

# Department of Environmental Protection

Lawton Chiles  
Governor

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Virginia B. Wetherell  
Secretary

February 2, 1998

Ms. Carol M. Browner  
Administrator  
Environmental Protection Agency  
401 M Street, Southwest  
Washington, D.C. 20460

Dear Carol:

RE: State Water Quality Certification under the Clean Water Act

Attached is a copy of a letter from the Governor of the State of Florida designating the Florida Department of Environmental Protection (Department) as the agency responsible for certifying compliance with applicable state water quality standards for federal licenses or permits issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act, 33 U.S.C. 1344. The letter further authorizes the Department to establish categories of permits or other authorizations for which the issuance (or denial) constitutes a certification (or denial of certification) that the permitted or authorized activity complies with (or fails to comply with) applicable state water quality standards, and to establish categories of activities for which water quality certification is waived. In addition, the letter authorizes the Department to issue, deny, or waive water quality certification on a case-by-case basis, and to further delegate authority to issue, deny, or waive water quality certification to water management districts, and to counties, municipalities, and local pollution control programs (hereinafter referred to collectively as "local governments") which have received delegated authority to issue permits under part IV of chapter 373 of the Florida Statutes.

Under the authority noted above, by this letter I am amending Florida's designation of permits and other authorizations which constitute state certification of compliance with state water quality standards for federal licenses or permits issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act, 33 U.S.C. 1344. I am also delegating concurrent authority to issue, deny or waive water quality certifications to the water management districts created under section 373.069 of the Florida Statutes, and to local governments which have received delegated authority to issue permits under part IV of chapter 373 of the Florida Statutes. This letter also establishes categories of activities for which water quality certification is waived. The

provisions of this letter supersede all previous designations regarding water quality certification.

**A. Permits and Other Authorizations that Constitute a Certification that the Permitted or Authorized Activity Complies with Applicable State Water Quality Standards**

Issuance of the following permits and other authorizations will constitute the granting of water quality certification by the Department, by state water management districts created under section 373.069 of the Florida Statutes, or by their delegates under section 373.441 of the Florida Statutes, unless the permit or authorization is issued pursuant to the net improvement provisions for water quality provided by paragraph 373.414(1)(b) of the Florida Statutes, or unless otherwise specifically stated in the permit or authorization:

- (1) noticed general environmental resource permits and wetland resource general permits issued under part IV of chapter 373;
- (2) standard general, individual, or conceptual approval of environmental resource permits, and individual wetland resource permits issued under part IV of chapter 373;
- (3) management and storage of surface waters permits for agricultural activities or agricultural water management systems issued under part IV of chapter 373;
- (4) individual and conceptual mitigation bank permits issued under part IV of chapter 373;
- (5) joint coastal permits issued under section 161.055 and part IV of chapter 373;
- (6) a written final order granting "certification" under one of the following siting acts by the Governor and Cabinet as the Siting Board, the Florida Land and Water Adjudicatory Commission, or by the Department of Environmental Protection, as appropriate:
  - (a) The Florida High-Speed Rail Transportation Act. Secs. 341.3201-.386, Fla. Stat. (1995 & Supp. 1996), as amended (if the certification exempts the activity from the requirement to obtain a permit under part IV of chapter 373 of the Florida Statutes -- see 341.363(5));
  - (b) The Florida Electric Power Plant Siting Act. Secs. 403.501-.539, Fla. Stat. (1995 & Supp. 1996), as amended;
  - (c) The Transmission Line Siting Act. Secs. 403.52-.5365, Fla. Stat. (1995 & Supp. 1996), as amended;

- (d) The Statewide Multipurpose Hazardous Waste Facility Siting Act. Secs. 403.78-.7895, Fla. Stat. (1995 & Supp. 1996), as amended;
- (e) The Natural Gas Transmission Pipeline Siting Act. Secs. 403.9401-.9425, Fla. Stat. (1995 & Supp. 1996), as amended; or
- (f) The Florida Jobs Siting Act. Secs. 403.952-.973, Fla. Stat. (1995 & Supp. 1996), as amended;

(7) consent decrees, orders, or agreements issued by the Department of Environmental Protection, a water management district created under section 373.069 of the Florida Statutes, or their delegates under section 373.441, where such consent decree, order, or agreement authorizes activities which would otherwise require a permit under part IV of chapter 373 of the Florida Statutes.

**B. Water Quality Certification is Waived for the Following Activities:**

(1) agricultural activities or agricultural water management systems exempt by rule or statute from the requirement to obtain an environmental resource permit and a management and storage of surface waters permit under part IV of chapter 373, including activities that fall below permitting thresholds;

(2) activities other than agricultural activities or agricultural water management systems exempt by rule or statute from the requirement to obtain an environmental resource permit and a wetland resource permit under part IV of chapter 373, including activities that fall below permitting thresholds;

(3) activities permitted or authorized as described in paragraphs A(1)-(6) above when the permit or authorization is issued pursuant to the net improvement provisions for water quality provided by paragraph 373.414(1)(b) of the Florida Statutes;

(4) activities permitted or authorized as described in paragraphs A(1)-(6) above when the permit or authorization expressly waives water quality certification; and

(5) activities within the Northwest Florida Water Management District, or activities elsewhere in the state that are grandfathered under section 373.414, of the Florida Statutes that do not require a wetland resource permit because they are located landward of the extent of waters of the state.

