

FLORIDA ENVIRONMENTAL PROGRAMS

Morgan Lewis is active in all major areas of Florida's extensive and complex system of environmental protection. This section highlights the major program areas of Florida environmental law administered by the Florida Department of Environmental Protection ("FDEP") and its regional water Management Districts. Each program is broadly summarized and matched with the relevant provisions of the Florida Statutes and Administrative Code. In addition, the Internet address of the appropriate governmental agency is given so that additional information can be obtained.

FLORIDA ENVIRONMENTAL PROGRAMS

PROTECTION OF AIR RESOURCES

AIR POLLUTION CONTROL

Fla. Stat. §§ 403.011-403.4154; Fla. Admin. Code, ch. 62, 204, 210, 212-14, 242-43, 252, 256-57, 281, 296-97

Part I of Chapter 403 provides comprehensive authority for the prevention, abatement, and control of air, water, and noise pollution by FDEP and equivalent local authorities. Part I governs, in part, the construction or operation of a stationary installation which will reasonably be expected to be a source of air or water pollution, including the operation of a major source of air pollution, and air emissions trading.

The FDEP's Division of Air Resource Management administers the state's air pollution control program. The Division has two bureaus and one office: the Bureau of Air Regulation (asbestos, emissions, Title V permitting), the Bureau of Air Monitoring and Mobile Sources (ambient monitoring, Title V general permits, mobile sources), and the Office of Policy Analysis and Program Management (Small Business Program, Partnerships for Ecosystem Protection, pollution prevention).

The 1998 Legislature established the Clean Fuels Advisory Board within the state Department of Community Affairs to formulate recommendations on expanding the use of alternative fuel vehicles (AFVs) and the expansion of the AFV industry in Florida.

The Division of Air Resource Management's web page is <http://www.fdep.state.fl.us/air/>.

COASTAL PROTECTION AND POLLUTION CONTROL

POLLUTION DISCHARGE PREVENTION AND CONTROL ACT

Fla. Stat. §§ 376.011-376.21; Fla. Admin. Code ch. 62N-16

Florida's Pollution Discharge Prevention And Control Act regulates the transfer of pollutants between vessels, onshore facilities and terminal facilities. The Act requires prompt containment and removal of pollution associated with transfer activities and establishes a fund for the inspection and supervision of such activities. The Act prohibits the discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state. The Act requires that every owner or operator of a terminal facility obtain a discharge prevention and response certificate issued by FDEP. The Act requires certain vessels carrying pollutants as fuel or cargo that operate in state waters to maintain an adequate written ship-specific discharge prevention and control contingency plan. The Act provides for liability associated with cleanup costs and defenses to liability.

The FDEP's coastal program's web page is www.fdep.state.fl.us/beach/.

INLAND PROTECTION AND POLLUTION CONTROL

POLLUTANT DISCHARGE, PREVENTION AND REMOVAL

Fla. Stat. §§ 376.30-376.75; Fla. Admin. Code ch. 62, §§ 761, 769-71, 773, 777, 781, 785

Part II of Chapter 376 addresses the prevention, control and abatement of discharges of pollutants or hazardous substances into or upon the surface or ground waters of the state or lands in violation of FDEP water quality criteria. It authorizes FDEP regulation of underground and aboveground systems for the storage of pollutants, including petroleum products and regulated substances. It establishes state trust funds for the remediation of contamination from pollutants, including petroleum products and dry-cleaning solvents. It also establishes a brownfields redevelopment program providing risk-based cleanup criteria and economic incentives for the redevelopment of brownfields. The storage tanks, brownfields and drycleaning contamination cleanup programs are discussed separately below.

Part II of Chapter 376 prohibits the discharge of pollutants or hazardous substances into or upon the surface or ground waters of the state or lands in violation of water quality standards and requires a discharger to immediately abate the resulting pollutive conditions. Subject to limited no-causation defenses, specific classes of people are liable for resulting pollutive conditions. These people are the discharger, the owner or operator of the facility, the owner or operator of the facility or system at the time of the discharge, the arranger for disposal of hazardous substances, or the transporter of hazardous substances who selected the facility.

