

Insights

Emergency DEP rule requires immediate media notification of pollution

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In response to two recent spills in Florida that simmered for days without notification to the public through the media, the Florida Department of Environmental Protection yesterday announced an immediately effective emergency rule requiring media notification of any incident resulting in pollution.

The emergency rule sweeps broadly, requiring “any owner or operator of any installation who has knowledge of any pollution at such installation [to] provide notice” **within 24 hours** “of any incident resulting in pollution or the discovery of pollution” to the DEP, the local government, and “the general public by providing notice to local broadcast television affiliates and a newspaper of general circulation.”

The emergency rule does not define “pollution” but presumably relies on the definition of pollution already in Florida law. “Pollution” is currently defined in Section 403.031(7), Fl. Stat., as “the presence in the outdoor atmosphere or waters of the state of any 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 which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law.”

Owners or operators whose pollution may affect or has affected areas beyond the property boundary have further notification obligations.

Significant questions remain about the application and scope of the emergency rule.

Emergency rules are effective for 90 days, although legal challenges or the need for legislative ratification of it can extend this period.

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The DEP announced on its website that it will be undertaking a formal, nonemergency rulemaking process to “gather public input and make the rule change permanent.” The DEP’s website also relates that the governor will seek legislation to ensure the public is kept informed of incidents of pollution, that will put the public notification requirements into law, and increase the fine amounts and penalties for violators.

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