and useful.

11 (2) To minimize confusion, the proposed rule should clearly identify  
12 what types of facilities shall be considered as reuse facilities.  
13 Given the statutory language in Sections 373.250 and  
14 403.064, F.S., it is clear that reuse is to be defined by the  
15 DEP. As a result, cross-references to the definition of "reuse"  
16 that appears in Chapter 62-610, F.A.C., and to the reuse  
17 criteria established in Chapter 62-610, F.A.C., are needed.

18 Below is the DEP's recommended amendment for addressing the  
19 above two concerns. This amendment would add a new Subsection (8) to  
20 proposed Rule 25-30.431, F.A.C. Recognizing the PSC's continuing  
21 interest in achieving the State's reuse objectives, the DEP is confident that  
22 the PSC will fully support this recommended amendment, which is based  
23 on clear statutory directives.

24 **RECOMMENDED AMENDMENT TO PROPOSED RULE 25-30.431, F.A.C.**

25 (8) Reuse facilities.

1 (a) As stated in Sections 373.250 and 403.064, F.S., the  
2 encouragement and promotion of reuse of reclaimed water, as defined by  
3 the Department of Environmental Protection, are State objectives. These  
4 sections also state that reuse is considered to be in the public interest.

5 (b) The Florida Public Service Commission encourages investor-  
6 owned utilities to implement reuse systems.

7 (c) "Reuse" is defined in Chapter 62-610, F.A.C. The Florida Public  
8 Service Commission shall use the criteria established in Chapter 62-610,  
9 F.A.C., for determining whether projects or portions of projects are to be  
10 considered as being reuse.

11 (d) Subsection 367.0817(3), F.S., states that all prudent costs of a  
12 reuse project shall be recovered in rates, and Subsection 403.064(10),  
13 F.S., states that, pursuant to Chapter 367, F.S., the Florida Public Service  
14 Commission shall allow entities under its jurisdiction that conduct studies or  
15 implement reuse projects, including any study required by Subsection  
16 403.064(2), F.S., or facilities used for reliability purposes for a reclaimed  
17 water reuse system, to recover the full, prudently incurred cost of such  
18 studies and facilities through their rate structure.

19 (e) Calculation of margin reserve is not applicable to reuse facilities.  
20 Reuse facilities shall be considered 100 percent used and useful.

21 (f) Reuse facilities include the following:

22 1. Reuse systems and related components and appurtenances (such  
23 as irrigation systems, rapid infiltration basins, and others, as described in  
24 Chapter 62-610, F.A.C.).

25 2. Reclaimed water pumping facilities.

- 1 3. Reclaimed water transmission and distribution piping and
- 2 facilities.
- 3 4. Land for the reuse system.
- 4 5. System storage and reject storage facilities.
- 5 6. If high-level disinfection is required by Chapter 62-610, F.A.C., all
- 6 treatment and disinfection facilities related to high-level disinfection
- 7 (chemical feed systems, filters, disinfectant feed and contact facilities, and
- 8 monitoring and control facilities).
- 9 7. If Class I reliability is required by Chapter 62-610, F.A.C.,
- 10 facilities that are needed to achieve Class I reliability but that would not
- 11 have been needed to meet Class III reliability.

12 The DEP recognizes that the PSC may have difficulty in categorizing  
13 all reuse facilities as 100 percent used and useful. Under some  
14 circumstances, this could pose a significant burden on existing utility  
15 customers. However, it is essential that the PSC's rules provide an  
16 incentive for reuse consistent with the statutory objectives of encouraging  
17 and promoting reuse stated in Sections 373.250 and 403.064, F.S., and  
18 further promoted by the cost-recovery provisions of Section 367.0817,  
19 F.S. It is crucial that the DEP and the PSC work together in order to  
20 achieve our mutual objectives.

landscaping, treatment of vented gases, setback distances, chemical additions, prechlorination, ozonation, innovative structural design or other similar techniques and methods. All such design measures shall be included in the preliminary design report.

(b) All treatment plant sites shall be enclosed with a fence or otherwise designed with appropriate features that discourage the entry of animals and unauthorized persons.

(c) The potential for damage or interruption of operation because of flooding shall be considered by the permittee when siting new treatment plants and expansions of existing plants at inland or coastal locations. The treatment plant structures essential for the purpose of treating, stabilizing, conveying, or holding incompletely treated waste and electrical and mechanical equipment shall be protected from physical damage by the 100-year flood. The treatment plant shall be designed to remain fully operational and accessible during the 25-year flood; lesser flood levels may be designed for, if justified in the preliminary design report based on local conditions, water surface elevations, forces arising from water movement, wave heights, flood protection measures provided, and provisions for wastewater storage such that applicable water quality standards will be met; but in no case shall less than a 10-year flood be used. Design for flood protection shall include considerations for wave action as appropriate. These flood protection considerations shall be addressed in the preliminary design report and shall be based upon available information; where site-specific information is unavailable, sound engineering practices shall be used in siting and design of treatment plant facilities.