RESOURCE RECOVERY AND MANAGEMENT

Fla. Stat. §§ 403.702-403.7895; Fla. Admin. Code ch. 62, §§ 4, 710, 720, 730, 737, 775

Part IV of Chapter 403 provides for FDEP and local controls over the generation, storage, treatment, recycling, reuse, materials recovery, and disposal of solid waste, hazardous waste, and hazardous substances. Part IV contains FDEP's EPA-approved solid waste management program. It also controls the management of waste tires, lead-acid batteries, mercury-containing lamps and devices, used oil, and thermal treatment of soils.

Part IV of Chapter 403 requires a permit for the construction, operation, or closure of a solid waste management facility, subject to limited exceptions for defined onsite disposal of wastes or disposals occurring before October 1, 1988, provided no public nuisance is created. It also restricts the placement or deposit of solid waste on the land or in waters and the burning of solid waste. Anyone causing, authorizing, creating, suffering or allowing an imminent hazard where hazardous substances pose a threat to human health or the environment is liable for the hazard. In addition, subject to certain no-causation defenses, current owners or operators of facilities containing a release of hazardous substances, owners or operators at the time of disposal, arrangers for disposal, or transporters of hazardous substances who select the disposal facility are liable for the remediation of such contamination and any natural resource damages. Part IV also restricts the management of used oil in any manner which endangers the public health or welfare.

The FDEP's Division of Waste Management implements state and federal laws relating to solid and hazardous waste management, and regulates construction, installation, operation and closure of above and below ground storage tanks. It is responsible for cleanup of hazardous substance and pollutant spill sites. The Division has three bureaus: the Bureau of Waste Cleanup (Hazardous Waste

Cleanup, Technical Review, Site Investigation), the Bureau of Solid and Hazardous Waste (Hazardous Waste Management, Hazardous Waste Regulation, Solid Waste Management, Waste Reduction) and the Bureau of Petroleum Storage Systems.

The Division of Waste Management's web page is <http://www.dep.state.fl.us/dwm/>.

HAZARDOUS WASTE PROGRAM

Fla. Stat. §§ 403.702, 403.72-403.74; Fla. Admin. Code ch. 62-730

Part IV of Chapter 403 contains the legal authority for FDEP's program governing the generation, storage, treatment, recycling, reuse, materials recovery, and disposal of solid and hazardous wastes. Part IV authorizes Florida's authorized base hazardous waste management program and grants FDEP authority to seek EPA approval of state corrective action authorities. Only EPA Region 4 is currently authorized to administer the corrective action authorities of the federal Hazardous and Solid Waste Amendments of 1984 in Florida.

Florida's Hazardous Waste Program defines solid and hazardous waste. It also defines the standards, requirements and procedures applicable to generators and transporters of hazardous waste and owners and operators of hazardous waste treatment, storage, or disposal facilities. Chapter 403 requires a permit from anyone intending to construct, operate, or close such a hazardous waste facility. It defines facility financial responsibility requirements. The program addresses hazardous waste facility siting, subject to a prohibition of hazardous waste landfills in Florida. In addition to defining contamination corrective action requirements, it requires the posting of signs at hazardous waste contamination sites. Chapter 403 also defines the limited role of local governments in hazardous waste management. FDEP's Bureau of Solid and Hazardous Waste is located at <http://www.dep.state.fl.us/dwm/bureaus/bshw.htm>.

STORAGE OF PETROLEUM AND PETROLEUM PRODUCTS AND CORRECTIVE ACTION

Fla. Stat. §§ 376.301-376.319; Fla. Admin. Code ch. 62, §§ 761, 769, 770, 771, 773, 775, 777

Florida's petroleum storage regulatory program administered by the Bureau of Petroleum Storage Systems provides standards for underground and aboveground storage tanks including registration requirements, contains several programs that provide limited amnesty and state funding assistance for the cleanup of eligible sites contaminated with petroleum products, and establishes the Inland Protection Trust Fund to administer the programs and provide cleanup funding. (While authority to administer the federal underground storage tank regulations at 40 C.F.R. part 280 has not been granted to FDEP, FDEP administers parts of that regulation under an interim agreement). Most recently, Florida's program was amended by the Petroleum Contamination Cleanup Act Amendments of 1998, which added or extended cleanup funding mechanisms for free product recovery, innovative remediation technologies, and economic redevelopment sites. The program also defines Florida's Risk Based Corrective Action principles for petroleum contamination sites.

The Bureau of Petroleum Storage Systems' web page is <http://www.dep.state.fl.us/dwm/bureaus/bpss.htm>.

