



The Florida Legislature

OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



SUNSET MEMORANDUM

Report No. 07-S30

Department of Environmental Protection, Division of Water Resource Management Options for Legislative Consideration

February 15, 2008

Summary

To support the Sunset Review process, the Legislature directed OPPAGA to assess activities conducted by the Department of Environmental Protection's Division of Water Resource Management. This memo provides information about the division's purpose, organization, responsibilities, resources, and performance.

OPPAGA assessed five policy options for the Legislature to consider regarding the state's water resource management activities. These options include retaining the Division of Water Resource Management and its current functions (Option 1); abolishing the total maximum daily load program and transferring related activities to the U.S. Environmental Protection Agency (Option 2); abolishing the department's environmental resource permitting program and transferring related activities to the state's five water management districts (Option 3); eliminating funding for local water projects (Option 4) and increasing coordination among permitting agencies (Option 5). The memo discusses the advantages and disadvantages of each option.

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Purpose, Organization, and Responsibilities

The Department of Environmental Protection's Division of Water Resource Management is responsible for protecting the quality of Florida's drinking water as well as its rivers, lakes, and wetlands. The division restores lands that have been mined for phosphate and other minerals and establishes the technical basis for setting the state's surface water and ground water quality standards. In addition, the division conducts activities in accordance with federal requirements, including establishing total maximum daily pollution loads. The division also administers funding for local water projects, such as stormwater and wastewater system improvements.

The division is organized into five bureaus and three offices.

- **The Bureau of Water Facilities Funding** administers the clean water state revolving loan fund program, which provide funding for the expansion or improvement of local wastewater and drinking water systems. These programs provide low-interest loans to local governments for planning, designing, and constructing water pollution control and drinking water facilities.¹
- **The Bureau of Beaches and Coastal Systems** manages activities to restore and manage critically eroded beaches, regulates coastal development, and determines shoreline conditions and trends. The bureau's current beach restoration projects are based on three-way cost sharing among local governments, the state, and the federal government.
- **The Bureau of Water Facilities Regulation** administers rules for industrial and domestic wastewater treatment. The bureau manages permitting, compliance and enforcement programs for the state's 4,000 domestic wastewater and industrial wastewater facilities and its 6,300 drinking water systems. The bureau also oversees municipal, industrial, and construction-site stormwater management activities. While the bureau conducts permitting on a limited number of project types, the majority of the permitting, compliance and enforcement work is conducted in the department's six regulatory district offices.
- **The Bureau of Watershed Management** is responsible for establishing total maximum daily loads (TMDLs) in conjunction with the U.S. Environmental Protection Agency. TMDLs represent the maximum amount of a pollutant from all sources that can be present in a water body with a particular designated use without violating water quality standards. TMDLs also provide the basis for identifying strategies to be used to help an impaired water body meet quality standards. Other bureau activities include conducting water quality assessments and developing watershed resource goals.
- **The Bureau of Mine Reclamation** administers laws, rules, and regulations related to reclaiming mined land, issuing mine environmental resource permits, providing mine safety training, managing phosphogypsum produced by phosphate mining, and overseeing mine dam safety. Regulatory activities include permitting mines, overseeing mined land reclamation, monitoring construction and closure of phosphogypsum stacks, and approving wetland mitigation plans.
- **The Office of Submerged Lands and Environmental Resources** administers programs to ensure that development activities in uplands, wetlands and other surface waters do not degrade water quality or habitat for aquatic or wetland dependent wildlife. The office monitors dredging, filling, and construction in wetlands and other surface water, as well as stormwater and surface water management systems in uplands. In addition, the office shares responsibility for implementing the

¹ Current interest rates range from 2.66% to 3.55%.

environmental resource permit program with the state's five Water Management Districts. These permits are required when persons seek to dredge and fill wetlands; construct drainage facilities, dams, or reservoirs; provide storm water containment and treatment; or undertake other activities that affect state waters. The office also processes, in conjunction with the regulatory environmental resource permit, any needed authorization to use sovereign submerged land. While the office conducts permitting on a limited number of project types, the majority of the permitting, compliance, and enforcement work is conducted in the department's six regulatory district offices.

