



City of North Port
NEIGHBORHOOD DEVELOPMENT SERVICES
DEPARTMENT
Planning & Zoning Division
941-429-7156



MEMORANDUM

TO: A. Jerome Fletcher II, ICMA-CM, MPA, City Manager

THRU: Jason Yarborough, ICMA-CM, Assistant City Manager

THRU: Alaina Ray, AICP, Neighborhood Development Services Director *AR*

FROM: Lori Barnes, AICP, CPM, Planning & Zoning Manager **Lori Barnes** Digitally signed by Lori Barnes
Date: 2023.03.09 13:22:34
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SUBJECT: Implications of Designating Warm Mineral Springs as an Outstanding Florida Spring

DATE: March 9, 2023

HB 1505, which is being considered in the 2023 Florida legislative session, if passed, would designate Warm Mineral Springs (WMS) as an Outstanding Florida Spring (OFS) under Chapter 373, Part VIII of the Florida Statutes (attached). This memo is intended to provide a broad overview of the implications associated with an OFS designation.

If HB 1505 is signed into law, WMS would be subject to assessment by the Florida Department of Environmental Protection (FDEP) pursuant Chapter 403, Section 403.067 of the Florida Statutes (attached). An impairment determination would be made under the numeric nutrient standards for spring vents. A nutrient total maximum daily load would be adopted for the spring and the FDEP, in conjunction with Southwest Florida Water Management District, would initiate development and adoption of a Basin Action Management Plan (BMAP).

According to FDEP, "A basin management action plan (BMAP) is a framework for water quality restoration that contains local and state commitments to reduce pollutant loading through current and future projects and strategies. BMAPs contain a comprehensive set of solutions, such as permit limits on wastewater facilities, urban and agricultural best management practices, and conservation programs designed to achieve pollutant reductions established by a total maximum daily load (TMDL). These broad-based plans are developed with local stakeholders and rely on local input and commitment for development and successful implementation. BMAPs are adopted by Florida Department of Environmental Protection Secretarial Order and are legally enforceable;" designed to be implemented in 5-year phases over a 20-year time frame.

A WMS BMAP would establish a priority focus area. The priority focus areas for existing springs designated as OFS vary, with the smallest comprising 3,089 acres (Gemini) and the largest 395,764 (Troy Peakcock Lafayette Blue Falmouth, which includes three river basins). In the case of WMS, the BMAP could include all or part of the Lower Myakka River basin (14,017-acres), or could encompass more than one basin, as determined by FDEP. Due to the area and location of the basin(s), Charlotte and Sarasota County participation would be required in addition to the City's.

In conjunction with BMAP adoption, City compliance with which is mandatory, multiple comprehensive

plan amendments and code amendments, including but not limited to the following, would be required to address agricultural best practices, conservation/limitations on development intensity and impervious surfaces, erosion control, fertilizer, stormwater and pollution control, reclaimed water, recharge areas, prohibition of septic tanks on smaller lots (as determined by FDEP; the plan for Deleon Springs only allows septic on lots 2.5-acres or larger), and water quality monitoring.

Perhaps the most substantial of the BMAP requirement would involve a wastewater treatment plan to provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load requirements applicable to the domestic wastewater treatment facility. A wastewater remediation plan to provide for elimination of existing onsite wastewater management systems would also be mandatory.

While the recognition of Warm Mineral Springs as an Outstanding Florida Spring may be desired, it is important for the City Commission to be aware of the long-term commitments, both budgetary and manpower related, associated with the designation and subsequent BMAP adoption. Similarly, the City Commission should consider the associated impacts to the City's growth and economic development potential in the area surrounding WMS.

FLORIDA SPRINGS AND AQUIFER PROTECTION ACT

- 373.801 Legislative findings and intent.
- 373.802 Definitions.
- 373.803 Delineation of priority focus areas for Outstanding Florida Springs.
- 373.805 Minimum flows and minimum water levels for Outstanding Florida Springs.
- 373.807 Protection of water quality in Outstanding Florida Springs.
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373.801 Legislative findings and intent.—

(1) The Legislature finds that springs are a unique part of this state's scenic beauty. Springs provide critical habitat for plants and animals, including many endangered or threatened species. Springs also provide immeasurable natural, recreational, economic, and inherent value. Springs are of great scientific importance in understanding the diverse functions of aquatic ecosystems. Water quality of springs is an indicator of local conditions of the Floridan Aquifer, which is a source of drinking water for many residents of this state. Water flows in springs may reflect regional aquifer conditions. In addition, springs provide recreational opportunities for swimming, canoeing, wildlife watching, fishing, cave diving, and many other activities in this state. These recreational opportunities and the accompanying tourism they provide are a benefit to local economies and the economy of the state as a whole.

(2) The Legislature finds that the water quantity and water quality in springs may be related. For regulatory purposes, the department has primary responsibility for water quality; the water management districts have primary responsibility for water quantity; and the Department of Agriculture and Consumer Services has primary responsibility for the development and implementation of agricultural best management practices. Local governments have primary responsibility for providing domestic wastewater collection and treatment services and stormwater management. The foregoing responsible entities must coordinate to restore and maintain the water quantity and water quality of the Outstanding Florida Springs.

(3) The Legislature recognizes that:

(a) A spring is only as healthy as its aquifer system. The groundwater that supplies springs is derived from water that recharges the aquifer system in the form of seepage from the land surface and through direct conduits, such as sinkholes. Springs may be adversely affected by polluted runoff from urban and agricultural lands; discharges resulting from inadequate wastewater and stormwater management practices; stormwater runoff; and reduced water levels of the Floridan Aquifer. As a result, the hydrologic and environmental conditions of a spring or spring run are directly influenced by activities and land uses within a springshed and by water withdrawals from the Floridan Aquifer.