### (3) Permitted Capacity

(a) The permittee shall establish the design capacity of a wastewater facility in the permit application and shall specify the time frame (e.g., annual average daily flow, maximum monthly average daily flow, three-month average daily flow). The time frame selected shall reflect seasonal variations in flows, if any.

(b) The Department shall include the permitted capacity in the construction and operation permits and shall specify the time frame (e.g., annual average daily flow, maximum monthly average daily flow, three-month average daily flow). The permitted capacity shall not exceed the design capacity. The Department shall establish a permitted capacity less than the design capacity if:

1. The total available reuse and disposal permitted capacity is less than the design capacity; or

2. The preliminary design report does not provide reasonable assurances that the proposed wastewater facility technology will function as intended at the design capacity requested by the permittee.

(c) When the permit includes the treatment facilities and reuse or disposal systems, different permitted capacities may be established for the treatment, reuse, and disposal systems.

### (4) Sampling Points

(a) Provisions shall be made in the design for easy access points for the purpose of obtaining representative influent and effluent samples. These access points shall be dry points which can be reached safely.

(b) Provisions for flow measurements shall be in accordance with Chapter 62-601, F.A.C.

Specific Authority: 403.061, 403.087, F.S.

Law Implemented: 403.021, 403.061, 403.062, 403.086, 403.087, 403.088, F.S.

History: New 11-27-89; Amended 1-30-91, 6-8-93, Formerly 17-600.400.

### 62-600.405 Planning for Wastewater Facilities Expansion.

(1) The permittee shall provide for the timely planning, design, and construction of wastewater facilities necessary to provide proper treatment and reuse or disposal of domestic wastewater and management of domestic wastewater residuals.

(2) The permittee shall routinely compare flows being treated at the wastewater facilities with the permitted capacities of the treatment, residuals, reuse, and disposal facilities.

(3) When the three-month average daily flow for the most recent three consecutive months exceeds 50 percent of the permitted capacity of the treatment plant or reuse and disposal systems, the permittee shall submit to the Department a capacity analysis report.

(4) The initial capacity analysis report shall be submitted according to the following:

(a) For new or expanded wastewater facilities for which the Department received a complete construction permit application after July 1, 1991, the initial capacity analysis report shall be submitted within 180 days after the last day of the last month in the three-month period referenced in Rule 62-600.405(3), F.A.C.

(b) For wastewater facilities for which the Department received a complete construction permit application on or before July 1, 1991, the initial capacity analysis report

EXHIBIT 1, PAGE 1

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shall be submitted when the next application for a permit to construct or operate wastewater facilities is submitted to the Department unless:

1. The three-month average daily flow for any three consecutive months during the period July 1, 1990 to June 30, 1991 exceeds 90 percent of the permitted capacity. In such cases, the initial capacity analysis report shall be submitted to the Department no later than January 1, 1992.

2. The three-month average daily flow for any three consecutive months during the period July 1, 1990 to June 30, 1991 exceeds 75 percent of the permitted capacity. In such cases, the initial capacity analysis report shall be submitted to the Department no later than July 1, 1992.

(c) In no case shall the initial capacity analysis report be required to be submitted before July 1, 1991 or before the three-month average daily flow exceeds 50 percent of the permitted capacity of the treatment plant or reuse or disposal systems, as described in Rule 62-600.405(3), F.A.C.

(5) The permittee shall submit updated capacity analysis reports to the Department according to the following:

(a) If the initial capacity analysis report or an update of the capacity analysis report documents that the permitted capacity will not be equaled or exceeded for at least 10 years, an updated capacity analysis report shall be submitted to the Department at five-year intervals or at each time the permittee applies for an operation permit or renewal of an operation permit, whichever occurs first.

(b) If the initial capacity analysis report or an update of the capacity analysis report documents that the permitted capacity will be equaled or exceeded within the next 10 years, an updated capacity analysis shall be submitted to the Department annually.

(6) The capacity analysis report or an update of the capacity analysis report shall evaluate the capacity of the plant and contain data showing the permitted capacity; monthly average daily flows, three-month average daily flows, and annual average daily flows for the past 10 years or for the length of time the facility has been in operation, whichever is less; seasonal variations in flow; flow projections based on local population growth rates and water usage rates for at least the next 10 years; an estimate of the time required for the three-month average daily flow to reach the permitted capacity; recommendations for expansions; and a detailed schedule showing dates for planning, design, permit application submittal, start of construction, and placing new or expanded facilities into operation. The report shall update the flow-related and loading information contained in the

preliminary design report submitted as part of the most recent permit application for the wastewater facilities pursuant to Rules 62-600.710 and 62-600.715, F.A.C.

