

# Handbook of Florida Water Regulation: Florida Pollutant Discharge Prevention and Control Act<sup>1</sup>

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## Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principle Federal and Florida laws that directly or indirectly relate to agriculture. This handbook should provide a basic overview of the many rights and responsibilities that farmers and farmland owners have under both Federal and Florida laws as well as the appropriate contact information to obtain more detailed information. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at anytime. Several details of cited laws are also left out due to space limitations.

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## Overview

The Florida Pollutant Discharge Prevention and Control Act (FPDPCA) was amended in 2005 with the goal of maintaining the “seacoast” and the coastal waters, beaches, and public lands that adjoin it in as close to a pristine condition as possible. FPDPCA states that the main threats to these areas are from spills and discharges of substances and pollutants occurring as a result of procedures involved in the storage, transportation, and transfer of these substances and pollutants between ships, onshore facilities, offshore facilities, and terminal

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facilities within the jurisdiction and waters of Florida, and from saltwater traps impregnated with pollutants. It empowers and provides a trust fund, the Florida Coastal Protection Trust Fund (FCPTF), for the Florida Department of Environmental Protection (DEP) and the Florida Fish and Wildlife Conservation Commission (FWC) to prevent (through regulations), investigate, rehabilitate, and clean up sites contaminated by these spills and discharges. FPDPCA also extends liability for site pollution to several potential defendants and is a potent measure for forcing responsible parties to contribute to the costs of cleanup.

The only expressed exclusion from FPDPCA coverage is the storage or transportation of liquefied petroleum gas or industrial effluents discharged into the waters or atmosphere of the state pursuant to either a federal or state permit.

### **Who Enforces FPDPCA?**

FPDPCA is enforced by the FWC and the DEP. The DEP is the primary enforcer of FPDPCA, under which the DEP issues both the registration certificates and the discharge prevention and response certificates required by this Act. Under FPDPCA, it is the DEP that adopts and enforces the rules necessary to implement FPDPCA, including rules pertaining to:

- The procedures and methods of reporting prohibited discharges.
- The procedures, methods, and equipment to be used in the removal of pollutants.
- The development and implementation of criteria and plans to meet pollution discharges of various degrees.
- The creation of a state response team which will create and maintain a contingency plan for handling emergency cleanup, rehabilitation, and wildlife rescue operations.

The DEP is also responsible for establishing and maintaining, at certain ports in and outside of Florida, equipment and officers needed to carry out the provisions of FPDPCA. The DEP is also tasked with assessing the damages caused by a discharge of

pollutants and in recovering the costs of the damage.

While the DEP is the primary enforcer of FPDPCA, FPDPCA mandates that the FWC must assist the DEP in both assessing the damages to wildlife caused by a discharge of pollutants and in recovering the costs of the damage. Furthermore, FPDPCA designates the FWC as the only state agency authorized to remove derelict vessels from public waters, and provides that the FWC may establish a grant program, funded by the FCPTF, to provide grants to coastal local governments for the removal of derelict vessels from the waters in their areas. FPDPCA mandates the criteria for allocating these grants. For a complete list of the criteria of and procedures to apply for this grant, please contact the FWC.

### **What Are the Requirements of FPDPCA?**

FPDPCA requires that any ship operating in Florida waters that has a storage capacity of 100,000 gallons of pollutants as fuel or cargo must have a written ship-specific discharge prevention and control contingency plan. Any such ship must have onboard a “discharge officer”, designated by the contingency plan, who is responsible for training crew members on how to perform discharge response efforts required by the contingency plan and to coordinate all onboard response efforts in case of a discharge. An adequate contingency plan must include provisions for onboard response, including notification, pollutant incident assessment, discharge mitigation, and onboard discharge containment. A contingency plan in compliance with the federal requirement for a ship-specific discharge contingency plan will satisfy this requirement.

FPDPCA also requires that these ships must maintain discharge prevention gear, holding tanks, and containment gear that meet federal requirements.

FPDPCA requires that every owner or operator of a terminal facility (onshore and offshore facilities, deepwater ports, pipelines, etc) must have a discharge prevention and response certificate, issued by the DEP, in order to legally operate in Florida. Terminal

facilities that have ships, motor vehicles, pipelines, or other related accessories may, at the discretion of the owner or operator, be covered under the discharge prevention and response certificate of the terminal facility from which they are located or dispatched. The certificate will be valid for one year after the date it is issued, subject to the terms and conditions determined by the DEP to carry out the purpose of FPDPCA.

Applicants for a discharge prevention and response certificate must submit the following information:

- The capacity of the terminal facility and the length of the largest ship docking at or providing service from the facility.
- All prevention, containment, and removal equipment (booms, skimmers, pumps, chemicals, etc) that the facility can access in case of a discharge.
- The terms of agreement and the operation plan of any discharge cleanup organization to which the owner or operator of the facility belongs.

