

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1300

SPONSOR: Appropriations Subcommittee on General Government and Committee on Agriculture and Senator Alexander

SUBJECT: Citrus Processing Emissions

DATE: April 10, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Poole	AG	Favorable/CS
2.	Blizzard	Hayes	AGG	Favorable/CS
3.	_____	_____	AP	Withdrawn: Fav/CS
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill affects the 28 citrus juice processing facilities that operate in Florida. It redefines the terms “new sources” and “existing sources” and changes permitted emissions limits. It requires the Department of Environmental Protection (department) to develop, by a specified deadline, management practices to prevent or minimize certain pollutants and provides additional information to be included in rules adopted by the department. The bill requires that citrus processing facilities provide the department with specified information for evaluation and provides for the expiration of the program created under s. 403.08725, F.S.

Additionally, the bill requires any change in the salary of an employee of the Department of Citrus which is at or above \$100,000 annually to be approved by the full membership of the Florida Citrus Commission. It also requires the Department of Citrus to publish an annual travel report that states specific information for each staff member of the department and each member of the Florida Citrus Commission who has traveled during that year.

This bill amends s. 403.08725 of the Florida Statutes. This bill repeals section 581.1845, Florida Statutes.

This bill creates sections of the Florida Statutes that are as yet unnumbered.

## II. Present Situation:

The Clean Air Act Amendments of 1990 provided for a nationwide air-operation-permit program which required owners of major sources of air pollution to obtain 5-year operation permits and to

pay an annual per ton emission fee in an amount sufficient to pay the costs of the programs under Title V of the act.

To receive delegation to administer the program, states were required to submit their Title V air operation permit program to the U.S. Environmental Agency (EPA) by November, 1993. In 1992, the Legislature passed legislation that was designed to allow the Department of Environmental Protection to seek delegation. In 1993 and 1994, refinements were made to Florida's law to address concerns expressed by EPA officials.

Section 403.0872, F.S., provides that each major source of air pollution, including electrical power plants, must obtain from the DEP an operation permit for a major source of air pollution which is the only department operation permit for a major source of air pollution required for such source. A major source of air pollution is a stationary source which emits any regulated air pollutant and which is:

1. A major source as defined in 42 U.S.C. s. 7412(a)(1);
2. A major stationary source or major emitting facility as defined in 42 U.S.C. s. 7602 (j) or 42 U.S.C. subchapter 1, part C or part D;
3. An affected source as defined in 42 U.S.C. s. 7651a(1);
4. An air pollution source subject to standards or regulations under 42 U.S.C. s. 7411 or s. 7412; provided that a source is not a major source solely because of its regulation under 42 U.S.C. s. 7412(r); or
5. A stationary air pollution source belonging to a category designated as a 40 C.F.R. part 70 source by regulation adopted by the administrator of the EPA and under 42 U.S.C. ss.7661, et seq. Certain facilities such as asphalt manufacturers and rock crushing facilities are exempt.

Each permitted major source of air pollution must pay an annual operation license fee in an amount determined by the department that is sufficient to cover all reasonable direct and indirect costs required to develop and administer the major stationary source air-operation permit program.

Essentially all citrus processing plants in Florida (of which there are 28) have some type of air permit and most need Title V permits. Many plants need to obtain retroactive Prevention of Significant Deterioration permits and perform case-by-case Best Available Control Technology determinations for Volatile Organic Compound emissions. This involves extensive permitting work for both the industry and the department. A comprehensive air sampling study was conducted in 1997 to determine the quantity of Volatile Organic Compound emissions from peel dryers. The Volatile Organic Compound emissions were over 100 tons per year from the smaller dryers and over 1,000 tons per year for the large plants.