(7) The capacity analysis report shall be signed by the permittee and shall be signed and sealed by a professional engineer registered in Florida.

(8) Documentation of timely planning, design, and construction of needed expansions shall be submitted according to the following schedule:

(a) If the initial capacity analysis report or an update of the capacity analysis report documents that the permitted capacity will be equaled or exceeded within the next five years, the report shall include a statement, signed and sealed by a professional engineer registered in Florida, that planning and preliminary design of the necessary expansion have been initiated.

(b) If the initial capacity analysis report or an update of the capacity analysis report documents that the permitted capacity will be equaled or exceeded within the next four years, the report shall include a statement, signed and sealed by an engineer registered in Florida, that plans and specifications for the necessary expansion are being prepared.

(c) If the initial capacity analysis report or an update of the capacity analysis report documents that the permitted capacity will be equaled or exceeded within the next three years, the permittee shall submit a complete construction permit application to the Department within 30 days of submittal of the initial capacity analysis report or the update of the capacity analysis report.

(d) If the initial capacity analysis report or an update of the capacity analysis report documents that the permitted capacity will be equaled or exceeded within the next six months, the permittee shall submit to the Department an application for an operation permit for the expanded facility. The operation permit application shall be submitted no later than the submittal of the initial capacity analysis report or the update of the capacity analysis report.

(9) If requested by the permittee, and if justified in the initial capacity analysis report or an update to the capacity analysis report based on design and construction schedules, population growth rates, flow projections, and the timing of new connections to the sewerage system such that adequate capacity will be available at the wastewater facility, the Secretary or Secretary's designee shall adjust

the schedule specified in Rule 62-600.405(8), F.A.C.  
Specific Authority: 403.061, 403.087, F.S.  
Law Implemented: 403.021, 403.061, 403.086, 403.087,  
403.088, 403.0881, 403.101, F.S.  
History: New 1-30-91, Formerly 17-600.405.

62-600.410 Operation and Maintenance Requirements.

(1) All domestic wastewater treatment plants shall be operated and maintained in accordance with the applicable provisions of this chapter and so as to attain, at a minimum, the reclaimed water or effluent quality required by the operational criteria specified in this chapter, and to meet the appropriate domestic wastewater residuals management criteria specified in Chapters 62-2, 62-7, 62-640, and 62-701, F.A.C.

(2) All reuse and land application systems shall be operated and maintained in accordance with the applicable provisions of this chapter and the provisions of Chapter 62-610, F.A.C.

(3) All underground injection effluent disposal systems shall be operated and maintained in accordance with the applicable provisions of this chapter and the provisions of Chapter 62-28, F.A.C.

(4) Wetlands application systems shall be operated and maintained in accordance with the applicable provisions of this chapter and provisions of Chapter 62-611, F.A.C.

(5) The operation of all treatment plants shall be under the supervision of an operator certified in accordance with Chapter 62-602, F.A.C. All facility operations shall provide for the minimum care and maintenance of the facility in accordance with Chapter 62-602, F.A.C.

(6) All facilities and equipment necessary for the treatment, reuse, and disposal of domestic wastewater and domestic wastewater residuals shall be maintained, at a minimum, so as to function as intended.

(7) All treatment plant permittees shall be responsible for making all facilities safe in terms of public health and safety at all times, including periods of inactivation or abandonment. The permittee shall give the Department written notice at least 60 days before inactivation or abandonment of a treatment plant and shall specify what steps will be taken to safeguard public health and safety.

(8) In the event that the treatment facilities or equipment no longer function as intended, are no longer safe in terms of public health and safety, or odor, noise, aerosol drift, or lighting adversely affect neighboring developed areas at the levels prohibited by Rule 62-600.400(2)(a), F.A.C., corrective action (which may

include additional maintenance or modifications of the treatment plant) shall be taken by the permittee. Other corrective action may be required to ensure compliance with rules of the Department.

(9) After July 1, 1991, all applications to renew permits for a treatment and reuse or disposal facility shall include an operation and maintenance performance report accordance with Rule 62-660.735, F.A.C.

(10) All treatment plant permittees shall provide the operating data, records, and analytical results as required to document the operational results of the treatment plant, reuse system, and disposal system. These records shall be transmitted to the appropriate district office of the Department, in accordance with Chapters 62-601 and 62-602, F.A.C.

(11) Copies of the Department permit; record drawings pursuant to Rule 62-600.717 and 62-600.730(4)(b), F.A.C.; the approved operation and maintenance manual pursuant to Rules 62-600.720 and 62-600.730(4)(c), F.A.C.; schedules; logs; and all recorded operating data shall be kept available at all facilities or other acceptable sites approved by the Department for use by plant operators and inspection by the Department.