DRYCLEANING SOLVENT CLEANUP PROGRAM

Fla. Stat. §§ 376.3078, 376.3079; Fla. Admin. Code ch. 62 §§ 777, 781, 782, 788

Florida's Drycleaning Solvent cleanup program provides for state funded cleanup of eligible facilities that are contaminated as a result of the operations of a drycleaning facility or wholesale supply facility. The program imposes certain taxes and fees on the owner or operator of drycleaning facilities or wholesale supply facilities. Additionally, the program provides for the registration of drycleaning and wholesale supply facilities and operating standards for drycleaners that include secondary containment requirements, discharge notification provisions, response action directives and third party liability insurance requirements. The program contains a mechanism for innocent landowners unconnected to the source of contamination to enter into voluntary cleanup agreements with FDEP. It also has tax credit provisions for innocent landowners who clean up contamination. Most recently, risk based corrective action principles for the remediation of drycleaning contamination were promulgated in Chapters 62-782 and 62-777, Fla. Admin.Code.

The Drycleaning Solvent Cleanup Program's web page is [http:// www. dep. state. fl.us/dwm/ programs/drycleaning/default.htm](http://www.dep.state.fl.us/dwm/programs/drycleaning/default.htm).

BROWNFIELDS REDEVELOPMENT ACT

Fla. Stat. §§ 376.77-376.83; Fla. Admin. Code ch. 62 §§ 777, 785, 788

The Florida Brownfields Redevelopment program provides statewide incentives for businesses to redevelop abandoned, idled, or under-used industrial or commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. The Act provides for cleanup criteria incorporating risk based corrective action principles to achieve cost-effective protection of

public health and the environment. The program also provides liability protection for Brownfields developers and lenders who meet certain criteria. The Act lists brownfield economic incentives that may be offered by the state and by local governments, and creates the brownfield redevelopment bonus refund. Additionally, it provides a contaminated site rehabilitation tax credit that applies to intangible personal property taxes and corporate income taxes paid by taxpayers cleaning up a Brownfield site, but not both. Up to 35 percent of costs of voluntary cleanup activity integral to site rehabilitation is allowed against any tax due for a taxable year with a maximum of \$250,000 credit per site per year. The Act also creates a mechanism to provide low-interest loans to be used to clear outstanding, unresolved contractor liens, tax certificates, or other liens on brownfield sites.

Florida's Brownfields program has a web page at [http:// www. dep. state. fl.us/dwm/ programs/brownfields/default.htm](http://www.dep.state.fl.us/dwm/programs/brownfields/default.htm).

PROTECTION OF WATER RESOURCES

WATER POLLUTION CONTROL

Fla. Stat. §§ 403.011-403.4154; Fla. Admin. Code ch. 62 §§ 4, 40, 40A-E, 302, 520-22, 620, 625, 701, 730

Part I of Chapter 403 provides comprehensive authority for the prevention, abatement, and control of water pollution by FDEP and equivalent local authorities.

Part I of Chapter 403 governs, in part, the following activities: (1) the construction or operation of a stationary installation which will reasonably be expected to be a source of water pollution; (2) the discharge of waste into the waters of the state so as to reduce the quality of the receiving waters below their established classification, including discharges covered by the state National Pollutant Discharge Elimination System program; (3) causing pollution; and (4) damaging natural resources. This Part regulates industrial and domestic

wastewater discharges and stormwater discharges. It also sets forth Florida's Watershed Restoration program, which is developing Total Maximum Daily Loads (TMDLs) for state waters not meeting water quality standards.

Under this Part, the State of Florida administers EPA-approved state NPDES programs except for federal NPDES requirements for stormwater. The State of Florida and EPA Region 4 currently have independent jurisdiction over stormwater discharges.

Florida's water resources protection programs can be found at <http://www.dep.state.fl.us/water/division/standards/>.

PERMITTING OF CONSUMPTIVE USES OF WATER

Fla. Stat. §§ 373.203-373.250; Fla. Admin. Code ch. 62 §§ 40, 40A-E

Part II of Chapter 373 provides FDEP and the state Water Management Districts exclusive authority over consumptive uses of water and its transportation, and governs artesian wells. Part II of Chapter 373 controls the following activities: (1) use and abandonment of artesian wells; (2) consumptive uses of water; (3) the transportation of captured water; and (4) reuse of reclaimed water.

