

Recent Developments for Pollution Reporting in Florida

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Outline:

- Overview of current reporting requirements
- Summary of Events/Pollution reporting rules
- 2016 attempted rulemaking
- 2017 legislative actions
- Overview of CS/CS/SB 1018
- Questions/Comments/Discussion



Overview of Current Pollution Reporting

Federal:

CERCLA/EPCRA Reportable
Quantities Hazardous/EHS,
40 C.F.R. 302.4 and 355

DOT/Hazardous Materials,
49 C.F.R. 171.15

NPDES Wastewater Excursions,
40 C.F.R. 122

Oil/Petroleum,
40 C.F.R. 110 and 112

RCRA Hazardous Wastes/Permitted
Facilities, 40 C.F.R. 262

PCBs under Toxic Substances Control
Act, 40 C.F.R. 761

State of Florida:

State Permit Thresholds

Pollution Discharge Prevention and Removal – petroleum,
dry cleaning solvents, Chapter 376, Florida Statutes

Environmental Control, Chapter 403, Florida Statutes

Chapters 62-150 (Hazardous Sub. Release Notification),
62-578 (UIC), 62-761 (USTs), and 62-762 (ASTs)

Initial Notice of Contamination Beyond Property
Boundaries, 376.30702, Florida Statutes

Chapter 62-780 (Contaminated Site Cleanup Rule)



Summary of Events – Environmental (2016)

Mosaic “Sinkhole,” Mulberry, Florida

Discovery, Aug 27, '16

- Notice, Aug 28, '16
- Agency Response, Aug 29, '16
- Story Goes Public, Sept 15, '16

City of St. Petersburg

- Tropical Weather (Hermine), Aug '16
- WW Discharge, Sept 7, '16
- Story Goes Public, late Sept '16



Summary of Events – Regulatory (2016)