- **The Office of Water Quality Standards** is responsible for establishment and periodic review and revision of the state's water quality standards and for providing technical and regulatory support for projects constructed under the Comprehensive Everglades Restoration Program, the Everglades Forever Act, and the Lake Okeechobee Protection Program.
- **The Office of Water Policy** is responsible for oversight and coordination with the state's five water management districts, including review of district rules, regional water supply planning, establishment of minimum flows and levels, and water conservation initiatives. The office is responsible for preparation of the Florida Water Plan and the Water Resource Implementation Rule, which establishes state water policy consistent with legislative directives.

Resources

The Legislature appropriated the Division of Water Resource Management \$619,843,057 and 381 full-time equivalent positions for Fiscal Year 2007-08. The division's appropriation includes \$102,877,224 in general revenue and \$516,965,833 in trust funds. The division's trust fund appropriations are from a variety of sources, including the Ecosystem Management and Restoration Trust Fund, Grants and Donations Trust Fund, and the Permit Fee Trust Fund.

Legislative outcome measures demonstrate generally positive results for water resource management

The Division of Water Resource Management met or exceeded established standards for six of its nine legislatively mandated performance measures in Fiscal Year 2006-07 (measures achieving established standards are highlighted in Exhibit 1). For example, the division exceeded its legislative standard for the percentage of facilities and sites in compliance, with 93.4% of facilities in compliance compared to the standard of 90%. In addition, the division exceeded the approved standard for groundwater that met designated uses, with 91.7% of groundwater supplies meeting designated uses compared to the legislative goal of 88.9%.

Exhibit 1

The Division Met Standards for 6 of 9 Performance Measures in Fiscal Year 2006-07

Performance Measures		Standard	Actual Performance
Beach Management	Percentage of beaches that provide upland protection, wildlife, or recreation according to statutory requirements	81%	76.8%
Water Resource Protection and Restoration	Percentage of reclaimed water (reuse) capacity relative to total domestic wastewater capacity	56%	57.9%
	Percentage of facilities/sites in compliance	90%	93.4%
	Percentage of surface waters that meet designated uses	88%	88%
	Percentage of ground waters that meet designated uses	88.9%	91.7%
	Percentage of phosphate mined lands that have been reclaimed; and percent of phosphate mined lands that have been reclaimed and released from reclamation obligations	65%/32%	64.5%/31.1%
	Number of total maximum daily loads adopted	149	34
	Percentage of public water systems with no significant health drinking water quality problems	94%	94.5%
Water Supply	Percentage of reclaimed water (reuse) capacity relative to total wastewater capacity	56%	57.9%

Source: The Florida Department of Environmental Protection.

However, the division did not meet its approved goal for the percentage of beaches that provide upland protection, wildlife, or recreation according to statute, attaining 76.8% rather than the 81% standard. The department reported that this occurred because the 2004 and 2005 hurricanes and tropical storms added approximately 55 miles of critically eroded shoreline to the state, which impeded the division's restoration efforts. In addition, the division did not meet the legislative standard for adopting total maximum daily loads, adopting only 34 TMDLs rather than the standard of 149. The department asserted that the current standard is unrealistic and does not reflect programmatic changes established in statute. The department believes a standard of adopting 25 TMDLs per year would be more realistic, based on its extensive data gathering and analysis, water quality modeling, and continuing litigation.

The process of establishing TMDLs continues to be slow, with the federal government continuing to share responsibility for the program

The adoption of total maximum daily loads are important to the protection of Florida's water because they represent the maximum amount of a pollutant from all sources that can be present in a water body with a particular designated use without violating water quality standards. As part of the federal Clean Water Act, state water resource programs were required to establish water quality standards and to implement a water quality management program in areas where water bodies do not meet standards. The act also requires states to develop total maximum daily loads for impaired water bodies. A 1999 U.S. District Court decision ordered the federal Environmental Protection Agency (EPA) to establish TMDLs for 500 water bodies in Florida by 2012, because the state had demonstrated a lack of progress in establishing these standards. The Florida Department of Environmental Protection is to develop TMDLs for those water bodies under the terms of an agreement with the EPA.