(b) Springs, whether found in urban or rural settings, or on public or private lands, may be threatened by actual or potential flow reductions and declining water quality. Many of this state's springs are demonstrating signs of significant ecological imbalance, increased nutrient loading, and declining flow. Without effective remedial action, further declines in water quality and water quantity may occur.

(c) Springshed boundaries and areas of high vulnerability within a springshed need to be identified and delineated using the best available data.

(d) Springsheds typically cross water management district boundaries and local government jurisdictional boundaries, so a coordinated statewide springs protection plan is needed.

(e) The aquifers and springs of this state are complex systems affected by many variables and influences.

(4) The Legislature recognizes that action is urgently needed and, as additional data is acquired, action must be modified.

History.—s. 23, ch. 2016-1.

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

(1) "Department" means the Department of Environmental Protection, which includes the Florida Geological Survey or its successor agencies.

(2) "Local government" means a county or municipal government the jurisdictional boundaries of which include an Outstanding Florida Spring or any part of a springshed or delineated priority focus area of an Outstanding Florida Spring.

(3) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land on which the owner has the legal right to install such system.

The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

(4) "Outstanding Florida Spring" includes all historic first magnitude springs, including their associated spring runs, as determined by the department using the most recent Florida Geological Survey springs bulletin, and the following additional springs, including their associated spring runs:

- (a) De Leon Springs;
- (b) Peacock Springs;
- (c) Poe Springs;
- (d) Rock Springs;
- (e) Wekiwa Springs; and
- (f) Gemini Springs.

The term does not include submarine springs or river rises.

(5) "Priority focus area" means the area or areas of a basin where the Floridan Aquifer is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring, as determined by the department in consultation with the appropriate water management districts, and delineated in a basin management action plan.

(6) "Springshed" means the areas within the groundwater and surface water basins which contribute, based upon all relevant facts, circumstances, and data, to the discharge of a spring as defined by potentiometric surface maps and surface watershed boundaries.

(7) "Spring run" means a body of flowing water that originates from a spring or whose primary source of water is a spring or springs under average rainfall conditions.

(8) "Spring vent" means a location where groundwater flows out of a natural, discernible opening in the ground onto the land surface or into a predominantly fresh surface water body.

History.—s. 24, ch. 2016-1.

373.803 Delineation of priority focus areas for Outstanding Florida Springs.—Using the best data available from the water management districts and other credible sources, the department, in coordination with the water management districts, shall delineate priority focus areas for each Outstanding Florida Spring or group of springs that contains one or more Outstanding Florida Springs and is identified as impaired in accordance with s. 373.807. In delineating priority focus areas, the department shall consider groundwater travel time to the spring, hydrogeology, nutrient load, and any other factors that may lead to degradation of an Outstanding Florida Spring. The delineation of priority focus areas must be completed by July 1, 2018, shall use understood and identifiable boundaries such as roads or political jurisdictions for ease of implementation, and is effective upon incorporation in a basin management action plan.

History.—s. 25, ch. 2016-1.

373.805 Minimum flows and minimum water levels for Outstanding Florida Springs.—

(1) At the time a minimum flow or minimum water level is adopted pursuant to s. 373.042 for an Outstanding Florida Spring, if the spring is below or is projected within 20 years to fall below the minimum flow or minimum water level, a water management district or the department shall concurrently adopt a recovery or prevention strategy.

(2) When a minimum flow or minimum water level for an Outstanding Florida Spring is revised pursuant to s. 373.0421(3), if the spring is below or is projected within 20 years to fall below the minimum flow or minimum water level, a water management district or the department shall concurrently adopt a recovery or prevention strategy or modify an existing recovery or prevention strategy. A district or the department may adopt the revised minimum flow or minimum water level before the adoption of a recovery or prevention strategy if the revised minimum flow or minimum water level is less constraining on existing or projected future consumptive uses.

(3) For an Outstanding Florida Spring without an adopted recovery or prevention strategy, if a district or the department determines the spring has fallen below, or is projected within 20 years to fall below, the adopted minimum flow or minimum water level, a water management district or the department shall expeditiously adopt a recovery or prevention strategy.

(4) The recovery or prevention strategy for each Outstanding Florida Spring must, at a minimum, include:

- (a) A listing of all specific projects identified for implementation of the plan;
- (b) A priority listing of each project;
- (c) For each listed project, the estimated cost of and the estimated date of completion;
- (d) The source and amount of financial assistance to be made available by the water management district for each listed project, which may not be less than 25 percent of the total project cost unless a specific funding source or sources are identified which will provide more than 75 percent of the total project cost. The Northwest Florida Water Management District and the Suwannee River Water Management District are not required to meet the minimum requirement to provide financial assistance pursuant to this paragraph;
- (e) An estimate of each listed project's benefit to an Outstanding Florida Spring; and
- (f) An implementation plan designed with a target to achieve the adopted minimum flow or minimum water level no more than 20 years after the adoption of a recovery or prevention strategy.

The water management district or the department shall develop a schedule establishing 5-year, 10-year, and 15-year targets for achieving the adopted minimum flows or minimum water levels. The schedule shall be used to provide guidance for planning and funding purposes and is exempt from chapter 120.

(5) A local government may apply to the department for a single extension of up to 5 years for any project in an adopted recovery or prevention strategy. The department may grant the extension if the local government provides to the department sufficient evidence that an extension is in the best interest of the public. For a local government in a rural area of opportunity, as defined in s. 288.0656, the department may grant a single extension of up to 10 years.