Specific Authority: 403.061, 403.087, 403.101, F.S.  
Law Implemented: 403.021, 403.061, 403.062, 403.085,  
403.086, 403.087, 403.088, 403.101, F.S.  
History: New 11-27-89; Amended 1-30-91, Formerly 17-600.410.

62-600.420 Minimum Treatment Standards - Technology Based Effluent Limitations (TBELs).

(1) Secondary Treatment

(a) Surface water disposal (excluding ocean outfalls)  
All domestic wastewater facilities are required, at a minimum, to provide secondary treatment of wastewater. New facilities and modifications of existing facilities shall be designed to achieve an effluent after disinfection containing not more than 20 mg/L CBOD<sub>5</sub> and 20 mg/L TSS, or 90% removal of each of these pollutants from the wastewater influent, whichever is more stringent. All facilities shall be operated to achieve, at a minimum, the specified effluent limitations (20 mg/L). All facilities shall be subject to provisions of Rule 62-600.110, F.A.C., regarding the applicability of the above requirements, and Rule 62-600.440, 62-600.445, and 62-600.740, F.A.C., regarding compliance with these requirements. Appropriate disinfection and pH control of effluents shall also be required.

EXHIBIT 1, PAGE 5  
ADD

**367.0817 Reuse projects.—**

(1) A utility may submit a reuse project plan for commission approval. A reuse project plan shall include:

(a) A description of the project and other effluent disposal options considered by the utility.

(b) Copies of the pertinent Department of Environmental Protection and water management district permit applications filed or, in lieu thereof, a statement of the project's permit status.

(c) A statement that the reuse project is required or recommended pursuant to s. 403.064 or other relevant authority.

(d) The number and identity of the project's proposed reuse customer(s) and copies of written agreements, if any, between the utility and the customer(s) regarding the project.

(e) The projected costs associated with the reuse project. As used in this section, the term "costs" includes, but is not limited to, all capital investments, including a rate of return, any applicable taxes, and all expenses related to or resulting from the reuse project which were not considered in the utility's last rate proceeding.

(f) The utility's proposal for recovering the project's costs through rates.

(g) A proposed inservice schedule for the project.

(h) Any other information the commission may require pursuant to rule.

(2) The commission shall review the utility's reuse project plan and shall determine whether the projected costs are prudent and the proposed rates are reasonable and in the public interest. The commission shall issue a proposed agency action order to approve or disapprove the utility's reuse project plan. The commission shall enter its vote on the proposed agency action within 5 months of the date of filing. If the commission's proposed action is protested, the final decision shall be rendered by the commission within 8 months of the date the protest is filed.

(3) All prudent costs of a reuse project shall be recovered in rates. The Legislature finds that reuse benefits water, wastewater, and reuse customers. The commission shall allow a utility to recover the costs of a reuse project from the utility's water, wastewater, or reuse customers or any combination thereof as deemed appropriate by the commission.

(4) The commission's order approving the reuse project plan shall approve rates based on projected costs and shall provide for the implementation of rates without the need for a subsequent proceeding. The commission shall allow the approved rates to be implemented when the reuse project plan is approved or when the project is placed in service. If the commission allows the rates to be implemented when the plan is approved, the commission may order the utility to escrow the resulting revenues until the project is placed in service. Escrowed revenues shall be used exclusively for the reuse project.

(5) If the commission allows the rates to be implemented when the plan is approved, the utility may place its proposed rates into effect on a temporary basis, subject to refund, in the event of a protest by a party other than the utility. If the utility has requested rate imple-

mentation upon approval of the plan and the commission has exceeded the time allowed in subsection (2), the utility may place its proposed rates into effect on a temporary basis, subject to refund.

(6) After the reuse project is placed in service, the commission, by petition or on its own motion, may initiate a proceeding to true-up the costs of the reuse project and the resulting rates.

History.—s. 1, ch. 94-243.

**367.082 Interim rates; procedure.—**

(1) The commission may, during any proceeding for a change of rates, upon its own motion, upon petition from any party, or by a tariff filing of a utility or a regulated company, authorize the collection of interim rates until the effective date of the final order. Such interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. Upon application by a utility, the commission may use the projected test-year rate base when determining the interim rates or revenues subject to refund. To establish a prima facie entitlement for interim relief, the commission, the petitioning party, the utility, or the regulated company shall demonstrate that the utility or the regulated company is earning outside the range of reasonableness on rate of return calculated in accordance with subsection (5).