Prior OPPAGA reports concluded that while the department had taken steps to address concerns related to adopting TMDLs, progress in adopting standards has been slow. Specifically, in 2003, we reported that the department's general approach to developing TMDLs appeared reasonable, but there were numerous actions needed to improve the program and better manage its costs.² Our 2005 progress report noted that the department had taken steps to address our previous concerns, but that its efforts to develop and implement TMDLs were still in the early stages and it would take many years to determine whether these standards improve state water quality.³ These concerns persist today, with the department only adopting 156 TMDLs to date. However, according to department officials the total number of TMDLs needing to be established changes annually as they evaluate waterbodies. In addition, in a 2006 report, DEP highlighted concerns regarding the water quality of the state's waterbodies, stating "Of the waterbodies that were evaluated, poor water quality was found in 50% of the river and stream miles, 60% of the lake acres (excluding Lake Okeechobee), and 60% of the square miles of estuaries."⁴

The department and water management districts both issue environmental resource permits

The Department of Environmental Protection, along with the state's five water management districts, issues environmental resource permits.⁵ These permits are intended to ensure that construction activities do not degrade water quality (e.g., loss of wetlands, improper construction techniques in waters, or discharges of improperly treated stormwater runoff), cause flooding (e.g., off-site runoff characteristics), or degrade habitat for aquatic or wetland dependent wildlife. The department generally reviews and takes actions on environmental resource permit applications involving a wide range of projects, including solid waste, hazardous waste, domestic waste, and industrial waste facilities; power plants, transmission and communication cables and lines, and natural gas and petroleum facilities; docking facilities and attendant structures; systems serving only one single-family dwelling unit or residential unit not part of a larger common plan of development; and systems located in whole or in part seaward of the coastal construction control line. The water management districts review and take action on all the other environmental resource permit applications.

Permit Types. There are three types of environmental resource permits: noticed general, standard general, and individual.

- **Noticed general permits** are issued by rule for activities that have minimal or no impacts on the environment and do not have any wetland impacts.
- **Standard general permits** are for projects up to 100 acres in size that have minimal wetland impact.
- **Individual environmental resource permits** are for projects of more than 100 acres.

Exemptions are provided by statute and by rule for certain activities. While no permit is required, confirming that activities qualify for an exemption when requested constitutes a significant workload for the department.

Permit Application Process. The department follows a multi-step process for issuing environmental resource permits. The process includes reviewing the permit application for completeness; requesting additional information from the applicant, if an application is not complete; deeming the application complete and

² Justification Review: Water Resource Management Program, Department of Environmental Protection, [Report No. 03-12](#), February 2003.

³ Initial Steps Taken to Implement TMDL Program, Too Early to Determine Water Quality Improvements, [Report No. 05-42](#), August 2005.

⁴ Integrated Water Quality Assessment for Florida: 2006 305(b) Report and 303(d) List Update, Department of Environmental Protection, May 2, 2006.

⁵ See OPPAGA Sunset Memo: Florida's Water Management District Environmental Resource Permitting, Options for Legislative and District Governing Board Consideration, February 2008.

determining whether the application meets requirement for issuance; and issuing the permit and ensuring proper public notice. Through the application process, a permit applicant must demonstrate that a proposed activity will not be harmful to water resources or inconsistent with the overall objectives of the water management district. In addition, the applicant must provide reasonable assurance that state water quality standards will not be violated and such activity in, on, or over surface waters or wetlands is not contrary to the public interest.

Department staff must process environmental resource permit applications within time limits specified by law.⁶ Once an applicant submits a permit application, the division has 30 days to review the application or request additional information. Applicants have 90 days to provide the additional information. When the requested materials have been received, within 30 days division staff must review it and request only information needed to clarify or to answer new questions raised by or directly related to such additional information. The department has an established timeframe of 90 days in their rules for applicants to respond to requests for additional information. Applicants can request an extension to have additional time to respond to an information request; there is no limit on the number of extension requests. Final agency action, meaning either issuance or denial, must occur within 90 days after receipt of a completed application or the last submittal of additional requested information, whichever is the latter, or the permit is issued by default.