History.—s. 26, ch. 2016-1.

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2016, the department shall initiate assessment, pursuant to s. 403.067(3), of Outstanding Florida Springs or spring systems for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2018.

(1)(a) Concurrent with the adoption of a nutrient total maximum daily load for an Outstanding Florida Spring, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan, as specified in s. 403.067. For an Outstanding Florida Spring with a nutrient total maximum daily load adopted before July 1, 2016, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan by July 1, 2016. During the development of a basin management action plan, if the department identifies onsite sewage treatment and disposal systems as contributors of at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve the total maximum daily load, the basin management action plan shall include an onsite sewage treatment and disposal system remediation plan pursuant to subsection (3) for those systems identified as requiring remediation.

(b) A basin management action plan for an Outstanding Florida Spring shall be adopted within 2 years after its initiation and must include, at a minimum:

1. A list of all specific projects and programs identified to implement a nutrient total maximum daily load;
2. A list of all specific projects identified in any incorporated onsite sewage treatment and disposal system remediation plan, if applicable;
3. A priority rank for each listed project;
4. For each listed project, a planning level cost estimate and the estimated date of completion;

5. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project;
6. An estimate of each listed project's nutrient load reduction;
7. Identification of each point source or category of nonpoint sources, including, but not limited to, urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and stormwater facilities. An estimated allocation of the pollutant load must be provided for each point source or category of nonpoint sources; and
8. An implementation plan designed with a target to achieve the nutrient total maximum daily load no more than 20 years after the adoption of a basin management action plan.

The department shall develop a schedule establishing 5-year, 10-year, and 15-year targets for achieving the nutrient total maximum daily load. The schedule shall be used to provide guidance for planning and funding purposes and is exempt from chapter 120.

(c) For a basin management action plan adopted before July 1, 2016, which addresses an Outstanding Florida Spring, the department or the department in conjunction with a water management district must revise the plan if necessary to comply with this section by July 1, 2018.

(d) A local government may apply to the department for a single extension of up to 5 years for any project in an adopted basin management action plan. A local government in a rural area of opportunity, as defined in s. 288.0656, may apply for a single extension of up to 10 years for such a project. The department may grant the extension if the local government provides to the department sufficient evidence that an extension is in the best interest of the public.

(2) By July 1, 2017, each local government, as defined in s. 373.802(2), that has not adopted an ordinance pursuant to s. 403.9337, shall develop, enact, and implement an ordinance pursuant to that section. It is the intent of the Legislature that ordinances required to be adopted under this subsection reflect the latest scientific information, advancements, and technological improvements in the industry.

(3) As part of a basin management action plan that includes an Outstanding Florida Spring, the department, relevant local governments, and relevant local public and private wastewater utilities shall develop an onsite sewage treatment and disposal system remediation plan for a spring if the department determines onsite sewage treatment and disposal systems within a priority focus area contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve the total maximum daily load. The plan shall identify cost-effective and financially feasible projects necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems and shall be completed and adopted as part of the basin management action plan no later than the first 5-year milestone required by subparagraph (1)(b)8. The department is the lead agency in coordinating the preparation of and the adoption of the plan. The department shall:

(a) Collect and evaluate credible scientific information on the effect of nutrients, particularly forms of nitrogen, on springs and springs systems; and

(b) Develop a public education plan to provide area residents with reliable, understandable information about onsite sewage treatment and disposal systems and springs.

In addition to the requirements in s. 403.067, the plan shall include options for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, connection to a central sewerage system, or other action for an onsite sewage treatment and disposal system or group of systems within a priority focus area that contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve a total maximum daily load. For these systems, the department shall include in the plan a priority ranking for each system or group of systems that requires remediation and shall award funds to implement the remediation projects contingent on an appropriation in the General Appropriations Act, which may include all or part of the costs necessary for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, initial connection to a central sewerage system, or other action. In awarding

funds, the department may consider expected nutrient reduction benefit per unit cost, size and scope of project, relative local financial contribution to the project, and the financial impact on property owners and the community. The department may waive matching funding requirements for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

(4) The department shall provide notice to a local government of all permit applicants under s. 403.814(12) in a priority focus area of an Outstanding Florida Spring over which the local government has full or partial jurisdiction.
History.—s. 27, ch. 2016-1; s. 37, ch. 2020-150.

373.811 Prohibited activities within a priority focus area.—The following activities are prohibited within a priority focus area in effect for an Outstanding Florida Spring:

(1) New domestic wastewater disposal facilities, including rapid infiltration basins, with permitted capacities of 100,000 gallons per day or more, except for those facilities that meet an advanced wastewater treatment standard of no more than 3 mg/l total nitrogen, expressed as N, on an annual permitted basis, or a more stringent treatment standard if the department determines the more stringent standard is necessary to attain a total maximum daily load for the Outstanding Florida Spring.

(2) New onsite sewage treatment and disposal systems on lots of less than 1 acre, if the addition of the specific systems conflicts with an onsite treatment and disposal system remediation plan incorporated into a basin management action plan in accordance with s. 373.807(3).

(3) New facilities for the disposal of hazardous waste.

(4) The land application of Class A or Class B domestic wastewater biosolids not in accordance with a department approved nutrient management plan establishing the rate at which all biosolids, soil amendments, and sources of nutrients at the land application site can be applied to the land for crop production while minimizing the amount of pollutants and nutrients discharged to groundwater or waters of the state.

(5) New agriculture operations that do not implement best management practices, measures necessary to achieve pollution reduction levels established by the department, or groundwater monitoring plans approved by a water management district or the department.

History.—s. 28, ch. 2016-1.

