

Proposed amendment to the Florida Statutes regarding the elimination of surface water discharges and associated reuse of reclaimed water

Prepared by Friends of the Hillsborough River, June 3, 2022 DRAFT

The Issue

In the 2021 session the Florida Legislature passed bill SB64 which requires utilities to eliminate surface water discharges of effluent, reclaimed, or reuse water that do not have a beneficial use. The resulting language that was incorporated in the Florida Statutes (FS 403.064(17)) is reprinted on pages 3 to 6 of this document along with the statutory definition of reclaimed water, which is water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

Our organization has concluded this legislation needs to be amended to allow for the use of site-specific information and the assessment of changes in hydrologic conditions to allow for flexibility in how much reclaimed water must be rerouted and reused over various time periods. Our proposed amendment is provided at the bottom of the next page.

Background and justification for the amendment

The driving force for this legislation is the recent statewide emphasis on using reclaimed water for potable supply, which would increase the water supplies available for human consumption and allow for additional population and economic growth. The water treatment processes that are necessary to make domestic wastewater safe for potable supply is a complex topic that is not the subject of this document, but we emphasize that caution must be applied to ensure that all necessary water treatment steps are taken to make treated domestic wastewater safe for human consumption. Also, reclaimed water can contain high nutrient concentrations and other constituents that can result in the degradation of the water quality and biological communities of springs, lakes, wetlands and rivers if it finds its way to those waterbodies without adequate treatment, uptake, or processing.

Many existing surface water discharges of treated domestic wastewater in the state are functioning just fine, well within acceptable environmental limits and with very low risk to human health. The elimination of these surface water discharges is not necessary for improved environmental management or human safety, and if the rerouting and reuse of this water is not done with sufficient caution and water treatment, it could jeopardize these management objectives.

The statute requires that each utility must submit a plan to the Florida Department of Environmental Protection that identifies the average quantity of effluent, reclaimed water, or reuse water that will no longer be discharged to surface waters and the average quantity that will continue to be discharged and the level of treatment it will receive. However, as stated in paragraph 17(a)1, the intent of the legislation is to result in elimination of surface water discharges. Some exemptions from this requirement are listed, but they are fairly narrow in their application and most utilities will be required to meet an average quantity of reclaimed water that must be rerouted and reused, but the time period over which that average is to be calculated is not specified.

In some cases, the quantities of surface water discharge that must be eliminated and rerouted may be in excess of actual needs for the reclaimed water for considerable periods of time. When this occurs, many utilities will put the water into storage areas, with some plans calling for injecting the reclaimed water into the Floridan aquifer using aquifer storage and recovery facilities. However, during some wet years, meeting a regulatory average value could require that reclaimed water would be to be put into storage well in excess of what is truly needed for supply, possibly resulting in unnecessary risk to the environment or the physical stability and quality of surface water or groundwater supplies.

The reuse of reclaimed water must also be accompanied by extensive water quality monitoring to ensure that the concentrations of various constituents are kept within acceptable limits. If monitoring shows that some constituents are approaching or exceeding certain standards, it would be desirable to discontinue the rerouting of the reclaimed water for some time to reduce these concentrations.

Given the likelihood of situations such as these, the requirement to maintain an average quantity of surface water discharge that must be eliminated and reused could unnecessarily put Florida's natural resources and human safety at potential risk for considerable periods of time. It would be much better to allow for some flexibility to discontinue the rerouting of the reclaimed water if there are periodic changes in the demand for the reclaimed water, or storage areas are becoming full during prolonged wet periods, or concentrations of constituents in the receiving waters or potable supply stream are approaching or exceeding applicable standards.

It could be argued that the statute allows for such flexibility, but the language is not clear and clarification would be very helpful. Accordingly, we have written an amendment to the statute that allows for the assessment of variations in site-specific and hydrologic conditions which would allow for periodic variances from the average quantity of surface water discharge that must be eliminated for each utility. We believe this amendment would provide for flexibility to ensure that that the reuse of reclaimed is done within safe limits, allowing for the evaluation of seasonal and short-term changes in critical site-specific factors and hydrologic conditions.