Permit Compliance and Enforcement. Once permits are issued, permittees must comply with specified conditions. The department conducts numerous activities to ensure compliance, including reviewing monitoring reports submitted by permittees; conducting inspections during and after project completion; and investigating public complaints.

A permittee can be found non-compliant for several reasons, such as failing to adhere to conditions specified in the permit. For example, a developer may perform activities that have not been authorized by a permit. Similarly, if a developer's project affects five acres of wetlands while the permit only authorizes one acre of impact, they are in violation of permit conditions.

The nature and severity of the non-compliance determines whether the department handles enforcement formally or informally. Informal enforcement actions are conducted by telephone call, courtesy letter, and/or warning letter before a compliance case is turned over for legal enforcement. Informal enforcement actions usually occur when the issue does not represent a danger to life, property or the environment, and the division believes the issue can be resolved with the applicant more expeditiously through informal means. Formal enforcement actions occur if the violation represents a danger to life, property or the environment and/or the permittee had prior non-compliance issues that could not be handled informally. For example, formal enforcement action would be taken if flooding or unauthorized impacts to wetlands occur because of a permittee's actions. The formal process starts with issuing a non-compliance letter, followed by a warning notice and then a violation letter if the problem is not resolved. If, after receiving the violation letter the permittee remains out of compliance, the department may issue a final order or a consent order. Continued non-compliance can result in an administrative hearing and possible revocation of the permit.

As shown in Exhibit 2, the Department of Environmental Protection issued 3,913 environmental resource permits in Fiscal Year 2006-07, the majority of which were individual permits that typically are more complex and have significant impacts. Both the department and applicants met statutory timeframes for processing permit applications. The department took a median of 25 days to request information from applicants, and applicants took an average of 51 days to provide additional requested information. The department met its timelines during the fiscal year, issuing permits of all types in a median of 75 days.

⁶ Section 373.4141, F.S.

Exhibit 2

The Department of Environmental Protection Issued 3,913 Environmental Resource Permits in Fiscal Year 2006-07

Permit Type	Individual	General	Noticed General	Total
Number issued	2,178	1,134	601	3,913
Median days to issue permit	118	30	35	75

Source: OPPAGA analysis of Department of Environmental Protection data. Fiscal Year 2006-07.

State funding for local water projects is significant

In recent years the Legislature has appropriated significant funds for local water projects. These projects are funded through Community Budget Issue Requests for wastewater, stormwater, surface water improvements, and drinking water system improvements or expansions. This annual process is coordinated with the Department of Environmental Protection's Division of Water Resource Management. The amount of money available each year varies widely and depends exclusively on legislative appropriations, and local matching funds may be required. The appropriations have ranged from approximately \$117 million in trust funds in Fiscal Year 2005-06, to \$193 million in Fiscal Year 2006-07, and \$119 million in Fiscal Year 2007-08.

Counties, municipalities, water management districts, and special districts with legal responsibility for water quality improvement, water management, stormwater management, wastewater management, lake and river restoration projects, and drinking water projects may qualify for such funds. Projects must meet the criteria of protecting public health or the environment and implement a state, local or regional plan related to water quality protection. The department is charged with reviewing projects relative to these and any criteria established by the Legislature and Governor's Office; the department requests information from the local government entities in order to facilitate a thorough review. DEP submits its evaluation of all projects to the Legislature and Governor's Office so that this information can be considered during the regular session's appropriations process. The department has no authority to prioritize or recommend funding for any project.

Options for Legislative Consideration

The Department of Environmental Protection's Division of Water Resource Management is responsible for protecting the quality of Florida's drinking water as well as its rivers, lakes and wetlands; to fulfill its mission, the division establishes the technical basis for setting the state's surface water and ground water quality standards. In addition, the division conducts several activities in accordance with federal requirements, including establishing total maximum daily loads, and provides funding for local water projects.