373.813 Rules.—

(1) The department shall adopt rules to improve water quantity and water quality to administer this part, as applicable.

(2)(a) The Department of Agriculture and Consumer Services is the lead agency coordinating the reduction of agricultural nonpoint sources of pollution for the protection of Outstanding Florida Springs. The Department of Agriculture and Consumer Services and the department, pursuant to s. 403.067(7)(c)4., shall study new or revised agricultural best management practices for improving and protecting Outstanding Florida Springs and, if necessary, in cooperation with applicable local governments and stakeholders, initiate rulemaking to require the implementation of such practices within a reasonable period.

(b) The department, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences shall cooperate in conducting the necessary research and demonstration projects to develop improved or additional nutrient management tools, including the use of controlled release fertilizer that can be used by agricultural producers as part of an agricultural best management practices program. The development of such tools must reflect a balance between water quality improvement and agricultural productivity and, if applicable, must be incorporated into the revised agricultural best management practices adopted by rule by the Department of Agriculture and Consumer Services.

History.—s. 29, ch. 2016-1.

Select Year: 2022

The 2022 Florida Statutes (including 2022 Special Session A and 2023 Special Session B)

[Title XXIX](#)
PUBLIC HEALTH

[Chapter 403](#)
ENVIRONMENTAL CONTROL

[View Entire Chapter](#)

403.067 Establishment and implementation of total maximum daily loads.—

(1) LEGISLATIVE FINDINGS AND INTENT.—In furtherance of public policy established in s. [403.021](#), the Legislature declares that the waters of the state are among its most basic resources and that the development of a total maximum daily load program for state waters as required by s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. will promote improvements in water quality throughout the state through the coordinated control of point and nonpoint sources of pollution. The Legislature finds that, while point and nonpoint sources of pollution have been managed through numerous programs, better coordination among these efforts and additional management measures may be needed in order to achieve the restoration of impaired water bodies. The scientifically based total maximum daily load program is necessary to fairly and equitably allocate pollution loads to both nonpoint and point sources. Implementation of the allocation shall include consideration of a cost-effective approach coordinated between contributing point and nonpoint sources of pollution for impaired water bodies or water body segments and may include the opportunity to implement the allocation through nonregulatory and incentive-based programs. The Legislature further declares that the Department of Environmental Protection shall be the lead agency in administering this program and shall coordinate with local governments, water management districts, the Department of Agriculture and Consumer Services, local soil and water conservation districts, environmental groups, regulated interests, other appropriate state agencies, and affected pollution sources in developing and executing the total maximum daily load program.

(2) LIST OF SURFACE WATERS OR SEGMENTS.—In accordance with s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq., the department must submit periodically to the United States Environmental Protection Agency a list of surface waters or segments for which total maximum daily load assessments will be conducted. The assessments shall evaluate the water quality conditions of the listed waters and, if such waters are determined not to meet water quality standards, total maximum daily loads shall be established, subject to the provisions of subsection (4). The department shall establish a priority ranking and schedule for analyzing such waters.

(a) The list, priority ranking, and schedule cannot be used in the administration or implementation of any regulatory program. However, this paragraph does not prohibit any agency from employing the data or other information used to establish the list, priority ranking, or schedule in administering any program.

(b) The list, priority ranking, and schedule prepared under this subsection shall be made available for public comment, but shall not be subject to challenge under chapter 120.

(c) The provisions of this subsection are applicable to all lists prepared by the department and submitted to the United States Environmental Protection Agency pursuant to s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq., including those submitted prior to the effective date of this act, except as provided in subsection (4).

(d) If the department proposes to implement total maximum daily load calculations or allocations established prior to the effective date of this act, the department shall adopt those calculations and allocations by rule by the secretary pursuant to ss. [120.536\(1\)](#) and [120.54](#) and paragraph (6)(c).

(3) ASSESSMENT.—

(a) Based on the priority ranking and schedule for a particular listed water body or water body segment, the department shall conduct a total maximum daily load assessment of the basin in which the water body or water body segment is located using the methodology developed pursuant to paragraph (b). In conducting this assessment, the department shall coordinate with the local water management district, the Department of Agriculture and Consumer Services, other appropriate state agencies, soil and water conservation districts, environmental groups, regulated interests, and other interested parties.

(b) The department shall adopt by rule a methodology for determining those waters which are impaired. The rule shall provide for consideration as to whether water quality standards codified in chapter 62-302, Florida Administrative Code, are being exceeded, based on objective and credible data, studies and reports, including surface water improvement and management plans approved by water management districts and pollutant load reduction goals developed according to department rule. Such rule also shall set forth:

1. Water quality sample collection and analysis requirements, accounting for ambient background conditions, seasonal and other natural variations;
2. Approved methodologies;
3. Quality assurance and quality control protocols;
4. Data modeling; and
5. Other appropriate water quality assessment measures.

(c) If the department has adopted a rule establishing a numerical criterion for a particular pollutant, a narrative or biological criterion may not be the basis for determining an impairment in connection with that pollutant unless the department identifies specific factors as to why the numerical criterion is not adequate to protect water quality. If water quality nonattainment is based on narrative or biological criteria, the specific factors concerning particular pollutants shall be identified prior to a total maximum daily load being developed for those criteria for that surface water or surface water segment.

