

# Akerman Practice Update

ENVIRONMENT & NATURAL RESOURCES

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## Florida's 2011 Legislative Session: Tracking Environmental Permitting, and USEPA Numeric Nutrient Water Quality Criteria

**Thomas R. Gould**  
thomas.gould@akerman.com

Florida's 2011 Legislative Session is shaping up to provide environmental-related interests with sweeping regulatory change. Akerman is currently tracking proposed legislation relating specifically to environmental and development-related permitting, and state enforcement of USEPA's numeric nutrient water quality criteria.

### **HB 991 and SB 1404: Environmental and Development-Related Permitting**

The proposed legislation creates, amends, and revises numerous laws with an overall aim to significantly streamline environmental and development-related permitting requirements.

Key changes include:

- local governments are directed to define the construction and operation of



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“Incentive-based permitting will be provided (e.g., automatic renewals, reduced or waived application fees, priority review, reduced number of routine compliance inspections, longer permit period durations)”

a bio-fuel processing facility as a valid industrial/agricultural/silvicultural use permitted within land use categories in local comprehensive plan

- local governments are directed to establish expedited review process of comprehensive plan amendments if a biomass facility is not defined in the original comprehensive plan
- local governments are prohibited from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency
- an expanded state programmatic general permit is provided for all dredge and fill activities impacting 3 acres (as opposed to the current limit of 5,000 s.f. – 1 acre) or less of wetlands or other surface waters, including navigable waters, subject to agreement with the United States Army Corps of Engineers
- any county having a population of 75,000 or more, or a municipality that has local pollution control programs serving populations of more than 50,000 must apply for environmental resource permitting delegation authority – those local governments that fail to apply for delegation of authority may not require permits that are similar to the requirements needed to obtain an ERP
- incentive-based permitting (e.g., automatic renewals, reduced or waived application fees, priority review, reduced number of routine compliance inspections, longer permit period durations)
- expanded use of ‘general’ permit (i.e., no agency action required) for construction, alteration, and maintenance of surface water management systems under 10 acres, subject to certain requirements
- exemptions for any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine from review as a DRI
- amends wetland mitigation bank UMAM scoring criteria set forth in section G2 – 345.100 et seq., FAC

### **HB 239 and SB 1090: Numeric Nutrient Water Quality Criteria**

The USEPA published its final numeric nutrient criteria rule (75 Fed. Reg. at 75,791) on December 6, 2010, which sets numeric nutrient criteria for Florida’s inland waters (e.g., lakes, springs, rivers, streams, and canals). EPA has delayed the effective date of the “Nutrient Criteria Rule” until March 6, 2012. However, EPA has initiated a second phase to the Nutrient Criteria Rule that will apply separate

“EPA has initiated a second phase to the Nutrient Criteria Rule that will apply separate numeric nutrient criteria targeting estuarine and coastal waters and their associated watersheds.”

numeric nutrient criteria targeting estuarine and coastal waters and their associated watersheds. EPA is scheduled to propose this separate Nutrient Criteria Rule by November 2011.

Federal lawsuits have recently been filed against EPA (i.e., State of Florida and the State of Florida’s Commissioner of Agriculture, Florida League of Cities, Florida Stormwater Association, and various fertilizer interests), which challenge the legal validity of the Nutrient Criteria Rule. The proposed legislation intends to block state agencies and local governments from implementing the Nutrient Criteria Rule. The proposed legislation also authorizes FDEP to adopt state numeric nutrient water quality criteria.

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For more information, please contact a member of our Environment & Natural Resources practice.

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