(2)(a) In a proceeding for an interim increase in rates, the commission shall authorize, within 60 days of the filing for such relief, the collection of rates sufficient to earn the minimum of the range of rate of return calculated in accordance with subparagraph (5)(b)2. The difference between the interim rates and the previously authorized rates shall be collected under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(b) In a proceeding for an interim decrease in rates, the commission shall authorize, within 60 days of the filing for such relief, the continued collection of the previously authorized rates; however, revenues collected under those rates sufficient to reduce the achieved rate of return to the maximum of the rate of return calculated in accordance with subsection (5) shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(c) The commission shall determine whether escrow, letter of credit, or corporate undertaking may be filed in lieu of the bond.

(3) In granting such relief, the commission may, in an expedited hearing but within 60 days of the commencement of the proceeding, upon petition or upon its own motion, preclude the recovery of any extraordinary or imprudently incurred expenditures or, for good cause shown, increase the amount of the bond, escrow, letter of credit, or corporate undertaking.

(4) Any refund ordered by the commission shall be calculated to reduce the rate of return of the utility or regulated company during the pendency of the proceeding to the same level within the range of the newly authorized rate of return which is found fair and reasonable on a prospective basis, but the refund shall not be in excess of the amount of the revenues collected sub-

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

**History.**—s. 7, ch. 67-436; ss. 19, 26, 35, ch. 69-106; s. 1, ch. 71-35; s. 2, ch. 71-36; s. 3, ch. 72-39; s. 1, ch. 72-53; s. 113, ch. 73-333; s. 3, ch. 74-133; s. 1, ch. 77-21; s. 137, ch. 77-104; s. 268, ch. 77-147; s. 2, ch. 77-369; s. 14, ch. 78-95; s. 2, ch. 78-437; s. 73, ch. 79-65; s. 1, ch. 79-130; s. 96, ch. 79-164; s. 160, ch. 79-400; s. 1, ch. 80-66; ss. 2, 5, ch. 81-228; s. 5, ch. 82-27; s. 1, ch. 82-79; s. 2, ch. 82-80; s. 66, ch. 83-310; s. 5, ch. 84-79; s. 1, ch. 84-338; s. 1, ch. 85-296; s. 5, ch. 85-345; s. 5, ch. 86-173; s. 52, ch. 86-186; s. 22, ch. 88-393; s. 31, ch. 89-279; s. 54, ch. 90-331; s. 24, ch. 91-305; s. 23, ch. 92-203; s. 127, ch. 92-279; s. 55, ch. 92-326; s. 36, ch. 93-213; s. 5, ch. 94-311; s. 1, ch. 94-321; s. 356, ch. 94-356; s. 55, ch. 95-144.

<sup>1</sup>Note.—Transferred to another location.

#### **403.0615 Water resources restoration and preservation.—**

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

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

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

- (a) The degree of water quality degradation;
- (b) The degree to which sources of pollution which have contributed to the need for restoration or preservation have been abated;
- (c) The public uses which can be made of the subject waters;
- (d) The ecological value of the subject waters in relation to other waters proposed for restoration and preservation;
- (e) The implementation by local government of regulatory or management programs to prevent further and subsequent degradation of the subject waters; and
- (f) The commitment of local government resources to assist in the proposed restoration and preservation.

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

**History.**—ss. 1, 4, 5, ch. 77-369; s. 2, ch. 79-130; s. 25, ch. 93-120; s. 357, ch. 94-356.

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

**History.**—s. 2, ch. 29834, 1955; ss. 26, 35, ch. 69-106.

**Note.**—Former s. 381.43; s. 381.251.

#### **403.0625 Environmental laboratory certification; water quality tests conducted by a certified laboratory.**

(1) To assure the acceptable quality, reliability, and validity of testing results, the department and the Department of Health and Rehabilitative Services shall

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

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

**History.**—s. 7, ch. 85-269; s. 3, ch. 88-89; s. 358, ch. 94-356.

#### **403.063 Groundwater quality monitoring.—**

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

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

- (a) The degree of danger to the public health caused or potentially caused by contamination.
- (b) The susceptibility of each site to contamination.
- (3) This information shall be made available to state and federal agencies and local governments to facilitate their regulatory and land use planning decisions.

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

**History.**—s. 3, ch. 83-310.

#### **403.064 Reuse of reclaimed water.—**

(1) The encouragement and promotion of water conservation, and reuse of reclaimed water, as defined by the department, are state objectives and are considered to be in the public interest. The Legislature finds that for those wastewater treatment plants permitted and operated under an approved reuse program by the department, the reclaimed water shall be considered environmentally acceptable and not a threat to public health and safety.

(2) All applicants for permits to construct or operate a domestic wastewater treatment facility located within, serving a population located within, or discharging within a water resource caution area shall prepare a reuse feasibility study as part of their application for the permit. Reuse feasibility studies shall be prepared in

accordance with department guidelines adopted by rule and shall include, but are not limited to:

(a) Evaluation of monetary costs and benefits for several levels and types of reuse.