(4) APPROVED LIST.—If the department determines, based on the total maximum daily load assessment methodology described in subsection (3), that water quality standards are not being achieved and that technology-based effluent limitations and other pollution control programs under local, state, or federal authority, including Everglades restoration activities pursuant to s. [373.4592](#) and the National Estuary Program, which are designed to restore such waters for the pollutant of concern are not sufficient to result in attainment of applicable surface water quality standards, it shall confirm that determination by issuing a subsequent, updated list of those water bodies or segments for which total maximum daily loads will be calculated. In association with this updated list, the department shall establish priority rankings and schedules by which water bodies or segments will be subjected to total maximum daily load calculations. If a surface water or water segment is to be listed under this subsection, the department must specify the particular pollutants causing the impairment and the concentration of those pollutants causing the impairment relative to the water quality standard. This updated list shall be approved and amended by order of the department subsequent to completion of an assessment of each water body or water body segment, and submitted to the United States Environmental Protection Agency. Each order shall be subject to challenge under ss. [120.569](#) and [120.57](#).

(5) REMOVAL FROM LIST.—At any time throughout the total maximum daily load process, surface waters or segments evaluated or listed under this section shall be removed from the lists described in subsection (2) or subsection (4) upon demonstration that water quality criteria are being attained, based on data equivalent to that required by rule under subsection (3).

(6) CALCULATION AND ALLOCATION.—

(a) Calculation of total maximum daily load.

1. Prior to developing a total maximum daily load calculation for each water body or water body segment on the list specified in subsection (4), the department shall coordinate with applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources to determine the information required, accepted methods of data collection and analysis, and quality

control/quality assurance requirements. The analysis may include mathematical water quality modeling using approved procedures and methods.

2. The department shall develop total maximum daily load calculations for each water body or water body segment on the list described in subsection (4) according to the priority ranking and schedule unless the impairment of such waters is due solely to activities other than point and nonpoint sources of pollution. For waters determined to be impaired due solely to factors other than point and nonpoint sources of pollution, no total maximum daily load will be required. A total maximum daily load may be required for those waters that are impaired predominantly due to activities other than point and nonpoint sources. The total maximum daily load calculation shall establish the amount of a pollutant that a water body or water body segment may receive from all sources without exceeding water quality standards, and shall account for seasonal variations and include a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. The total maximum daily load may be based on a pollutant load reduction goal developed by a water management district, provided that such pollutant load reduction goal is promulgated by the department in accordance with the procedural and substantive requirements of this subsection.

(b) Allocation of total maximum daily loads. The total maximum daily loads shall include establishment of reasonable and equitable allocations of the total maximum daily load between or among point and nonpoint sources that will alone, or in conjunction with other management and restoration activities, provide for the attainment of the pollutant reductions established pursuant to paragraph (a) to achieve water quality standards for the pollutant causing impairment. The allocations may establish the maximum amount of the water pollutant that may be discharged or released into the water body or water body segment in combination with other discharges or releases. Allocations may also be made to individual basins and sources or as a whole to all basins and sources or categories of sources of inflow to the water body or water body segments. An initial allocation of allowable pollutant loads among point and nonpoint sources may be developed as part of the total maximum daily load. However, in such cases, the detailed allocation to specific point sources and specific categories of nonpoint sources shall be established in the basin management action plan pursuant to subsection (7). The initial and detailed allocations shall be designed to attain the pollutant reductions established pursuant to paragraph (a) and shall be based on consideration of the following:

1. Existing treatment levels and management practices;
2. Best management practices established and implemented pursuant to paragraph (7)(c);
3. Enforceable treatment levels established pursuant to state or local law or permit;
4. Differing impacts pollutant sources and forms of pollutant may have on water quality;
5. The availability of treatment technologies, management practices, or other pollutant reduction measures;
6. Environmental, economic, and technological feasibility of achieving the allocation;
7. The cost benefit associated with achieving the allocation;
8. Reasonable timeframes for implementation;
9. Potential applicability of any moderating provisions such as variances, exemptions, and mixing zones; and
10. The extent to which nonattainment of water quality standards is caused by pollution sources outside of Florida, discharges that have ceased, or alterations to water bodies prior to the date of this act.

(c) Adoption of rules. The total maximum daily load calculations and allocations established under this subsection for each water body or water body segment shall be adopted by rule by the secretary pursuant to ss. [120.536\(1\)](#), [120.54](#), and [403.805](#). Where additional data collection and analysis are needed to increase the scientific precision and accuracy of the total maximum daily load, the department is authorized to adopt phased total maximum daily loads that are subject to change as additional data becomes available. Where phased total maximum daily loads are proposed, the department shall, in the detailed statement of facts and circumstances justifying the rule, explain why the data are inadequate so as to justify a phased total maximum daily load. The rules adopted pursuant to this paragraph are not subject to approval by the Environmental Regulation Commission and are not subject to the provisions of s. [120.541\(3\)](#). As part of the rule development process, the department shall hold at least one public workshop in the vicinity of the water body or water body segment for which the total maximum daily load is being developed. Notice of the public workshop shall be published not less than 5 days nor

more than 15 days before the public workshop in a newspaper of general circulation in the county or counties containing the water bodies or water body segments for which the total maximum daily load calculation and allocation are being developed.

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) *Basin management action plans.*—

1. In developing and implementing the total maximum daily load for a water body, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, when appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). When appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies at least 5 days, but not more than 15 days, before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan shall include:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151;

b. A description of best management practices adopted by rule;

c. A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project;

d. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable; and

e. A planning-level estimate of each listed project's expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement this section.

6. The basin management action plan must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable

progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5 years, and revisions to the plan shall be made as appropriate. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8. The department's rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or water body segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

9. In order to promote resilient wastewater utilities, if the department identifies domestic wastewater treatment facilities or onsite sewage treatment and disposal systems as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the department determines remediation is necessary to achieve the total maximum daily load, a basin management action plan for a nutrient total maximum daily load must include the following:

a. A wastewater treatment plan developed by each local government, in cooperation with the department, the water management district, and the public and private domestic wastewater treatment facilities within the jurisdiction of the local government, that addresses domestic wastewater. The wastewater treatment plan must:

(I) Provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load requirements applicable to the domestic wastewater treatment facility.