Additional information on consumptive use permitting can be found at <http://www.fdep.state.fl.us/water/division/waterpol/wpwtrmgmtdistricts.htm>.

PROTECTION OF NATURAL RESOURCES

MANAGEMENT AND STORAGE OF SURFACE WATERS

Fla. Stat. §§ 373.403-373.4597; Fla. Admin. Code ch. 62 §§ 40, 40A-E, 312, 330, 340-43, 611

Part IV of Chapter 373 provides FDEP and the state Water Management Districts authority over the construction or operation of stormwater management systems, dams, impoundments, reservoirs, and appurtenant work or works, and provides for an environmental resource permitting process enabling one permit to be issued for a project raising both water and wetland resource management issues (that is, dredging and filling in, on, or over waters of the state) and management and storage of surface waters. It also authorizes the participation of local authorities in the permitting system.

Part IV of Chapter 373 governs the construction or operation of stormwater management systems, dams, impoundments, reservoirs, and appurtenant works which: (1) might otherwise impact the water resources of a Water Management District, including undermining state water quality standards or (2) when conducted in on or over surface waters or wetlands might otherwise not be in the public interest. Part IV also governs dredging and filling in, on, or over, waters of the state. It also prohibits pollution which injures human health or welfare, animal, plant, or aquatic life or property.

Florida's Environmental Resource Permitting (ERP) program combines the state's dredge-and-fill and management and storage of surface waters programs into a single permitting program. ERP permits are processed by either FDEP or the appropriate Water Management District office, depending on the activity for which a permit is sought.

Florida's water resources programs can be found at www.fdep.state.fl.us/water/.

**NATURAL RESOURCE
PROTECTION AND
ACQUISITION**

**Fla. Stat. §§ 259.01-259.1051,
380.012-380.12, 380.20-380.27 &
380.501-380-514**

Chapter 259 sets forth the State of Florida's authorities for land acquisition for conservation or recreation. It contains bonding authority for state capital projects for environmentally endangered lands and for outdoor recreation. It establishes the Conservation and Recreation Lands Trust Fund to purchase interests in land to protect natural resources, protect the environment and provide for natural resource based recreation. The Chapter sets forth state authorities to purchase lands within designated areas of critical state concern. In addition, it contains the program to preserve the quality of life in Florida through acquisition and management of natural resources known as Preservation 2000.

Chapter 259 also contains the Florida Forever program, future successor to Florida's Preservation 2000 land-buying program. Beginning in 2001, this program authorizes the State of Florida to issue bonds (funded primarily from documentary stamp tax revenue) for up to \$300 million per year for 10 years for land acquisition, restoration of environmentally sensitive areas and development of water resources. The program expands Preservation 2000's focus on environmentally sensitive lands to include authority to purchase urban parks and in-holdings, and to implement multiple-purpose use of acquired lands, including water resource development, agriculture, silviculture, and siting of transmission lines and pipelines. The program has two oversight bodies. The Acquisition and Restoration Council reviews management plans and recommends acquisition projects to the Board of Trustees of the Internal Improvement Trust Fund, which, with the Water Management Districts, owns the projects. The Florida Forever Advisory Council establishes goals, performance measures and acquisition project

selection criteria for consideration by the Legislature.

Chapter 380 Part I contains Florida's Environmental Land and Water Management Act, addressing state land and water management policies to guide and coordinate local decisions relating to growth and development. It establishes the Department of Community Affairs (DCA) as the agency responsible for state land planning regarding any development activity. The Chapter sets forth the process for designating specific areas of critical concern and contains the protective regimes for designated areas of critical concern, including Big Cypress, Florida Keys and Apalachicola Bay. It also contains the state coral reef restoration program. The process for state review and approval of development projects determined to have significant regional impacts, the Developments of Regional Impact (DRI) program, is set forth in sections 380.06 through 380.0651. The Florida Land and Water Adjudicatory Commission is given responsibility for ensuring compliance with the DRI and area of critical concern programs.

Part II of Chapter 380 contains Florida's Coastal Management Act. It sets forth the state authority for Florida's federally-approved Coastal Management Program. Part III contains the Florida Communities Trust Act. The Act sets up a non-regulatory agency, the Florida Communities Trust, to assist local governments to implement measures to protect the state's natural areas and conserve natural resources.

