

Permits; Enforcement of Water and Wastewater Systems

Number: AGO 91-20

Date: January 05, 1996

Subject:

Permits; Enforcement of Water and Wastewater Systems

Mr. Ronald W. Thomas
Executive Director
Department of General Services

RE: DEPARTMENT OF CORRECTIONS–DEPARTMENT OF ENVIRONMENTAL
REGULATION–DEPARTMENT OF GENERAL SERVICES–STATE BUILDINGS–BUILDING
CODES–regulation of construction of state buildings.

QUESTION:

What are the respective responsibilities of the Department of Environmental Regulation and the Department of General Services regarding the issuance of permits for water and wastewater systems and the enforcement of building codes for the construction of new correctional institutions by the Department of Corrections?

SUMMARY:

The Department of Environmental Regulation issues operational permits for any installation that may be a source of water pollution and for sewage or disposal systems or water treatment works. The Department of General Services is responsible for enforcing the state building codes for state buildings.

The "Florida Air and Water Pollution Control Act," Ch. 403, F.S., sets forth the duties and responsibilities of the Department of Environmental Regulation (DER) relating to environmental control. Pursuant to the act, DER is responsible for exercising general supervision over the administration and enforcement of the laws and administrative rules and regulations pertaining to air and water pollution.[1] The DER is charged with adopting, modifying and repealing rules and regulations to effectuate the intent and purposes of Ch. 403, F.S.[2]

Pursuant to s. 403.061(14), F.S. (1990 Supp.), DER is authorized to:

"Establish a permit system whereby a permit may be required for the operation, construction, or expansion of any installation that may be a source of air or water pollution and provide for the issuance and revocation of such permits and for the posting of an appropriate bond to operate."[3]

No stationary installation may be operated, maintained, constructed, expanded, or modified if it is expected to be a source of water pollution unless an appropriate and currently valid permit has

been secured from DER or department rule exempts it from the permitting requirement.[4] The department may only issue such permits when it has determined that "the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules promulgated by the department . . ."[5]

With regard to sewage or disposal systems or water treatment works:

"The department may issue construction permits for sewage systems, treatment works, or disposal systems based upon review of a preliminary design report, application forms, and other required information, all of which shall be formulated by department rule. Detailed construction plans and specifications shall not be required prior to issuance of a construction permit unless such plans and specifications are required to secure federal funding and the project is expected to receive federal funding. Upon a demonstration that a constructed system operates as designed, the department shall issue a permit for operation of the system."[6]

Thus, the focus of DER's permitting process is whether an installation is equipped with appropriate pollution control capability and systems,[7] not the structural integrity or specifications of the buildings or facilities themselves.[8]

Pursuant to s. 255.25, F.S. (1990 Supp.):

"No state agency may construct a building for state use . . . unless prior approval of the architectural design and preliminary construction plans is first obtained from the Division of Building Construction."[9]

In addition to its own review, the Division of Building Construction, a division of the Department of General Services (DGS), must submit proposed plans for construction of state-owned buildings to several other state agencies for consideration and approval. The Division of State Fire Marshal must determine that the proposed plan complies with uniform firesafety standards[10] and it must be determined that the proposed construction complies with flood plain management criteria.[11]

The intent of the Legislature in adopting Part VI, Ch. 553, F.S., entitled the "Florida Building Codes Act," was to provide a mechanism for the promulgation, adoption, and enforcement of state minimum building codes. These codes must establish standards flexible enough to cover all phases of construction which would also protect the public safety, health, and general welfare at a reasonable cost to the consumer.[12]

Pursuant to s. 553.73(2), F.S., each state agency with building construction regulation responsibilities must adopt one of the State Minimum Building Codes. These codes include provisions relating to plumbing, electrical requirements, glass, manufactured buildings, accessibility by handicapped persons, and thermal efficiency.[13] The designated code will then govern the construction, erection, alteration, repair, or demolition of any building for which the agency has construction responsibility. This office has concluded on a number of occasions that the DGS is the state agency which enforces the provisions of the State Minimum Building Codes against state buildings.[14]

Thus, the Department of Environmental Regulation reviews plans and the progress of construction to ensure such things as the adequate design and construction of systems to produce safe drinking water or to discharge adequately treated wastewater effluent. It is the responsibility of the Department of General Services to determine whether the requirements of the State Minimum Building Codes, relating to such things as plumbing, electrical requirements, and handicapped accessibility have been met by state buildings.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/t

[1] Section 403.061(6), F.S. (1990 Supp.).

[2] Section 403.061(7), *supra*.

[3] *And see* AGO 70-170 which discusses the authority of the Department of Environmental Regulation (formerly the Department of Air and Water Pollution Control) to establish a permit system for the construction, expansion, or operation of installations which may be a source of water pollution.

[4] Section 403.087(1), F.S.

[5] Section 403.087(4), F.S.

[6] Section 403.0881, F.S.

[7] *See also* s. 403.091, F.S., which details the inspection process for compliance with the law or rules and regulations of the department and which authorizes a DER representative to have access to records, inspect monitoring equipment or methods, sample pollutants, effluents, or wastes which are being discharged, and obtain other information to determine compliance with permit conditions.

[8] *Cf.* Council of Lower Keys v. Charley Toppino & Sons, Inc., 429 So.2d 67 (3 D.C.A. Fla., 1983) (DER not required or authorized by statute to deny or modify an air pollution permit due to alleged noncompliance with local zoning ordinances, land-use restrictions or long-range development plans; issuance of such permit must be based solely on compliance with applicable pollution control standards and rules).

[9] Section 255.25(1)(a), F.S. (1990 Supp.).

[10] Section 255.25(5), *supra*.

[11] Section 255.25(6), *supra*.

[12] Section 553.72, F.S.

[13] See s. 553.73(1)(a), F.S.

[14] See AGO's 76-114 and 75-170 concluding that it is the responsibility of the Department of General Services to enforce the provisions of the State Minimum Building Codes against state buildings. Cf. AGO 71-75 reaching a similar conclusion with regard to the Florida Electrical Code.