(II) Include the permitted capacity in average annual gallons per day for the domestic wastewater treatment facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a projected timeline of the dates by which the construction of any facility improvements will begin and be completed and the date by which operations of the improved facility will begin; the estimated cost of the improvements; and the identity of responsible parties.

The wastewater treatment plan must be adopted as part of the basin management action plan no later than July 1, 2025. A local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility within its jurisdiction to improve water quality necessary to achieve a total maximum daily load. A local government is not responsible for a private domestic wastewater facility's compliance with a basin management action plan unless such facility is operated through a public-private partnership to which the local government is a party.

b. An onsite sewage treatment and disposal system remediation plan developed by each local government in cooperation with the department, the Department of Health, water management districts, and public and private domestic wastewater treatment facilities.

(I) The onsite sewage treatment and disposal system remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for onsite sewage treatment and disposal systems. To identify cost-effective and financially feasible projects for remediation of onsite sewage treatment and disposal systems, the local government shall:

(A) Include an inventory of onsite sewage treatment and disposal systems based on the best information available;

(B) Identify onsite sewage treatment and disposal systems that would be eliminated through connection to existing or future central domestic wastewater infrastructure in the jurisdiction or domestic wastewater service area of the local government, that would be replaced with or upgraded to enhanced nutrient-reducing onsite sewage treatment and disposal systems, or that would remain on conventional onsite sewage treatment and disposal systems;

(C) Estimate the costs of potential onsite sewage treatment and disposal system connections, upgrades, or replacements; and

(D) Identify deadlines and interim milestones for the planning, design, and construction of projects.

(II) The department shall adopt the onsite sewage treatment and disposal system remediation plan as part of the basin management action plan no later than July 1, 2025, or as required for Outstanding Florida Springs under s. [373.807](#).

10. When identifying wastewater projects in a basin management action plan, the department may not require the higher cost option if it achieves the same nutrient load reduction as a lower cost option. A regulated entity may choose a different cost option if it complies with the pollutant reduction requirements of an adopted total maximum daily load and meets or exceeds the pollution reduction requirement of the original project.

(b) *Total maximum daily load implementation.*—

1. The department shall be the lead agency in coordinating the implementation of the total maximum daily loads through existing water quality protection programs. Application of a total maximum daily load by a water management district must be consistent with this section and does not require the issuance of an order or a separate action pursuant to s. [120.536\(1\)](#) or s. [120.54](#) for the adoption of the calculation and allocation previously established by the department. Such programs may include, but are not limited to:

- a. Permitting and other existing regulatory programs, including water-quality-based effluent limitations;
- b. Nonregulatory and incentive-based programs, including best management practices, cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. [403.061\(22\)](#), and public education;
- c. Other water quality management and restoration activities, for example, surface water improvement and management plans approved by water management districts or basin management action plans developed pursuant to this subsection;
- d. Trading of water quality credits or other equitable economically based agreements;
- e. Public works including capital facilities; or
- f. Land acquisition.

2. For a basin management action plan adopted pursuant to paragraph (a), any management strategies and pollutant reduction requirements associated with a pollutant of concern for which a total maximum daily load has been developed, including effluent limits for a discharger subject to NPDES permitting, if any, must be included in a timely manner in subsequent NPDES permits or permit modifications for that discharger. The department may not impose limits or conditions implementing an adopted total maximum daily load in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted basin management action plan.

a. Absent a detailed allocation, total maximum daily loads must be implemented through NPDES permit conditions that provide for a compliance schedule. In such instances, a facility's NPDES permit must allow time for the issuance of an order adopting the basin management action plan. The time allowed for the issuance of an order adopting the plan may not exceed 5 years. Upon issuance of an order adopting the plan, the permit must be reopened or renewed, as necessary, and permit conditions consistent with the plan must be established. Notwithstanding the other provisions of this subparagraph, upon request by an NPDES permittee, the department as part of a permit issuance, renewal, or modification may establish individual allocations before the adoption of a basin management action plan.

b. For holders of NPDES municipal separate storm sewer system permits and other stormwater sources, implementation of a total maximum daily load or basin management action plan must be achieved, to the

maximum extent practicable, through the use of best management practices or other management measures.

c. The basin management action plan does not relieve the discharger from any requirement to obtain, renew, or modify an NPDES permit or to abide by other requirements of the permit.

d. Management strategies in a basin management action plan to be implemented by a discharger subject to permitting by the department must be completed pursuant to the schedule in the basin management action plan. This implementation schedule may extend beyond the 5-year term of an NPDES permit.

e. Management strategies and pollution reduction requirements in a basin management action plan for a specific pollutant of concern are not subject to challenge under chapter 120 at the time they are incorporated, in an identical form, into a subsequent NPDES permit or permit modification.

f. For nonagricultural pollutant sources not subject to NPDES permitting but permitted pursuant to other state, regional, or local water quality programs, the pollutant reduction actions adopted in a basin management action plan must be implemented to the maximum extent practicable as part of those permitting programs.

g. A nonpoint source discharger included in a basin management action plan must demonstrate compliance with the pollutant reductions established under subsection (6) by implementing the appropriate best management practices established pursuant to paragraph (c) or conducting water quality monitoring prescribed by the department or a water management district. A nonpoint source discharger may, in accordance with department rules, supplement the implementation of best management practices with water quality credit trades in order to demonstrate compliance with the pollutant reductions established under subsection (6).

h. A nonpoint source discharger included in a basin management action plan may be subject to enforcement action by the department or a water management district based upon a failure to implement the responsibilities in sub-subparagraph g.

i. A landowner, discharger, or other responsible person who is implementing applicable management strategies specified in an adopted basin management action plan may not be required by permit, enforcement action, or otherwise to implement additional management strategies, including water quality credit trading, to reduce pollutant loads to attain the pollutant reductions established pursuant to subsection (6) and shall be deemed to be in compliance with this section. This subparagraph does not limit the authority of the department to amend a basin management action plan as specified in subparagraph (a)6.

