

Questions raised about pollution notification plan

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TALLAHASSEE — Representatives of utility companies and municipalities told environmental regulators this week they are concerned that a proposed pollution-notification rule could place excessive reporting burdens on industry and local governments.

The Department of Environmental Protection held its seventh and final workshop Wednesday to hear public comment on the proposed rule, which was ordered by Gov. Rick Scott last month after a pair of pollution incidents raised questions about the state's public-notification process.

Scott's call came after a sewage spill in Pinellas County and after a massive sinkhole south of Lakeland sent toxins into the Floridan Aquifer. The latter came to light in September only after the news media reported on the incident, which occurred at a Mosaic Fertilizer phosphate plant near Mulberry.

While critics accused the administration of intentionally withholding information, Scott's office blamed flawed state regulations and called for stricter requirements for notifying the public when pollution occurs.

"It does not make sense that the public is not immediately notified when pollution incidents occur, and that is why I am directing (the Department of Environmental Protection) to immediately issue an emergency rule implementing strict requirements for public notification within 24 hours," Scott

said in a Sept. 26 statement, when he also ordered a long-term replacement for the emergency order. "Today, I am demanding any business, county or city government responsible for a pollution incident to immediately tell the public."

The proposed requirements include same-day notification of state and local government agencies and the news media upon discovery of the pollution. But utility representatives told a panel of department officials this week that despite "laudable goals," the proposal could have negative consequences.

Utility groups contend, in part, that the proposal is too broad. It states "any owner of an installation who has knowledge of any pollution at such installation shall provide notice" to a specified list of officials within the contaminated area.

The utilities argued vague use of key legal terms — including "pollution" itself — in the proposed rule would create ambiguities that could impose onerous compliance costs and hamper their response to pollution-related disasters.

Gainesville Regional Utilities engineer Jennifer McElroy cited a case under the emergency rule where a simple five-gallon spill of contaminated water led to high compliance costs.

Though the incident had "no impact to public health or safety," the company spent some \$1,000 and 20 man-hours complying with the new requirements because of a lack of clarity in the changing notification regime, McElroy said.

Department officials were wary of providing guidance about past or hypothetical pollution scenarios. But a department program manager said incidents such as the Gainesville case would likely be considered negligible under the new rule and therefore not be subject to the public notification process.

Utility representatives said the state should take on any added responsibility to notify the public and local officials, while the companies should continue to report only to the department, as is current practice.

"Not everybody understands your definition of pollution in the statute," said Mike Sole of Florida Power & Light, the state's largest utility, who called the proposed language "extremely vague."

"Here's an opportunity where probably two people within the department could move forward and take the reporting that's already established by law and rule, and expand that reporting. I'm perplexed as to why we're trying to push that judgment on a regulated industry," said Sole, a former secretary of the Department of Environmental Protection.

Rep. Lake Ray, R-Jacksonville, chimed in at Wednesday's workshop, saying the proposed requirement that companies notify local media in the event of a pollution incident is "probably inconsistent with state law" and may lead to "uncontrolled public hysteria."

The department will hold a formal hearing on the proposed rule Nov. 7 — the last day of the public comment period — in Tallahassee, where regulators will seek to finalize the rule.

At a Cabinet meeting Tuesday, Scott said changes to the proposal were likely to come before the hearing. Department officials said Wednesday they noted that suggestion "loud and clear" and said any updates would be posted to the department's website ahead of Nov. 7.

The final workshop was held Wednesday in Jacksonville after similar meetings were held during the past two weeks in Tallahassee, West Palm Beach, Orlando, Fort Myers, Pensacola, and Temple Terrace.

In addition to departmental reforms, Scott has said he will push for legislative action in 2017, including higher fines for polluters.

Rep. Kathleen Peters, R-Treasure Island, announced last month she will spearhead Scott's proposal in the House. Senate Majority Leader Bill Galvano, R-Bradenton, has said he will lead Senate efforts on pollution-notification requirements.