Exhibit 4 below presents five options for the Legislature to consider for the Division of Water Resource Management that would transfer or eliminate some of the department's responsibilities. These options include retaining the Division of Water Resource Management and its current functions (Option 1); abolishing the total maximum daily load program and transferring related activities to the U.S. Environmental Protection Agency (Option 2); abolishing the department's environmental resource permitting program and transferring related activities to the state's five water management districts (Option 3); eliminating funding for local water projects (Option 4); and increasing coordination among permitting agencies (Option 5). The exhibit outlines the policy options and describes the advantages and disadvantages of each option.

Exhibit 4

The Legislature Could Consider Five Options to Modify the Division of Water Resource Management Program

Option	Advantages	Disadvantages
Option 1 – Retain the Division of Water Resource Management		
Retain the Division of Water Resource management and its current functions related to permitting, enforcement, monitoring, and data assessment.	<ul style="list-style-type: none"> ▪ Helps ensure that the state is in compliance with federal regulations ▪ Enables the state to maintain flexibility to consider local conditions in enforcing provisions of federal regulations ▪ Helps ensure receipt of federal funds associated with beach restoration 	<ul style="list-style-type: none"> ▪ Florida incurs costs associated with operating programs at the state level
Option 2 – Transfer Responsibility for Total Maximum Daily Load program to Federal Government		
Abolish and transfer the total maximum daily load program to the federal government. All water quality testing, analysis, monitoring, and setting of TMDLs would be conducted by the U.S. Environmental Protection Agency.	<ul style="list-style-type: none"> ▪ Would reduce size of state government and state program costs by \$12.1 million ▪ Program staff could be eliminated or assigned other duties 	<ul style="list-style-type: none"> ▪ Would eliminate the state's ability to set total maximum daily load pollution limits based on consideration of local conditions; federal government may not be responsive to state and local needs ▪ Failure to implement the program as required could result in loss of federal Clean Water Act grant funds ▪ Impaired surface waters may not be restored ▪ May encounter resistance from environmental and business stakeholders
Option 3 – Transfer Environmental Resource Permitting Program to Water Management Districts		
Abolish the department's environmental resource permitting program and transfer responsibilities to water management districts. The districts currently issue similar permits and have staff trained to process applications and provide technical assistance to permittees.	<ul style="list-style-type: none"> ▪ Would reduce size of state government and program costs by \$22.5 million ▪ Department staff could be eliminated or assigned other duties ▪ All environmental resource permitting would be done by water management districts, which would streamline the process for permittees ▪ The department could monitor permitting of water management districts as the department has general supervisory authority over districts 	<ul style="list-style-type: none"> ▪ Would increase water management district workload and costs, which are largely supported by ad valorem taxes ▪ May encounter resistance from environmental and business stakeholders
Option 4 – Eliminate Funding for Local Water Projects		
State funding for local water projects would be discontinued	<ul style="list-style-type: none"> ▪ Would reduce state expenditures by approximately \$100,000,000 annually 	<ul style="list-style-type: none"> ▪ Would reduce funding to local governments for expansion or improvement of local wastewater and drinking water systems ▪ May encounter resistance from environmental and local government, and business stakeholders ▪ Local governments may not be able to compensate for the loss of state funding, which may limit development of critical infrastructure and ultimately, growth ▪ May have a negative impact on water quality

Option	Advantages	Disadvantages
Option 5 – Increase coordination among permitting agencies		
<p>The Legislature would direct DEP to establish a working group to develop strategies to increase coordination among permitting agencies at the federal, state, and local level. Working group members could include staff from DEP, water management districts, the U.S. Army Corp of Engineers, and local government representatives. The working group would submit a report proposing any statutory changes that would be necessary to implement the strategies to the Speaker of House and Senate President by January 1, 2009.</p>	<ul style="list-style-type: none"> ▪ Would provide a more efficient delivery of government services ▪ May reduce costs to the public and private sector by reducing the need to obtain approvals from multiple agencies ▪ May avoid permitting processing delays 	<ul style="list-style-type: none"> ▪ May increase staff time and costs to conduct working group meetings

Source: OPPAGA analysis.