(b) Evaluation of water savings if reuse is implemented.

(c) Evaluation of rates and fees necessary to implement reuse.

(d) Evaluation of environmental and water resource benefits associated with reuse.

(e) Evaluation of economic, environmental, and technical constraints.

(f) A schedule for implementation of reuse. The schedule shall consider phased implementation.

(3) The study required under subsection (2) shall be performed by the applicant, and the applicant's determination of feasibility is final if the study complies with the requirements of subsection (2).

(4) A reuse feasibility study is not required if:

(a) The domestic wastewater treatment facility has an existing or proposed permitted or design capacity less than 0.1 million gallons per day; or

(b) The permitted reuse capacity equals or exceeds the total permitted capacity of the domestic wastewater treatment facility.

(5) A reuse feasibility study prepared under subsection (2) satisfies a water management district requirement to conduct a reuse feasibility study imposed on a local government or utility that has responsibility for wastewater management.

(6) Local governments may allow the use of reclaimed water for inside activities, including, but not limited to, toilet flushing, fire protection, and decorative water features, as well as for outdoor uses, provided the reclaimed water is from domestic wastewater treatment facilities which are permitted, constructed, and operated in accordance with department rules.

(7) Permits issued by the department for domestic wastewater treatment facilities shall be consistent with requirements for reuse included in applicable consumptive use permits issued by the water management district, if such requirements are consistent with department rules governing reuse of reclaimed water. This subsection applies only to domestic wastewater treatment facilities which are located within, or serve a population located within, or discharge within water resource caution areas and are owned, operated, or controlled by a local government or utility which has responsibility for water supply and wastewater management.

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

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

(10) Pursuant to chapter 367, the Florida Public Service Commission shall allow entities under its jurisdiction which conduct studies or implement reuse projects, including, but not limited to, any study required by subsection (2) or facilities used for reliability purposes for a reclaimed water reuse system, to recover the full, prudently incurred cost of such studies and facilities through their rate structure.

(11) In issuing consumptive use permits, the permitting agency shall consider the local reuse program.

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

(13) If, after conducting a feasibility study under subsection (2), an applicant determines that reuse of reclaimed water is feasible, domestic wastewater treatment facilities that dispose of effluent by Class I deep well injection, as defined in 40 C.F.R. part 144.6(a), must implement reuse according to the schedule for implementation contained in the study conducted under subsection (2), to the degree that reuse is determined feasible. Applicable permits issued by the department shall be consistent with the requirements of this subsection.

(a) This subsection does not limit the use of a Class I deep well injection facility as backup for a reclaimed water reuse system.

(b) This subsection applies only to domestic wastewater treatment facilities located within, serving a population located within, or discharging within a water resource caution area.

(14) If, after conducting a feasibility study under subsection (2), an applicant determines that reuse of reclaimed water is feasible, domestic wastewater treatment facilities that dispose of effluent by surface water discharges or by land application methods must implement reuse according to the schedule for implementation contained in the study conducted under subsection (2), to the degree that reuse is determined feasible. This subsection does not apply to surface water discharges or land application systems which are currently categorized as reuse under department rules. Applicable permits issued by the department shall be consistent with the requirements of this subsection.

(a) This subsection does not limit the use of a surface water discharge or land application facility as backup for a reclaimed water reuse system.

(b) This subsection applies only to domestic wastewater treatment facilities located within, serving a population located within, or discharging within a water resource caution area.

History.—s. 7, ch. 89-324; s. 3, ch. 94-243; s. 8, ch. 95-323.

**403.072 Pollution Prevention Act.**—Sections 403.072-403.074 may be cited as the "Pollution Prevention Act."

History.—s. 25, ch. 91-305.

**403.073 Pollution prevention; state goal; agency programs; public education.**—

(1) It is a goal of the state that all its agencies, the State University System, the State Board of Community Colleges, and all municipalities, counties, regional agencies, and special districts develop and implement strategies to prevent pollution, including public information programs and education programs.

(2) It is the policy of the state that pollution prevention is necessary for all materials and waste management activities.

History.—s. 26, ch. 91-305; s. 1, ch. 95-144.

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shall be construed to estop the governing board from subsequently denying an application for a permit pursuant to ss. 373.219 and 373.229.

*History.*—s. 1, ch. 79-160.

**373.245 Violations of permit conditions.**—Holders of consumptive use permits who violate conditions of such permits shall be liable to abutting consumptive use permit holders for damages caused by such permit violations. No cause of action shall accrue under this section until the complainant has first applied for and then been denied relief by the water management district for the permit violations complained of. The provisions of this section are supplemental, and nothing in this section is intended to preclude the use of any other existing cause of action, remedy, or procedure.