In 2000, the Legislature enacted s. 403.08725, F.S., to regulate air pollutant emissions from the citrus juice processing industry in an innovative manner. The adopted legislation was

collaboratively drafted by the department, industry, the Legislature and the Governor's office. The statutory program eliminates federal permitting requirements in favor of a flexible approach that encourages pollution prevention and reduction. In January 2001, the department submitted the legislation to the EPA for approval as a revision of the State Implementation Plan for control of air pollutants. Approval by EPA is required for the statutory program to be effective in place of federal requirements. The EPA agreed to review the program under the provisions of an agreement between EPA and the Environmental Council of the States to pursue regulatory innovation. The department worked with the citrus juice processing industry to draft a supporting rule to address many of EPA's concerns with the statutory program.

To accommodate delays in approval, the Governor signed HB 1285 in May 2002, which extended EPA's time for approving the program from two years from submittal to EPA to three years from submittal. HB 27E was also signed, authorizing the department to extend the times for complying with the statutory requirements for one year. In July, the department submitted the statute, draft rule and supporting technical analysis of air pollutant emissions and impacts to EPA for review of the program under the ECOS Agreement. EPA responded with similar comments to those originally expressed. The major issues were related to emissions of sulfur and particulate matter, emission impact modeling, public participation and right to judicial review, periodic review of the program's effectiveness, a regulatory backstop related to fruit processing rates, and regulation of hazardous air pollutants.

In June the Department learned from EPA that the Natural Resources Defense Council (NRDC) was interested in commenting on the statutory program, and would likely file suit against EPA if EPA approved the program without addressing NRDC's concerns, which were similar to several of EPA's concerns.

Currently, discussions have continued between the department, EPA, the NRDC, and the citrus juice processing industry to reach an agreement on statutory and rule changes that will allow EPA to approve the program under the ECOS agreement. Most comments have been addressed with agreement on draft changes to the statute. The department sent complete draft statutory language to EPA in late February for review. Included were two options for limiting the sulfur content of fuel oils fired by the industry and a request for language that would address EPA's concerns about public participation and right to judicial review. EPA responded informally in mid-March regarding only the sulfur content issue, but the department is still awaiting a formal response.

Section 581.1845, F.S., provides that the Department of Agriculture and Consumer Services shall provide compensation to eligible homeowners whose citrus trees have been removed under the citrus canker eradication program. Historically, homeowners have been compensated through the Shade Dade and Shade Florida Voucher Programs where they received a \$100 voucher card for the first citrus tree removed. Although the law allows \$100 to be provided for each tree after the first one is removed, Chapter 2002-402 amends s. 581.1845, F.S., for the 2002-2003 fiscal year only, to provide \$55 in compensation for each tree removed by the department from residential property under the citrus canker eradication program.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 403.08725, F.S., to provide that all citrus juice processing facilities must comply with this section in lieu of obtaining air-pollution construction and operation permits, by July 1, 2004. Revises the definition of “new sources” and “existing sources”.

#### **Permitted Emissions Limits –**

After October 31, 2004, a facility with access to natural gas may not fire fuel oil containing greater than 0.1 percent sulfur by weight or alternatively, operate without processes that result in the equivalent of the use of such fuel. Those facilities without access to natural gas shall be limited to fuel oil containing no greater than 0.5 percent sulfur by weight, or alternatively be required to operate by using processes that result in the equivalent of the use of such fuel, except that all new sources at such facilities shall be limited to fuel oil containing no greater than 0.1 percent sulfur by weight or to the use of processes that result in the equivalent of the use of such fuel. No source shall fire any fuel other than fuel oil, natural gas, ethanol, propane, d-limonene, or biogas. No source shall fire used oil.

After October 31, 2004, for particulate matter of 10 microns or less, the emissions levels, expressed in pounds per million British Thermal Units of heat input, are established for specified types of new and existing sources. Fuel limitations are specified depending upon the source.

The Department of Environmental Protection (department) is authorized to develop, with the cooperation of the Florida Citrus Processors Association, management practices for prevention or minimization of any other pollutant specifically regulated under the Clean Air Act but not specifically addressed by this section. To the greatest practicable extent, considering the unique characteristics of each facility, after these management practices have been developed, each source that is subject to this section must either comply with such generic practices or obtain approval from the department for use of modified practices that are uniquely tailored to the facility. Such management practices must be developed before the Environmental Protection Agency (EPA) issues its final approval of the program developed under this section. The department shall adopt such practices by rule when practicable.

