

Use of chemicals by Det of Natural resources

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Subject:
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DEPARTMENT OF NATURAL RESOURCES--NO AUTHORITY TO PERMIT USE OF
POISONS, DRUGS, OR CHEMICALS OTHER THAN FOR CAPTURE OF LIVE MARINE
SPECIMENS

To: Joseph W. Landers, Jr., Secretary, Department of Environmental Regulation, Tallahassee

Prepared by: Kenneth F. Hoffman, Assistant Attorney General

QUESTION:

Does s. 370.08(10), F. S., empower the Florida Department of Natural Resources to issue permits which authorize persons to place poisons, drugs, or other chemicals into the marine waters of the state for purposes other than capturing live marine species?

SUMMARY:

Section 370.08(10), F. S., does not authorize the Department of Natural Resources to issue permits which would authorize the placing of poisons, drugs, or other chemicals into the marine waters of the state for any purpose other than the capture of live marine species.

The question is answered in the negative.

Section 370.08(10), F. S., simply makes it unlawful for any person to place poisons, drugs, or other chemicals in the marine waters of the state unless a permit is obtained from the Division of Marine Resources of the Department of Natural Resources. The only permit authorized is specified by subsection 370.08(10)(b) to be one for the use of the above-named substances "for the purpose of capturing live marine species." No other purpose is authorized. The Department of Natural Resources has not promulgated any rules or regulations under this statute and has not yet made any administrative determination of the meaning of the statute.

However, it would appear that even the Department of Natural Resources, should it use poisons, drugs, or other chemicals in public waters of Florida, is controlled by the provisions of s. 403.161, F.S., as amended by s. 8 of Ch. 74-133, Laws of Florida, which prohibits and makes it a violation of Ch. 403, F. S., to cause pollution, except as is otherwise provided in Ch. 403, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property. The term "pollution" is defined to be "the presence in the outdoor atmosphere or waters of the state of any one or more substances, contaminants, or noise in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, or unreasonably

interfere with the enjoyment of life or property, including outdoor recreation." Section 403.031(2), as amended by s. 1 of Ch. 74-133. Chapter 403 applies to all fresh, brackish, saline, tidal, surface, or underground waters of the state, s. 403.031(3), except waters owned entirely by one person other than the state. The discharge of toxic chemicals or substances which could harm or injure plant or aquatic life is a violation of Ch. 403, as amended by Ch. 74-133, and also s. 17-3.02, Florida Administrative Code. Both Ch. 403 and Ch. 17-3, Florida Administrative Code, are enforced by the Florida Department of Pollution Control.

Nothing in s. 370.08(10), F. S., indicates the desire of the Legislature to preempt the authority of the Florida Department of Pollution Control under Ch. 403, F. S. The act on its face simply authorizes the Department of Natural Resources to permit the use of certain chemicals in marine water for the narrow purpose of capturing *live* marine species, subject to conditions placed on the issuance of such permits by the Department of Natural Resources. This in itself would not be contradictory of the provisions of Ch. 403 and rules promulgated thereunder, which prohibit use of chemicals, contaminants, or substances which would be "toxic" or harmful or injurious to marine organisms or plant or aquatic life. See s. 403.031(2) and 403.161. Should even the Department of Natural Resources desire to use chemicals which would be toxic to marine organisms or plant or aquatic life, that agency would be required to obtain permission from the Department of Pollution Control. The provisions of Ch. 403 are that no *person* may discharge wastes which reduce the quality of the water below the classification established for a particular body of water. Section 403.161, as amended by Ch. 74-133, Laws of Florida. The term "person" is defined in s. 403.031(11) to mean "the state or any agency or institution thereof"

Therefore, it is my conclusion that s. 370.08(10), F. S., does not authorize the Department of Natural Resources to issue permits which would authorize the placing of poisons, drugs, or other chemicals into the marine waters of the state for any purpose other than the capture of live marine species.