MANGROVE TRIMMING AND PRESERVATION ACT

Fla. Stat. §§ 403.9321-403.9333; Fla. Admin. Code § 62-343.070 & ch. 61G10-17

The Mangrove Trimming and Preservation Act prohibits the alteration or trimming of mangroves without a permit unless the activity falls within certain enumerated exceptions. The Act provides for general permits and provides exceptions to permit requirements based upon factors such as tree location, pre-trimmed height and the use of a professional mangrove trimmer. The Act provides for monetary penalties for mangroves illegally trimmed or altered and provides requirements for restoration and mitigation.

This state program's web page is www.fdep.state.fl.us/water/slerp/pds/mangrove.htm.

GROWTH POLICY

Fla. Stat. §§ 163.2511-143.2526

Florida's Growth Policy Act sets forth state policy and incentives to encourage urban community renewal. The State Comprehensive Plan declares that preservation and revitalization of urban areas is a state goal. The Act establishes a program for local governments to designate urban infill and redevelopment (UIR) areas to assist in revitalization of urban centers and to ensure adequate infrastructure, human services, safe neighborhoods, educational facilities, job creation and economic opportunity. An incentive program provides UIR areas with the opportunity for matching grants from local governments. UIR areas are granted relief regarding regulatory requirements of transportation concurrency, Development of Regional Impact thresholds, comprehensive plan amendment, promotion of public transportation projects through multi-modal transportation districts, and school concurrency. Tax credits on state corporate income tax are available for private entities involved in urban revitalization projects.

ELECTRICAL POWER PLANT AND TRANSMISSION LINE SITING

Fla. Stat. §§ 403.501-403.539

The Florida Electrical Power Plant Siting Act provides a procedure for the selection and utilization of sites for electrical generating facilities and a centralized process for handling permit applications for such facilities. It also establishes a centralized and coordinated permitting process for the location of transmission line corridors and the construction and maintenance of transmission lines.

The Florida Electrical Power Plant Siting Act applies to electrical power plants, defined as a steam or solar electrical generating facility using any process or fuel, including nuclear materials, and associated facilities which directly support the construction and operation of the electrical power plant, and associated transmission lines, excluding a plant of less than 75 megawatts in capacity. Covered transmission lines encompass new proposed transmission lines designed to operate at 230 kilovolts and the structures and maintenance and access roads to enable the project to become operational.

NATURAL GAS TRANSMISSION PIPELINE SITING

Fla. Stat. §§ 403.9401-403.9425

The Natural Gas Transmission Pipeline Siting Act establishes a centralized and coordinated permitting process for the location of natural gas transmission pipeline corridors and the construction and maintenance of natural gas transmissions pipelines.

**FLORIDA EXPEDITED
PERMITTING**
Fla. Stat. § 403.973

Section 403.973 establishes an expedited permitting and comprehensive plan amendment process for economic development projects which offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to consider environmental protection. Regional permit action teams are established to review permit applications and local comprehensive plan amendments submitted by certain projects satisfying specified economic development criteria.

**COMMUNITY RIGHT-TO-
KNOW AND HAZARD
DISCLOSURE**

**FLORIDA HAZARDOUS
MATERIALS EMERGENCY
RESPONSE AND COMMUNITY
RIGHT-TO-KNOW ACT OF 1988**
Fla. Stat. §§ 252.81-252.91

Florida's community right-to-know program is substantially similar to its federal analogue, the

Emergency Planning and Community Right-to-Know Act (EPCRA), also known as SARA Title III. EPCRA and the Florida Act require facilities to plan for emergencies, report the presence of hazardous chemicals in the workplace, and provide information on permitted and accidental releases of hazardous substances. Under Florida's Act, companies covered by EPCRA are required to pay an annual fee to the state. A separate lower fee schedule applies to certain petroleum industry facilities. Florida's list of extremely hazardous substances include the federal list plus additional substances identified by the state. Florida requires a one-time registration fee for facilities that handle extremely hazardous substances above the federal threshold planning quantity, in addition to annual registration fees. The Florida Act provides for specific civil and criminal penalties for violations.

Florida's program can be found at web page [http:// www. fdep. state. fl.us/ law/ ber/ default.htm](http://www.fdep.state.fl.us/law/ber/default.htm).