#### **Emission Fees –**

The effective dates have been revised to match the effective dates of the emission limits.

#### **Rules –**

The department is directed to require registration of facilities and shall provide for such public and EPA participation as is required by Title V of the Clean Air Act.

#### **Legislative Review –**

By March 2007, the department, after consultation with the citrus industry, shall report to the Legislature concerning the implementation of s. 403.08725, F.S., and shall make recommendations for any changes necessary to improve implementation.

#### **Additional Emissions Limits And Expiration Of This Program –**

No later than June 15 of each calendar year, each citrus processing facility subject to s. 403.08725, F.S., shall provide the total facility fruit throughput, in standard box measurement,

for the previous June 1 through May 31 period, to the Florida Citrus Processors Association. Requires the association to provide the department with the aggregate fruit throughput for all facilities no later than June 30 of each calendar year and to provide throughput information for individual facilities upon request of the department.

On July 31 following the close of a production year during which the industry wide fruit throughput exceeds 350 million boxes, specified terms and conditions shall expire and all facilities subject to those provisions shall become subject to all then-existing department air-permitting requirements for the construction and operation of major air-pollution sources and all generally applicable air-pollution-limiting department rules. Such facilities shall apply for individual Title V permits on or before July 31 of that year, and all facility emissions limits and unit emissions limits effective as of July 30 of that year shall continue to be the effective limits until changed through normal department air-pollution preconstruction permit processes.

If a facility makes timely application for a Title V permit and provides information to make the application complete, that facility is not considered to be operating without a permit during the processing of the Title V permit if the facility continues to provide the department with all Title V compliance reports and monitoring reports.

The department is directed to evaluate the program to determine if it is successful. Evaluation criteria is specified. The department, in consultation with the EPA shall determine the success of the program by a comparison of industry wide aggregate air emissions increases and reductions resulting from regulation under this program versus emissions increases and reductions that would have resulted from regulation under the federal new source review program. During the evaluation period, the department shall track new sources added to citrus facilities and estimate the emissions limitations that would have resulted from the federal new source review regulations in effect at the time of the addition of each source.

If this program is not considered successful, on July 31 following the date of completion of the evaluation, certain terms and conditions shall expire, and all facilities subject to such provisions shall become subject to all then-existing department air-permitting requirements for construction and operation of major air pollution sources and all generally applicable air pollution-limiting department rules. Such facilities must apply for individual Title V permits on or before July 31 of that year, and all facility emissions limits and unit emissions limits effective as of July 30 of that year shall continue to be the effective limits for such units and facilities, with certain exceptions.

If the program is not successful, the department shall identify each air pollutant, PM10, NOx, SO2 and VOC, for which the industry wide emissions increases are greater than would have resulted under the federal new source review program and shall quantify the extent to which such emissions exceed such levels. For each pollutant so identified, the facilities subject to this section shall individually or collectively reduce industry wide emissions of such pollutants to the levels equivalent to those that would have resulted under the federal new source review program.

**Section 2.** Requires any change in the salary of an employee of the Department of Citrus which is at or above \$100,000 annually to be approved by the full membership of the Florida Citrus Commission.

**Section 3.** Requires the Department of Citrus to publish an annual travel report that provides specific information for each staff member of the department and each member of the Florida Citrus Commission who has traveled during that year.

**Section 4.** Repeals section 581.1845, Florida Statutes to eliminate the Citrus Canker Compensation Program.

**Section 5.** Provides that this act shall take effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Since most of the citrus industry's facilities have historically burned natural gas, the impact on the industry as a whole is expected to be minimal.

Eligible homeowners will no longer receive compensation in the amount of \$100 for the first tree removed, and \$55 for each subsequent citrus tree removed under the Citrus Canker Compensation Program.

C. Government Sector Impact:

The Departments of Environmental Protection and Citrus have determined the fiscal impact to be insignificant and can be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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