*History.*—s. 10, ch. 82-101.

**373.246 Declaration of water shortage or emergency.**—

(1) The governing board or the department by regulation shall formulate a plan for implementation during periods of water shortage. Copies of the water shortage plan shall be submitted to the Speaker of the House of Representatives and the President of the Senate no later than October 31, 1983. As a part of this plan the governing board or the department shall adopt a reasonable system of water-use classification according to source of water supply; method of extraction, withdrawal, or diversion; or use of water or a combination thereof. The plan may include provisions for variances and alternative measures to prevent undue hardship and ensure equitable distribution of water resources.

(2) The governing board or the department may declare that a water shortage exists for a source or sources within all or part of the district when insufficient water is or will be available to meet the present and anticipated requirements of the users or when conditions are such as to require temporary reduction in total use within the area to protect water resources from serious harm. Such orders will be final agency action.

(3) In accordance with the plan adopted under subsection (1), the governing board or the department may impose such restrictions on one or more classes of water uses as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous condition.

(4) A declaration of water shortage and any measures adopted pursuant thereto may be rescinded by the governing board or the department.

(5) When a water shortage is declared, the governing board or the department shall cause notice thereof to be published in a prominent place within a newspaper of general circulation throughout the area. Publication of such notice will serve as notice to all users in the area of the condition of water shortage.

(6) The governing board or the department shall notify each permittee in the district by regular mail of any change in the condition of his or her permit or any suspension of his or her permit or of any other restriction on the permittee's use of water for the duration of the water shortage.

(7) If an emergency condition exists due to a water shortage within any area of the district, and if the depart-

ment, or the executive director of the district with the concurrence of the governing board, finds that the exercise of powers under subsection (1) is not sufficient to protect the public health, safety, or welfare; the health of animals, fish, or aquatic life; a public water supply; or recreational, commercial, industrial, agricultural, or other reasonable uses, it or he or she may, pursuant to the provisions of s. 373.119, issue emergency orders reciting the existence of such an emergency and requiring that such action, including, but not limited to, apportioning, rotating, limiting, or prohibiting the use of the water resources of the district, be taken as the department or the executive director deems necessary to meet the emergency.

(8) An affected party to whom an emergency order is directed under subsection (7) shall comply immediately, but may challenge such an order in the manner set forth in s. 373.119.

*History.*—s. 10, part II, ch. 72-299; s. 14, ch. 78-95; s. 11, ch. 82-101; s. 10, ch. 84-341; s. 601, ch. 95-148.

**373.249 Existing regulatory districts preserved.**—

The enactment of this chapter shall not affect any existing water regulatory districts pursuant to chapter 373, or orders issued by said regulatory districts, unless specifically revoked, modified, or amended by such regulatory district or by the department.

*History.*—s. 11, part II, ch. 72-299.

**373.250 Reuse of reclaimed water.**—

(1) The encouragement and promotion of water conservation and reuse of reclaimed water, as defined by the department, are state objectives and considered to be in the public interest. The Legislature finds that the use of reclaimed water provided by domestic wastewater treatment plants permitted and operated under a reuse program approved by the department is environmentally acceptable and not a threat to public health and safety.

(2)(a) For purposes of this section, "uncommitted" means the average amount of reclaimed water produced during the three lowest-flow months minus the amount of reclaimed water that a reclaimed water provider is contractually obligated to provide to a customer or user.

(b) Reclaimed water may be presumed available to a consumptive use permit applicant when a utility exists which provides reclaimed water, which has uncommitted reclaimed water capacity, and which has distribution facilities, which are initially provided by the utility at its cost, to the site of the affected applicant's proposed use.

(3) The water management district shall, in consultation with the department, adopt rules to implement this section. Such rules shall include, but not be limited to:

(a) Provisions to permit use of water from other sources in emergency situations or if reclaimed water becomes unavailable, for the duration of the emergency or the unavailability of reclaimed water. These provisions shall also specify the method for establishing the quantity of water to be set aside for use in emergencies or when reclaimed water becomes unavailable. The amount set aside is subject to periodic review and revision. The methodology shall take into account the risk



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that reclaimed water may not be available in the future, the risk that other sources may be fully allocated to other uses in the future, the nature of the uses served with reclaimed water, the extent to which the applicant intends to rely upon reclaimed water and the extent of economic harm which may result if other sources are not available to replace the reclaimed water. It is the intent of this paragraph to ensure that users of reclaimed water have the same access to ground or surface water and will otherwise be treated in the same manner as other users of the same class not relying on reclaimed water.

(b) A water management district shall not adopt any rule which gives preference to users within any class of use established under s. 373.246 who do not use reclaimed water over users within the same class who use reclaimed water.