**C. Denial of Water Quality Certification**

Unless otherwise stated in the denial, the denial of a permit listed in paragraphs A(1)-(5) above, or the denial of a certification under the siting acts specified in paragraphs A(6)(a)-(f) above, shall constitute denial of state water quality certification.

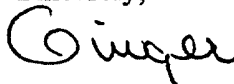
**D. Water Quality Certification or Denial for Activities Other Than Those Noted Above**

For individual activities other than those noted above which require state certification of compliance with state water quality standards, the certification or denial shall be issued on a case-by-case basis by the Secretary of the Department of Environmental Protection or the Secretary's designees within the agency; the Governing Board of a water management district or its designees within the water management district; or the head of a local government, or its designees within the local government, when the local government has been delegated authority under section 373.441 from the Department or a water management district to issue permits under part IV of chapter 373. Certification, denial or waiver for Nationwide Permits proposed by the U.S. Army Corps of Engineers shall be issued by the Secretary of the Department of Environmental Protection or the Secretary's designee within the Department.

**E. Effective Date and Applicable Water Quality Standards**

The designations in this letter are effective immediately. For the purposes of these certifications, the appropriate water quality standards to be used by the Department; water management districts; or delegated local government; shall be those water quality standards in chapters 62-3, 62-4, 62-302, 62-520, 62-522 and 62-550 of the Florida Administrative Code, and any amendments to those standards as approved by the Environmental Protection Agency.

Sincerely,



Virginia B. Wetherell  
Secretary

VBW/rgg  
attachment

cc:

John Hankinson  
EPA Regional Administrator  
Atlanta

Douglas Barr, Executive Director  
Northwest Florida Water Management  
District

Jerry Scarborough, Executive  
Director  
Suwannee River Water  
Management District

Henry Dean, Executive Director  
St. Johns River Water Management  
District

E.D. "Sonny" Vergara, Executive  
Director  
Southwest Florida Water  
Management District

Samuel E. Poole III, Executive Director  
South Florida Water Management District



LAWTON CHILES  
GOVERNOR

STATE OF FLORIDA

# Office of the Governor

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

January 15, 1998

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DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

JAN 26 1998

OFFICE OF THE SECRETARY

Ms. Virginia B. Wetherell, Secretary  
Florida Department of Environmental Protection  
3900 Commonwealth Boulevard, MS10  
Tallahassee, Florida 32399-3000

Dear Ginger:

RE: State Water Quality Certification under the Clean Water Act

Under the authority granted to me as the Governor of the State of Florida in 33 U.S.C. secs. 1341 and 1362 (the Clean Water Act), and 40 C.F.R. sec. 121.1(e), I am designating the Florida Department of Environmental Protection (department) as the agency responsible for certifying compliance with applicable state water quality standards for federal licenses or permits issued by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, 33 U.S.C. sec. 1344. Under the authority of this designation, the department may establish:

- (a) categories of permits or other authorizations for which the issuance (or denial) of the permit or authorization constitutes a certification (or denial of certification) that the permitted or authorized activity complies with (or fails to comply with) applicable state water quality standards; and
- (b) categories of activities for which water quality certification is waived.

The establishment of such categories by the department shall supersede all previous designations issued by this office regarding water quality certification. For activities other than those established under paragraphs (a) and (b) above, the department may issue, deny, or waive certification of compliance with state water quality standards on a case-by-case basis.

Certification of compliance with state water quality standards may be issued, denied, or waived by you, as the head of the department, or by your designees within the department. The department is also authorized to further delegate the authority to issue, deny, or waive certification of compliance with state water quality standards to the water management districts created under section 373.069, Florida Statutes.

The department, and any water management district which has received such a delegation from the department, may further delegate such authority to the head of a county, municipality, or local governmental pollution control program which has been delegated authority under section 373.441, Florida Statutes, from the department or the water management district to implement a permitting

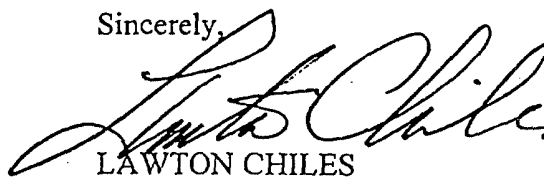
Ms. Virginia B. Wetherell  
January 15, 1998

program under Part IV of Chapter 373, Florida Statutes. The governing board of such a water management district and the head of such county, municipality, or local governmental pollution control program may further delegate such authority within their respective agencies or governmental entities.

The provisions of this letter are effective immediately.

With kind regards, I am

Sincerely,



LAWTON CHILES

LC/rgg/mle

cc: Carol Browner  
Administrator  
U.S. Environmental Protection Agency

John Hankinson  
EPA Regional Administrator, Region IV  
Atlanta

Douglas Barr, Executive Director  
Northwest Florida Water Management District

Jerry Scarborough, Executive Director  
Suwannee River Water Management District

Henry Dean, Executive Director  
St. Johns River Water Management District

E. D. "Sonny" Vergara, Executive Director  
Southwest Florida Water Management District

Samuel E. Poole III, Executive Director  
South Florida Water Management District

F. Perry Odom, DEP General Counsel