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. [120.536\(1\)](#) and [120.54](#) suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12)(b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources, and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules must also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including site inspection and recordkeeping requirements.

3. When interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph

(12)(b) must be verified at representative sites by the department. The department shall use its best professional judgment in making the initial verification that the best management practices are reasonably expected to be effective and, when applicable, shall notify the appropriate water management district or the Department of Agriculture and Consumer Services of its initial verification before the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, or are authorized by s. 576.045, shall provide a presumption of compliance with state water quality standards and release from s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants. Research projects funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or best management practices shall be granted a presumption of compliance with state water quality standards and a release from s. 376.307(5). The presumption of compliance and release is limited to the research site and only for those pollutants addressed by the interim measures or best management practices. Eligibility for the presumption of compliance and release is limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. When water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. If the reevaluation determines that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Subject to subparagraph 6., the Department of Agriculture and Consumer Services shall provide to the department information obtained pursuant to subparagraph (d)3.

6. Agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services pursuant to subparagraphs 3., 4., and 5. or pursuant to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to the department or any water management district provided that the confidentiality specified by this subparagraph for such records is maintained.

7. Subparagraphs 1. and 2. do not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

(d) *Enforcement and verification of basin management action plans and management strategies.*—

1. Basin management action plans are enforceable pursuant to this section and ss. 403.121, 403.141, and 403.161. Management strategies, including best management practices and water quality monitoring, are enforceable under this chapter.

2. No later than January 1, 2017:

a. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of water quality monitoring required in lieu of implementation of best management practices or other measures pursuant to subparagraph (b)2.g.;

b. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of nonagricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph (c)1.; and

c. The Department of Agriculture and Consumer Services, in consultation with the water management districts and the department, shall initiate rulemaking to adopt procedures to verify implementation of agricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph (c)2.

The rules required under this subparagraph shall include enforcement procedures applicable to the landowner, discharger, or other responsible person required to implement applicable management strategies, including best management practices or water quality monitoring as a result of noncompliance.

3. At least every 2 years, the Department of Agriculture and Consumer Services shall perform onsite inspections of each agricultural producer that enrolls in a best management practice to ensure that such practice is being properly implemented. Such verification must include a collection and review of the best management practice documentation from the previous 2 years required by rules adopted pursuant to subparagraph (c)2., including, but not limited to, nitrogen and phosphorus fertilizer application records, which must be collected and retained pursuant to subparagraphs (c)3., 4., and 6. The Department of Agriculture and Consumer Services shall initially prioritize the inspection of agricultural producers located in the basin management action plans for Lake Okeechobee, the Indian River Lagoon, the Caloosahatchee River and Estuary, and Silver Springs.

(e) *Cooperative agricultural regional water quality improvement element.*—

1. The department, the Department of Agriculture and Consumer Services, and owners of agricultural operations in the basin shall develop a cooperative agricultural regional water quality improvement element as part of a basin management action plan only if:

- a. Agricultural measures have been adopted by the Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. and have been implemented and the water body remains impaired;
- b. Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- c. The department determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the basin management action plan, are necessary to achieve the total maximum daily load.

2. The element will be implemented through the use of cost-sharing projects. The element must include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis. Such cooperative regional agricultural nutrient reduction projects may include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects on the lands of project participants.

3. To qualify for participation in the cooperative agricultural regional water quality improvement element, the participant must have already implemented and be in compliance with best management practices or other measures adopted by the Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. The element may be included in the basin management action plan as a part of the next 5-year assessment under subparagraph (a)6.

4. The department may submit a legislative budget request to fund projects developed pursuant to this paragraph. In allocating funds for projects funded pursuant to this paragraph, the department shall provide at least 20 percent of its annual appropriation for projects in subbasins with the highest nutrient concentrations within a basin management action plan.

(f) *Data collection and research.*—

1. The Department of Agriculture and Consumer Services, in cooperation with the University of Florida Institute of Food and Agricultural Sciences and other state universities and Florida College System institutions that have agricultural research programs, shall annually develop research plans and legislative budget requests to:

- a. Evaluate and suggest enhancements to the existing adopted agricultural best management practices to reduce nutrient runoff;
- b. Develop new best management practices that, if proven effective, the Department of Agriculture and Consumer Services may adopt by rule pursuant to subparagraph (c)2.; and
- c. Develop agricultural nutrient runoff reduction projects that willing participants could implement on a site-specific, cooperative basis, in addition to best management practices. The department may consider these projects for inclusion in a basin management action plan. These nutrient runoff reduction projects must reduce the nutrient impacts from agricultural operations on water quality when evaluated with the projects and management strategies currently included in the basin management action plan.

2. To be considered for funding, the University of Florida Institute of Food and Agricultural Sciences and other state universities and Florida College System institutions that have agricultural research programs must submit such plans to the department and the Department of Agriculture and Consumer Services by August 1, 2021, and each May 1 thereafter.

