

Handbook of Florida Water Regulation: Private Regulation¹

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Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principal federal and state (Florida) laws that directly or indirectly relate to agriculture. This handbook provides a basic overview of the many rights and responsibilities that farmers and farmland owners have under both federal and state 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decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time. Several details of cited laws are also left out due to space limitations.

This handbook is distributed with the understanding that the authors are not engaged in rendering legal or other professional advice, and the information contained herein should not be regarded as a substitute for professional advice. This handbook is not all inclusive in providing information to achieve compliance with the federal and state laws and regulations governing water protection. For these reasons, the use of these materials by any person constitutes an agreement to hold harmless the authors, the Florida Cooperative Extension Service, the Institute of Food and Agricultural Sciences, and the University of Florida for any liability claims, damages, or expenses that

may be incurred by any person as a result of reference to or reliance on the information contained in this handbook.

Private Regulation Overview

Another form of water quality regulation occurs through private lawsuits. These lawsuits are often based on the nuisance and negligence principles of law. In addition, some federal statutes contain clauses allowing citizens to enforce laws through private lawsuits. It is important to understand how you may be held liable by other members of the public for your actions.

What Is Nuisance?

The theory of nuisance, a common law basis of pollution litigation, provides that one may not use one's own property in a way that causes harm to others. Nuisances are categorized as either public or private, depending on whether the nuisance affects the rights of the public or only the rights of an individual. Public nuisance actions may be brought by a public official on behalf of the public-at-large; certain types of public nuisances may be criminal acts as well.

In nuisance actions, the court will often balance the social value of the nuisance against the harm it causes. If the harm is slight and the social value is great, the lawsuit will fail. But if the social value is small and the harm is great,

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the plaintiff may both recover monetary damages and stop (enjoin) the defendant from continuing the activity.

Concerning nuisance lawsuits, the Florida Legislature has passed the Florida Right-to-Farm Act (FRTFA) to protect reasonable farm operations from nuisance lawsuits (see [FE599](#), Florida Right-to-Farm Act).

What Is Negligence?

Negligence is the causing of harm to someone else by failing to do what a reasonable person would have done under the same circumstances. The harm may be economic, physical, or emotional. Anyone seeking to recover for someone else's negligence must prove four legal elements: duty, breach of duty, causation of damage, and value of damage.

1. Duty is an individual's responsibility to govern his or her own conduct so that others are not harmed
2. Breach of duty occurs where one of the parties does not fulfill his or her duty of care (i.e., the party does not act with the degree of caution or foresight that a reasonably prudent person would have used in the same situation)
3. Causation occurs when the defendant's failure to use due care causes harm to the plaintiff; proving this step may be difficult if the damage is only indirectly related to the defendant's act or if there are other possible causes for the harm
4. For value of damage, the plaintiff must prove that he or she suffered actual damage from the defendant's act; if no damage resulted, even where the defendant's conduct was admittedly negligent, the plaintiff has no claim for negligence

What Is Negligence Per Se?

Where a defendant's acts subject him or her to a private lawsuit and, at the same time, violate a statute, the court will usually regard the violation of the statute as enough evidence of wrongful conduct to find the defendant guilty of negligence in the private lawsuit as well. This rule applies, however, only if two conditions exist. First, the damage claimed in the lawsuit must be of the type the statute is intended to prevent. Second, the plaintiff must be a member of the class of persons the statute is intended to protect.

It should be noted that compliance with all statutes does not guarantee immunity from negligence actions, as lawful behavior may still be negligent.

What Is Strict Liability?

Strict liability is liability imposed without evidence of negligence. That is, the defendant may be found guilty on a showing that his or her action resulted in harm, without consideration of whether or not he or she acted reasonably. Strict liability is usually imposed on those who engage in abnormally dangerous or "ultra hazardous" activities (e.g., handling explosives) or other activities defined by statute (see [FE584](#), Comprehensive Environmental Response, Compensation, and Liability Act).

What Is Joint and Several Liability?

Where two or more parties, acting independently, are the source of a plaintiff's injuries, the law (or the courts) may impose the principle of joint and several liability. This principle allows the plaintiff to recover from one of the defendants the full amount of his or her damages and forces the loss to be apportioned among all the defendants.

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