

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 19, 1998 Revised: _____

Subject: Hazardous waste facilities

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill would restrict the Department of Environmental Protection’s (DEP) authority to issue construction, modification, and initial operation permits for facilities that manage hazardous waste generated off-site. The DEP may not issue any permit for a facility to be located in certain specified locations. The bill would apply to any permit application for the construction, initial operation, or substantial modification of a facility pending on the effective date of the bill for which the DEP has not issued a final order and to any proposed transfer facility which has not commenced operation as of the effective date of the bill.

This bill creates s. 403.7211, F.S.

II. Present Situation:

Facilities which treat, store, or dispose of hazardous waste, often referred to as TSDs, are regulated under the federal Resource Conservation and Recover Act (RCRA) by the Environmental Protection Agency and also are required to obtain construction and operation permits from the Department of Environmental Protection (DEP) under part IV, ch. 403, F.S. The DEP has been delegated the authority from the U.S. Environmental Protection Agency to implement certain portions of RCRA, including the permitting of these hazardous waste facilities.

Under RCRA, all facilities that currently or plan to treat, store, or dispose of hazardous waste must obtain a permit. The permit outlines facility design and operation, lays out safety standards, and describes activities that the facility must perform, such as monitoring and reporting. Permits typically require facilities to develop emergency plans, find insurance and financial backing, and train employees to handle hazards. Permits can also include facility-specific requirements such as

groundwater monitoring. According to RCRA and its regulations, a TSD cannot operate without a permit, with a few exceptions.

According to the EPA, hazardous waste management facilities should avoid locating near sensitive populations or in densely populated areas. Areas near schools, nursing homes, day care centers, or hospitals should be avoided. Some states have setback distances that prescribe the minimum distance a hazardous waste facility can be from certain types of land use.

Section 403.721, F.S., granted the DEP the authority to establish, by rule, standards, requirements, and procedures needed to protect human health and the environment to apply to:

- Persons who generate or transport hazardous waste;
- Persons who own or operate hazardous waste disposal, storage, or treatment facilities; and
- Hazardous waste disposal facilities.

The DEP's rules govern such things as recordkeeping practices; labeling practices and use of appropriate containers for hazardous waste; and a manifest system to assure that all hazardous waste is designated for permitted TSDs.

Section 403.722, F.S., provides that each person who intends to construct, modify, operate, or close a hazardous waste disposal, storage, or treatment facility shall obtain a construction, operation, or closure permit from the DEP. The DEP may require, in a permit application, submission of information concerning:

- The maintenance of certain records;
- Satisfactory compliance with the manifest system;
- The methods, techniques, and practices for treatment, storage, and disposal;
- The location, design, and construction of the TSD;
- Contingency plans for effective action to minimize unanticipated damage resulting from any accident at the TSD;
- Financial responsibility and personnel;
- Corrective action to be taken beyond a facility boundary where necessary to protect human health and the environment;
- Conditions which require cleanup of releases of hazardous waste;

- Groundwater monitoring, unsaturated zone monitoring, and corrective action requirements for certain land disposal facilities accepting hazardous waste;
- Estimates of the composition, quantity, and concentration of any hazardous waste to be stored, treated, or disposed of; and
- The site to which hazardous waste or the products of treatment of such hazardous will be transported and at which will be disposed, treated, or stored.

In addition to those rules adopted pursuant to ss. 403.721 and 403.722, F.S., the DEP has incorporated by reference the EPA rules concerning the siting of these facilities. The EPA's rules limit the siting of these facilities in the 100-year floodplain; wetland areas; over high-value groundwater or where the underground conditions are complex and not understood; earthquake zones; and unstable terrain, such as where the incidents of sinkholes is high. (40 CFR 264.18)

A company known as American Environmental Services proposed to build a treatment and storage facility for hazardous waste at the northern end of the Dames Point peninsula in Duval County. Questions arose about the safety of the facility at the proposed site even if the facility meets existing conditions for permits from the DEP. The City of Jacksonville has been unable to block the project, the latest loss came in an appeal to the Florida Supreme Court on February 27, 1998.