Sept 27: DEP Temporary
Emergency Order
Requiring Notification
About Pollution

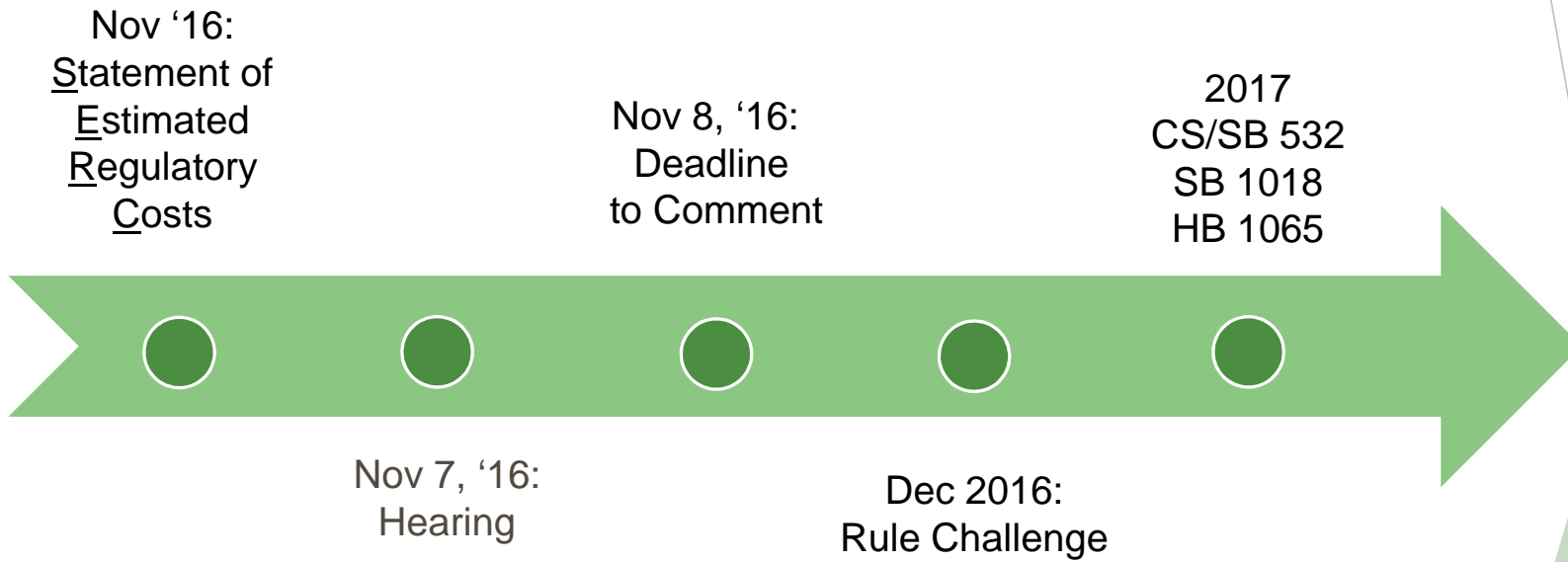
Oct: DEP Rulemaking
Workshops

Sept 28: DEP Proposed
Rulemaking –
Public Notice of
Pollution

Nov 4, 2016:
Revised
Proposed DEP
Rule



Summary of Events – Regulatory (2016-2017)



Overview of Former Proposed DEP Rule

Owners and operators of an installation where a *reportable release* occurred must notify:

- State officials;
- Local government officials;
- Local TV and newspaper; and
- Neighboring land owners (when migrates off property)

3 different notification possibilities:

- Within 24 hours of discovery (basic info);
- Within 48 hours of discovery (where release is/ is heading and recommended precautions); and
- Within 24 hours of migration from property (same info as previous two, but notify affected property owners)



Administrative Rule Challenge

- In December, 2016, a coalition of industry trade associations successfully challenged the Proposed Rule:
DOAH Case No.: 16-6889RP
- Administrative Law Judge Canter agreed with the industry group that DEP lacked statutory authority to adopt the Proposed Rule.



2017 Legislative Action

- 3 bills introduced: SB 532, SB 1018, and HB 1065
- SB 532 passed the Senate on 4/18, went to the House
- Pollution reporting requirements were inserted into SB 1018, a bill relating to contaminated site cleanup, in late April.
- On May 3, CS/CS/SB 1018 was passed and now awaits the Governor's signature.



CS/CS/SB 1018: “reportable pollution release”

- A “reportable pollution release” is a release/discharge to the air/land/water of state which is:
 1. Discovered by the owner or operator of the installation;
 2. Not authorized by law; and
 3. Is reportable to the State Watch Office pursuant to any DEP rule, permit, order, or variance.



CS/CS/SB 1018ER : reporting requirements

- Within 24 hours of discovery of a reportable release, the owner or operator of the installation must provide DEP with the same information it is required to provide to the State Watch Office.
- If the substance then migrates off the installation property boundaries, the owner or operator must notify DEP within 24 hours of discovery.



CS/CS/SB 1018: DEP responsibilities

- Must maintain a website where it will post all notices of reportable pollution releases it receives within 24 hours of receipt
- Will create regional email lists to allow subscribers to receive notices
- Create an email address and online form to allow owners or operators to submit notices required under the law



CS/CS/SB 1018: miscellaneous

- If multiple people must report same release, a single report is sufficient for all parties, but if report is insufficient DEP may enforce against all parties
- Submitting a required notice is not an admission of liability or harm
- Failure to provide required notification can subject owner/operator to civil penalties under § 403.121, Florida Statutes:
 - Recovery of damages and up to \$10,000 per day of the violation
 - Note, no criminal penalties
- Will take effect July 1, 2017



DEP Proposed Rule v. Legislation

- Only have to report to DEP; no reporting to news media or other entities
- Only have to report info required by State Watch Office requirements
- Less ambiguity
- No admission of liability/harm
- No criminal penalties, only civil



Questions and Comments?