(4) Nothing in this section shall impair a water management district's authority to plan for and regulate consumptive uses of water under this chapter.

(5) This section applies to new consumptive use permits and renewals of existing consumptive use permits.

(6) Each water management district shall submit to the Legislature, by January 30 of each year, an annual report which describes the district's progress in promoting the reuse of reclaimed water. The report shall include, but not be limited to:

(a) The number of permits issued during the year which required reuse of reclaimed water and, by categories, the percentages of reuse required.

(b) The number of permits issued during the year which did not require the reuse of reclaimed water and, of those permits, the number which reasonably could have required reuse.

(c) In the second and subsequent annual reports, a statistical comparison of reuse required through consumptive use permitting between the current and preceding years.

(d) A comparison of the volume of reclaimed water available in the district to the volume of reclaimed water required to be reused through consumptive use permits.

(e) A comparison of the volume of reuse of reclaimed water required in water resource caution areas through consumptive use permitting to the volume required in other areas in the district through consumptive use permitting.

(f) An explanation of the factors the district considered when determining how much, if any, reuse of reclaimed water to require through consumptive use permitting.

(g) A description of the district's efforts to work in cooperation with local government and private domestic wastewater treatment facilities to increase the reuse of reclaimed water. The districts, in consultation with the department, shall devise a uniform format for the report required by this subsection and for presenting the information provided in the report.

History.—s. 2, ch. 94-243.

PART III

REGULATION OF WELLS

- 373.302 Legislative findings.
- 373.303 Definitions.
- 373.306 Scope.
- 373.308 Implementation of programs for regulating water wells.
- 373.309 Authority to adopt rules and procedures.
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- 373.314 Citation of rule.
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- 373.333 Disciplinary guidelines; adoption and enforcement; license suspension or revocation.
- 373.335 Clearinghouse.
- 373.336 Unlawful acts; penalties.
- 373.337 Rules.
- 373.342 Permits.

**373.302 Legislative findings.**—The Legislature recognizes that the practice of constructing, repairing, and abandoning water wells, if conducted by incompetent contractors, is potentially threatening to the health of the public and to the environment. The Legislature finds that a threat to the public and the environment exists if water resources become contaminated as a result of wells drilled by incompetent or dishonest contractors, and that to prevent contamination, it is necessary to regulate the construction, repair, and abandonment of wells, and the persons and businesses responsible therefor.

History.—s. 9, ch. 88-242.

**373.303 Definitions.**—As used in this part, the term:

(1) "Abandoned water well" means a well the use of which has been permanently discontinued. Any well shall be deemed abandoned which is in such a state of disrepair, as determined by a representative of the department, that continued use for the purpose of obtaining groundwater or disposing of water or liquid wastes is impracticable.

(2) "Construction of water wells" means all parts necessary to obtain groundwater by wells, including the location and excavation of the well, but excluding the installation of pumps and pumping equipment.

(3) "Department" means the Department of Environmental Protection.

(4) "Political subdivision" means a city, town, county, district, or other public body created by or pursuant to state law, or any combination thereof acting cooperatively or jointly.

(5) "Repair" means any action which involves the physical alteration or replacement of any part of a well, but does not include the alteration or replacement of any portion of a well which is above ground surface.

(6) "Water well contractor" means a person who is responsible for the construction, repair, or abandonment of a water well and who is licensed under this part to engage in the business of construction, repair, or abandonment of water wells.

(7) "Well" means a cored, bored, washed, or constructed when the it is for the location, acqu recharge of groundwa include any well for the pecting for oil, natural g ing or quarrying; for in brines or to repressur bearing formation; for st other products; or for te face formations for min purposes.

(8) "Well seal" mean device to prevent conta at the upper terminal.

History.—s. 1, part III, ch. 72-299; 10-24, ch. 88-242; s. 4, ch. 91-429.

**373.306 Scope.**—No abandon, or cause to be done, any water well c part and applicable rules not apply to equipment purposes or to the proce History.—s. 2, part III, ch. 72-299

**373.308 Implementa water wells.**—

(1) The department board of a water manag program for the issuance struction, repair, and abe

(2) The department board of a water manag power authorized to be under ss. 373.309, 373.3 373.329, and 373.333 anc fully exercise such powe (3) Delegations pursu and ss. 373.323 and 373 the secretary determines being carried out in acc department.

(4) Notwithstanding t delegation of authority to the department may pres the location, construction water wells throughout al be determined by the de History.—s. 2, ch. 79-160; s. 76, c

**373.309 Authority to**

(1) The department si to time amend, rules gov tion, repair, and abandon be responsible for the ad respect thereto, the depa

(a) Enforce the provisi adopted pursuant thereto

(b) Delegate, by inter pursuant to s. 373.046, to the Department of Health a any other political subdivis