III. Effect of Proposed Changes:

This bill creates s. 403.7211, F.S., to provide restrictions on the siting of facilities managing hazardous waste generated off-site. This section does not apply to manufacturers, power generators, or other industrial operations that have received or apply for a permit or a modification to a permit from the DEP for the treatment, storage, or disposal of hazardous waste generated only on-site or from other sites owned or acquired by the permittee. This section shall apply to all federal facilities that manage hazardous waste.

The DEP shall not issue any permit under s. 403.722, F.S., for the construction, initial operation, or substantial modification of a facility for the disposal, storage, or treatment of hazardous waste generated off-site which is proposed to be located in any of the following locations:

- Any area where life-threatening concentrations of hazardous substances could accumulate at any residence or residential subdivision as the result of a catastrophic event at the proposed facility, unless each such residence or residential subdivision is served by at least one arterial road or urban minor arterial road, as defined in s. 334.03, F.S., which provides safe and direct egress by land to an area where such lethal concentrations of hazardous substances could not accumulate in a catastrophic event. Egress by any road leading from any residence or residential subdivision to any point located within 1,000 yards of the proposed facility is deemed unsafe. In determining whether egress proposed by the applicant is safe and direct, the DEP must consider factors such as:

1. Natural barriers such as water bodies, and whether any road in the proposed evacuation route is impaired by a natural barrier such as a water body;
 2. Potential exposure during egress and potential increases in the duration of exposure;
 3. Whether any road in a proposed evacuation route passes in close proximity to the facility; and
 4. Whether any portion of the evacuation route is inherently directed toward the facility.
- Any location within 1,500 yards of any hospital, prison, school, nursing home facility, day care facility, stadium, place of assembled worship, or any other site where individuals are routinely confined or assembled in such a manner that reasonable access to immediate evacuation is likely to be unavailable.
 - Any location within 1,000 yards of any residence.
 - Or any location which is inconsistent with rules adopted by the DEP under part IV, ch. 403, F.S.

All distances are to be measured from the outer limit of the active hazardous waste management area.

It shall be presumed that life-threatening concentrations of hazardous substances could accumulate in a catastrophic event in any area within a radius of 3 miles of a hazardous waste transfer, disposal, storage, or treatment facility. The bill provides that this presumption can be rebutted by certain demonstrations.

A concentration of hazardous substance is deemed to be life-threatening when the concentration could cause susceptible or sensitive individuals, excluding hypersensitive or hypersusceptible individuals, to experience irreversible or other serious, long-lasting effects or impaired ability to escape.

No person shall construct or operate a transfer facility for the management of hazardous waste unless the facility meets the siting requirements of s. 403.7211, F.S.

The bill would not prohibit the operation of existing transfer facilities that have commenced operation as of the effective date of the bill, if the transfer facility is not relocated or if there is no substantial modification in the structure or operation of the facility after the effective date of the bill.

Section 403.7211, F.S., which is created by this bill, would apply to any permit applications for the construction, initial operation, or substantial modification of a facility pending on the effective date of this act for which the DEP has not issued a final order and to any proposed transfer station

which has not commenced operation as of the effective date of this act. The effective date is 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:

This bill provides additional restrictions on the siting of hazardous waste facilities in this state and would effectively prohibit the proposed construction of a facility by American Environmental Services in Duval County at the northern end of the Dames Point peninsula. The company proposing the facility would be required to seek an alternate site and would likely experience additional siting and permit costs.

Residents of this state would be afforded added protections in the event of an accident at a hazardous waste treatment, storage, or disposal facility since the enhanced siting requirements restrict where such facilities may be located and provide more effective egress in the event of a catastrophic event.

C. Government Sector Impact:

The requirements of this bill are not expected to impose any significant costs on the Department of Environmental Protection for administration.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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