Accordingly, we believe the amendment below is important to protecting the quality of Florida's natural environment and the safety of its surface and groundwater supplies for human consumption, and we recommend that it be added to the corresponding statute (FS 403.064(17)) via legislative action.

The proposed amendment

A utility may apply to the department to allow for yearly variances from the average annual quantity of surface water discharge of effluent or reclaimed water that is to be eliminated and reused for potable or non-potable use that is identified in the plan. Such variances may be based on short-term or seasonal variations in hydrologic conditions, environmental or water quality factors, reductions in the need or demand for the reuse water, or a lack of capacity in natural or constructed storage areas that are part of reuse plan.

Applications for such variances could extend for multi-year periods, but at the end of each calendar year the utility shall describe the conditions that contributed to the surface water discharges that were not eliminated and rerouted for potable or non-potable uses that resulted in the average annual quantity being less than that identified in the plan.

Relevant language from existing Florida Statutes

Chapter 373.019 - Definitions

(17) “Reclaimed water” means water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility. Reclaimed water is not subject to regulation pursuant to s. 373.175 or part II of this chapter until it has been discharged into waters as defined in s. 403.031(13).

(18) “Reclaimed water distribution system” means a network of pipes, pumping facilities, storage facilities, and appurtenances designed to convey and distribute reclaimed water from one or more domestic wastewater treatment facilities to one or more users of reclaimed water.

Chapter 403.064(17)

(17) By November 1, 2021, domestic wastewater utilities that dispose of effluent, reclaimed water, or reuse water by surface water discharge shall submit to the department for review and approval a plan for eliminating nonbeneficial surface water discharge by January 1, 2032, subject to the requirements of this section. The plan must include the average gallons per day of effluent, reclaimed water, or reuse water that will no longer be discharged into surface waters and the date of such elimination, the average gallons per day of surface water discharge which will continue in accordance with the alternatives provided for in subparagraphs (a)2. and 3., and the level of treatment that the effluent, reclaimed water, or reuse water will receive before being discharged into a surface water by each alternative.

(a) The department shall approve a plan that includes all of the information required under this subsection as meeting the requirements of this section if one or more of the following conditions are met:

1. The plan will result in eliminating the surface water discharge.
2. The plan will result in meeting the requirements of s. 403.086(10).
3. The plan does not provide for a complete elimination of the surface water discharge but does provide an affirmative demonstration that any of the following conditions apply to the remaining discharge:
 - a. The discharge is associated with an indirect potable reuse project;
 - b. The discharge is a wet weather discharge that occurs in accordance with an applicable department permit;
 - c. The discharge is into a stormwater management system and is subsequently withdrawn by a user for irrigation purposes;

d. The utility operates domestic wastewater treatment facilities with reuse systems that reuse a minimum of 90 percent of a facility's annual average flow, as determined by the department using monitoring data for the prior 5 consecutive years, for reuse purposes authorized by the department; or

e. The discharge provides direct ecological or public water supply benefits, such as rehydrating wetlands or implementing the requirements of minimum flows and minimum water levels or recovery or prevention strategies for a water body.

The plan may include conceptual projects under sub-subparagraphs 3.a. and e.; however, such inclusion does not extend the time within which the plan must be implemented.

(b) The department shall approve or deny a plan within 9 months after receiving the plan. A utility may modify the plan by submitting such modification to the department; however, the plan may not be modified such that the requirements of this subsection are not met, and the department may not extend the time within which a plan will be implemented. The approval of the plan or a modification by the department does not constitute final agency action.

(c) A utility shall fully implement the approved plan by January 1, 2032.

(d) If a plan is not timely submitted by a utility or approved by the department, the utility's domestic wastewater treatment facilities may not dispose of effluent, reclaimed water, or reuse water by surface water discharge after January 1, 2028. A violation of this paragraph is subject to administrative and civil penalties pursuant to ss. 403.121, 403.131, and 403.141.