A terminal facility cannot obtain a discharge prevention and response certificate, unless it has access to containment equipment that is at least five times the length of the largest ship docking at or providing service from the facility, whichever is larger. The containment equipment and an adequate number of trained personnel to operate the equipment must be available to deploy on the water within one hour after discharge is detected. Within a reasonable time period additional equipment and personnel must be available to reasonably clean up 10,000 gallons of pollutants, unless the terminal facility does not have the capacity to store that much as fuel or cargo and does not service any ships that have the capacity to store that much as fuel or cargo. Cleanup or containment equipment purchased with state funds will not count towards the required amount of equipment. FPDPCA also mandates that terminal facilities must have adequate booms around a ship during the transfer of pollutants (fuel and cargo) to or from the ship.

FPDPCA further requires that each owner or operator of a terminal facility or ship, including any barge, using any port in Florida must establish and maintain insurance pursuant to federal laws and to be able to meet the liabilities which may be incurred under FPDPCA.

### **Who Is Liable for the Cleanup Costs under FPDPCA?**

FPDPCA is aimed at several potentially responsible parties, depending on the type of facility that discharges pollutants, as follows:

- In the case of a ship, any person owning, operating, or chartering the ship.
- In the case of a ship's cargo, it is the owner of the cargo.
- In the case of an onshore facility, it is the owner or operator of the facility.
- In the case of an offshore facility, it is the owner, lessee, permit holder, or holder of the right of use and easement of the facility.
- In the case of a deepwater port licensed under the Deepwater Port Act, it is the licensee.
- In the case of a pipeline, it is the owner or operator of the pipeline.

If the facility is abandoned, it is the persons who would have been the responsible parties immediately prior to abandonment.

Under FPDPCA, no hold harmless agreements entered into after July 1, 1974 will be effective in exempting any terminal facility or ship from liability for a discharge of pollutants prohibited under this Act.

For a list of the criteria of FPDPCA cleanup standards and the criteria of FPDPCA's compensation schedule for damages to natural resources, please contact the DEP.

## What Are the Penalties under FPDPCA?

Any violation of a provision of FPDPCA or a rule or order of the DEP made pursuant to FPDPCA will be punishable by a civil penalty of up to \$50,000 per violation per day. Each day the violation occurred and continues constitutes a separate offense. Any discharge that is promptly reported and removed or cleaned up by a responsible person, in accordance with DEP rules or that is less than or equal to five gallons of pollutants, is exempted from these penalties.

Any person responsible for two or more reported discharges within a twelve-month period at the same facility commits a non-criminal infraction and faces the following civil penalties:

- For discharges of gasoline or diesel equal to or less than five gallons, \$50 for each discharge after the first offense.
- For discharges of gasoline or diesel over five gallons, \$500 for the second discharge and \$1,000 for each subsequent discharge within the twelve-month period.
- For discharges of pollutants other than gasoline or diesel equal to or less than five gallons, \$100 for each discharge after the first offense.
- For discharges of pollutants other than gasoline or diesel over five gallons, \$2,500 for the second discharge and \$5,000 for each subsequent discharge within the twelve-month period.

Any owner or operator of a ship who operates in Florida waters without a discharge prevention and control contingency plan in violation of FPDPCA commits a non-criminal infraction and faces a civil penalty of \$5,000.

Any owner or operator of a terminal facility operating without a discharge prevention and response certificate in violation of FPDPCA or violates the terms and requirements of the certificate, commits a non-criminal infraction and faces a civil penalty of \$500.

Any owner or operator of a terminal facility involved in the transfer of a pollutant (fuel or cargo) to or from a ship that is not adequately boomed commits a non-criminal infraction and faces a civil penalty of \$2,500.

For all the penalties under FPDPCA, any person charged with a non-criminal infraction and facing a civil penalty may:

- Pay the civil penalty.
- Post a bond equal to the amount of the civil penalty, which is forfeited if they do not appear in county court.
- Sign and accept a citation indicating a promise to appear before the county court, which may or may not impose the civil penalty. The county court's ruling can be appealed to the circuit courts.

Any person who refuses to post bond or accept and sign a citation commits a second-degree misdemeanor punishable by a fine of up to \$500 and/or incarceration for up to 60 days.

Any person who knowingly makes or causes to be made a false statement in response to FPDPCA requirements before the county or circuit court commits a second-degree felony punishable by a fine of up to \$10,000 and/or incarceration for up to 15 years.

## What Are the Defenses to Liability under FPDPCA?

Defenses to liability are limited to the following:

- Acts of God.
- Acts of war.
- Acts of government, federal, state, county, or municipalities.
- Actions or omissions of a third party not employed by or in a contractual relationship with defendant.

To establish entitlement to any of these defenses, violators must plead and prove that they exercised due care with respect to the pollutant concerned, taking into consideration the characteristics of the pollutant, and took precautions against foreseeable acts or omissions of others and the foreseeable consequences of those acts or omissions.

These defenses will not apply to violators who fail or refuse to:

- Report the discharge as required by law, when they know or have reason to know of the discharge.
- Provide reasonable cooperation and assistance requested by a state or federal on-scene coordinator in connection with cleanup activities.

### **Source**

Chapter 376, Florida Statutes, Sections 376.11 to 376.21

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