3. The department shall work with the University of Florida Institute of Food and Agricultural Sciences and regulated entities to consider the adoption by rule of best management practices for nutrient impacts from golf courses. Such adopted best management practices are subject to the requirements of paragraph (c).

(8) WATER QUALITY CREDIT TRADING.—

- (a) Water quality credit trading must be consistent with federal law and regulation.
- (b) Water quality credit trading must be implemented through permits, including water quality credit trading permits, other authorizations, or other legally binding agreements as established by department rule.
- (c) The department shall establish the pollutant load reduction value of water quality credits and is responsible for authorizing their use.
- (d) A person who acquires water quality credits (“buyer”) shall timely submit to the department an affidavit, signed by the buyer and the credit generator (“seller”), disclosing the term of acquisition, number of credits, unit credit price paid, and any state funding received for the facilities or activities that generate the credits. The department may not participate in the establishment of credit prices.
- (e) Sellers of water quality credits are responsible for achieving the load reductions on which the credits are based and complying with the terms of the department authorization and any trading agreements into which they may have entered.
- (f) Buyers of water quality credits are responsible for complying with the terms of the department water discharge permit.

(g) The department shall take appropriate action to address the failure of a credit seller to fulfill its obligations, including, as necessary, deeming the seller’s credits invalid if the seller cannot achieve the load reductions on which the credits were based in a reasonable time. If the department determines duly acquired water quality credits to be invalid, in whole or in part, thereby causing the credit buyer to be unable to timely meet its pollutant reduction obligations under this section, the department shall issue an order establishing the actions required of the buyer to meet its obligations by alternative means and a reasonable schedule for completing the actions. The invalidation of credits does not, in and of itself, constitute a violation of the buyer’s water discharge permit.

(h) The department may authorize water quality credit trading in adopted basin management action plans. Participation in water quality credit trading is entirely voluntary. Entities that participate in water quality credit trades shall timely report to the department the prices for credits, how the prices were determined, and any state funding received for the facilities or activities that generated the credits. The department may not participate in the establishment of credit prices.

(i) Land set-asides and land use modifications not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into nutrient impaired surface waters may be used under this subsection.

(9) RULES.—The department may adopt rules for:

(a) Delisting water bodies or water body segments from the list developed under subsection (4) pursuant to the guidance under subsection (5).

(b) Administering of funds to implement the total maximum daily load and basin management action planning programs.

(c) Water quality credit trading among the pollutant sources to a water body or water body segment. The rules must provide for the following:

1. The process to be used to determine how credits are generated, quantified, and validated.
2. A publicly accessible water quality credit trading registry that tracks water quality credits, trading activities, and prices paid for credits.
3. Limitations on the availability and use of water quality credits, including a list of eligible pollutants or parameters and minimum water quality requirements and, where appropriate, adjustments to reflect best management practice performance uncertainties and water-segment-specific location factors.
4. The timing and duration of credits and allowance for credit transferability.
5. Mechanisms for determining and ensuring compliance with trading procedures, including recordkeeping, monitoring, reporting, and inspections.

At the time of publication of the draft rules on water quality credit trading, the department shall submit a copy to the United States Environmental Protection Agency for review.

(d) The total maximum daily load calculation in accordance with paragraph (6)(a) immediately upon the effective date of this act, for those eight water segments within Lake Okeechobee proper as submitted to the United States Environmental Protection Agency pursuant to subsection (2).

(e) Implementation of other specific provisions.

(10) APPLICATION.—The provisions of this section are intended to supplement existing law, and may not be construed as altering any applicable state water quality standards or as restricting the authority otherwise granted to the department or a water management district under this chapter or chapter 373. The exclusive means of state implementation of s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. shall be in accordance with the identification, assessment, calculation and allocation, and implementation provisions of this section.

(11) CONSTRUCTION.—This section does not limit the applicability or consideration of any mixing zone, variance, exemption, site specific alternative criteria, or other moderating provision.

(12) IMPLEMENTATION OF ADDITIONAL PROGRAMS.—

(a) The department may not implement, without prior legislative approval, any additional regulatory authority pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part 130, if such implementation would result in water quality discharge regulation of activities not currently subject to regulation.

(b) Interim measures, best management practices, or other measures may be developed and voluntarily implemented pursuant to paragraph (7)(c) for any water body or segment for which a total maximum daily load or allocation has not been established. The implementation of such pollution control programs may be considered by the department in the determination made pursuant to subsection (4).

(13) RULE CHALLENGES.—In order to provide adequate due process while ensuring timely development of total maximum daily loads, proposed rules and orders authorized by this act are ineffective pending resolution of a s. [120.54\(3\)](#), s. [120.56](#), s. [120.569](#), or s. [120.57](#) administrative proceeding. However, the department may go forward prior to resolution of such administrative proceedings with subsequent agency actions authorized by subsections (2)-(6) if the department can support and substantiate those actions using the underlying bases for the rules or orders without the benefit of any legal presumption favoring, or in deference to, the challenged rules or orders.

History.—s. 3, ch. 99-223; s. 10, ch. 99-353; s. 3, ch. 2000-130; s. 1, ch. 2001-74; s. 1, ch. 2002-165; s. 17, ch. 2002-295; s. 10, ch. 2003-265; s. 6, ch. 2005-166; s. 13, ch. 2005-291; s. 1, ch. 2006-76; s. 10, ch. 2006-289; s. 1, ch. 2008-189; s. 1, ch. 2013-70; s. 2, ch. 2013-146; s. 44, ch. 2015-2; s. 33, ch. 2016-1; s. 4, ch. 2016-130; s. 13, ch. 2020-150; s. 3, ch. 2022-177.