

Practice Update

# FDEP Emergency Rule Expands Pollution Notifications, Creating Significant New Requirements for Facilities and Landowners in Florida

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By Carolyn R. Haslam, Silvia M. Alderman, and Jason S. Lichtstein

On September 26, 2016, as directed by Governor Rick Scott, Florida Department of Environmental Protection (FDEP) Secretary Jon Steverson issued an emergency rule (62ER16-01) that established new, expanded requirements for public notification of pollution incidents in Florida. After two recent and highly publicized events, including a sewage spill in Pinellas County and sinkhole at Mosaic's New Wales facility, Governor Scott directed the rule issuance and stated that while FDEP was onsite to investigate and followed current state laws regarding public notification, current law required immediate change.

The FDEP emergency rule requires any owner or operator of any installation who has knowledge of any pollution at such installation to provide notification of such pollution in writing to FDEP (via email to [pollution.notice@dep.state.fl.us](mailto:pollution.notice@dep.state.fl.us)), local governments (the senior elected official and the senior administrative official of the affected area), and the general public within 24 hours of (i) the occurrence of any incident at an installation resulting in pollution or (ii) the discovery of

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Silvia M. Alderman  
Carolyn R. Haslam  
Jason S. Lichtstein

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pollution. Notice is required within 48 hours to the same parties of any potentially affected areas beyond the property boundaries and the potential risk to the public health, safety or welfare in connection with the pollution incident or the discovery of pollution. Additionally, the owner or operator must provide notice of becoming aware that pollution from an installation has affected areas beyond the property boundaries of the installation to the property owner of any affected area, as well as FDEP, local governments (as noted above), and the general public. In particular, the emergency rule requires notification of the general public by providing notice to local broadcast television affiliates and a newspaper of general circulation in the area of the contamination.

The pollution notification required by the emergency rule appears to apply quite broadly to any “pollution” affecting Florida’s air or water resources.

Subsequently, FDEP has provided additional information on its website, including a Frequently Asked Questions (FAQ) sheet and guidelines for interpreting the emergency rule. FDEP’s interpretative guidelines indicate that while there are no numeric thresholds within the emergency rule, consistent with the definition of pollution in section 403.031, Florida Statutes, notice should be provided for incidents which result in the introduction or discovery of substances “in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property.”

FDEP has stated that further information and guidance regarding the information that should be included in the content of the notification may be found at FDEP’s [website](#). FDEP has also indicated that for purposes of notifying the press, local broadcast television affiliates includes ABC, NBC, CBS, and Fox and that a newspaper of general circulation is described in Sections 50.011 and

50.031, Florida Statutes, but notice in accordance with Chapter 50, Florida Statutes, is not required.

The emergency rule took effect immediately on September 26, 2016 and will be in effect for ninety (90) days. Additionally, FDEP was directed by Governor Scott to begin the formal rulemaking process in order to gather public input and to make the rule change permanent. Notice was provided for seven (7) workshops across the state. FDEP will also be holding a rule hearing on November 7, 2016 in Tallahassee.

Governor Scott has stated that he will propose legislation during the next legislative session regarding public notification of pollution incidents that may cause a threat to public health and to Florida's air and water resources, as well as increase the fine amounts and penalties on violators.

Overall, the FDEP emergency rule and ongoing rulemaking have significant implications for facilities, property owners, and transactions in Florida to ensure compliance.

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