(e) A domestic wastewater utility applying for a permit for a new or expanded surface water discharge shall prepare a plan in accordance with this subsection as part of that permit application. The department may not approve a permit for a new or expanded surface water discharge unless the plan meets one or more of the conditions provided in paragraph (a).

(f) By December 31, 2021, and annually thereafter, the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives which provides the average gallons per day of effluent, reclaimed water, or reuse water that will no longer be discharged into surface waters by the utility and the dates of such elimination; the average gallons per day of surface water discharges that will continue in accordance with the alternatives provided in subparagraphs (a)2. and 3., and the level of treatment that the effluent, reclaimed water, or reuse water will receive before being discharged into a surface water by each alternative and utility; and any modified or new plans submitted by a utility since the last report.

(g) This subsection does not apply to any of the following:

1. A domestic wastewater treatment facility that is located in a fiscally constrained county as described in s. 218.67(1).

2. A domestic wastewater treatment facility that is located in a municipality that is entirely within a rural area of opportunity as designated pursuant to s. 288.0656.

3. A domestic wastewater treatment facility that is located in a municipality that has less than \$10 million in total revenue, as determined by the municipality's most recent annual financial report submitted to the Department of Financial Services in accordance with s. 218.32.

4. A domestic wastewater treatment facility that is operated by an operator of a mobile home park as defined in s. 723.003 and has a permitted capacity of less than 300,000 gallons per day.

(h) This subsection does not prohibit the inclusion of a plan for backup discharges under s. 403.086(8)(a).

(i) This subsection may not be deemed to exempt a utility from requirements that prohibit the causing of or contributing to violations of water quality standards in surface waters, including groundwater discharges that affect water quality in surface waters.

(18)(a) By December 31, 2020, the department shall initiate rule revisions based on the recommendations of the Potable Reuse Commission's 2020 report "Advancing Potable Reuse in Florida: Framework for the Implementation of Potable Reuse in Florida." Rules for potable reuse projects must address contaminants of emerging concern and meet or exceed federal and state drinking water quality standards and other applicable water quality standards. Reclaimed water is deemed a water source for public water supply systems.

(b) The Legislature recognizes that sufficient water supply is imperative to the future of the state and that potable reuse is a source of water which may assist in meeting future demand for water supply.

(c) The department may convene and lead one or more technical advisory groups to coordinate the rulemaking and review of rules for potable reuse as required under this section. The technical advisory group, which shall assist in the development of such rules, must be composed of knowledgeable representatives of a broad group of interested stakeholders, including, but not limited to, representatives from the water management districts, the wastewater utility industry, the water utility industry, the environmental community, the business community, the public health community, the agricultural community, and the consumers.

(d) Potable reuse is an alternative water supply as defined in s. 373.019, and potable reuse projects are eligible for alternative water supply funding. The use of potable reuse water may not be excluded from regional water supply planning under s. 373.709.

(e) The department and the water management districts shall develop and execute, by December 31, 2023, a memorandum of agreement providing for the procedural requirements of a coordinated review of all permits associated with the construction and operation of an indirect potable reuse project. The memorandum of agreement must provide that the coordinated review will occur only if requested by a permittee. The purpose of the coordinated review is to share information, avoid the redundancy of information requested from the permittee, and ensure consistency in the permit for the protection of the public health and the environment.

(f) To encourage investment in the development of potable reuse projects by private entities, a potable reuse project developed as a qualifying project under s. 255.065 is:

1. Beginning January 1, 2026, eligible for expedited permitting under s. 403.973.
2. Consistent with s. 373.707, eligible for priority funding in the same manner as other alternative water supply projects from the Drinking Water State Revolving Fund, under the Water Protection and Sustainability Program, and for water management district cooperative funding.

(g) This subsection is not intended and may not be construed to supersede s. 373.250(3).

History.—s. 7, ch. 89-324; s. 3, ch. 94-243; s. 8, ch. 95-323; s. 37, ch. 2002-296; s. 13, ch. 2004-381; s. 48, ch. 2018-110; s. 12, ch. 2020-150; s. 1, ch. 2021-168.