

By Representative Gay

1 A bill to be entitled
2 An act relating to air pollution; amending s.
3 403.0872, F.S., relating to operation permits
4 for major sources of air pollution; providing
5 that the Department of Environmental Protection
6 permit is the only air-operation permit
7 required for such source; authorizing continued
8 operation of a permitted source until
9 conclusion of certain application proceedings
10 or the effective date of the new permit,
11 whichever is later; providing timeframe for
12 issuance of revised draft permits containing
13 significant change resulting from public
14 comments; requiring provision of revised permit
15 to the applicant; providing timeframe for
16 provision of proposed permits and certain
17 comments to the United States Environmental
18 Protection Agency; providing timeframe for
19 issuance of permits containing changes
20 resulting from an administrative hearing;
21 providing that compliance with department's
22 air-operation permit constitutes compliance
23 with applicable federal, state, and local
24 requirements; authorizing inclusion of local
25 air pollution control ordinances, regulations,
26 or rules adopted before the effective date of
27 the act, as applicable permit requirements;
28 providing conditions for inclusion of such
29 local ordinances, regulations, or rules adopted
30 on or after that date; providing that permit
31 requirements based on local ordinances,

1 regulations, or rules are not enforceable by
2 the department, notwithstanding certain
3 agreements; providing a time-limited exception
4 for air construction permits; requiring the
5 department to specify permit terms or
6 conditions that are not federally enforceable
7 under the Clean Air Act; requiring the
8 department to revise air-operation permits for
9 consistency by a specified date; providing an
10 effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Section 403.0872, Florida Statutes, 1996
15 Supplement, is amended to read:

16 403.0872 Operation permits for major sources of air
17 pollution; annual operation license fee.--Provided that
18 program approval pursuant to 42 U.S.C. s. 7661a has been
19 received from the United States Environmental Protection
20 Agency, beginning January 2, 1995, each major source of air
21 pollution, including electrical power plants certified under
22 s. 403.511, must obtain from the department an operation
23 permit for a major source of air pollution under this section,
24 which is the only air ~~department~~ operation permit for a major
25 source of air pollution required for such source. Operation
26 permits for major sources of air pollution, except general
27 permits issued pursuant to s. 403.814, must be issued in
28 accordance with the following procedures and in accordance
29 with chapter 120; however, to the extent that chapter 120 is
30 inconsistent with the provisions of this section, the
31 procedures contained in this section prevail:

1 (1) For purposes of this section, a major source of
2 air pollution means a stationary source of air pollution, or
3 any group of stationary sources within a contiguous area and
4 under common control, which emits any regulated air pollutant
5 and which is any of the following:

6 (a) A major source within the meaning of 42 U.S.C. s.
7 7412(a)(1);

8 (b) A major stationary source or major emitting
9 facility within the meaning of 42 U.S.C. s. 7602(j) or 42
10 U.S.C. subchapter I, part C or part D;

11 (c) An affected source within the meaning of 42 U.S.C.
12 s. 7651a(1);

13 (d) An air pollution source subject to standards or
14 regulations under 42 U.S.C. s. 7411 or s. 7412; provided that
15 a source is not a major source solely because of its
16 regulation under 42 U.S.C. s. 7412(r); or

17 (e) A stationary air pollution source belonging to a
18 category designated as a 40 C.F.R. part 70 source by
19 regulations adopted by the administrator of the United States
20 Environmental Protection Agency under 42 U.S.C. ss. 7661 et
21 seq. The department shall exempt those facilities that are
22 subject to this section solely because they are subject to
23 requirements under 42 U.S.C. s. 7411 or solely because they
24 are subject to reporting requirements under 42 U.S.C. s. 7412
25 for as long as the exemption is available under federal law.

26 (2) An application for an operation permit for a major
27 source of air pollution must be submitted in accordance with
28 rules of the department governing permit applications. The
29 department shall adopt rules defining the timing, content, and
30 distribution of an application for a permit under this
31 section. A permit application processing fee is not required.

1 The department may issue an operation permit for a major
2 source of air pollution only when it has reasonable assurance
3 that the source applies pollution control technology,
4 including fuel or raw material selection, necessary to enable
5 it to comply with the standards or rules adopted by the
6 department or an approved compliance plan for that source. If
7 two or more major air pollution sources that belong to the
8 same Major Group as described in the Standard Industrial
9 Classification Manual, 1987, are operated at a single site,
10 the owner may elect to receive a single operation permit
11 covering all such sources at the site.

12 (a) An application for a permit under this section is
13 timely and complete if it is submitted in accordance with
14 department rules governing the timing of applications and
15 substantially addresses the information specified in
16 completeness criteria determined by department rule in
17 accordance with applicable regulations of the United States
18 Environmental Protection Agency governing the contents of
19 applications for permits under 42 U.S.C. s. 7661b(d). Unless
20 the department requests additional information or otherwise
21 notifies the applicant of incompleteness within 60 days after
22 receipt of an application, the application is complete.

23 (b) Any permitted air pollution source that submits a
24 timely and complete application for a permit under this
25 section is entitled to operate in compliance with its existing
26 air permit until ~~pending~~ the conclusion of proceedings
27 associated with its application or the permit becomes
28 effective, whichever is later. Notwithstanding the timing
29 requirements of paragraph (c) and subsection (3), the
30 department may process applications received during the first
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1 year of permit processing under this section, in a manner
2 consistent with 42 U.S.C. s. 7661b(c).

3 (c) The department may request additional information
4 necessary to process a permit application subsequent to a
5 determination of completeness in accordance with s.
6 403.0876(1).

7 (3) Within 90 days after the date on which the
8 department receives all information necessary to process an
9 application for a permit under this section, the department
10 shall issue a draft permit or a determination that the
11 requested permit should be denied. A draft permit must contain
12 all conditions that the department finds necessary to ensure
13 that operation of the source will be in compliance with
14 applicable law, rules, or compliance plans. If the department
15 proposes to deny the permit application, the department's
16 determination must provide an explanation for the denial. The
17 department shall furnish a copy of each draft permit to the
18 United States Environmental Protection Agency and to any
19 contiguous state whose air quality could be affected or which
20 is within 50 miles of the source pursuant to procedures
21 established by department rule.

22 (4) The department shall require the applicant to
23 publish notice of any draft permit in accordance with
24 department rule. The department must accept public comment
25 with respect to a draft permit for 30 days following the date
26 of notice publication. The notice must be published in a
27 newspaper of general circulation as defined in s. 403.5115(2).
28 If comments received during this comment period result in a
29 significant change in the draft permit, the department must
30 issue a revised draft permit within 45 days, which shall be
31 supplied to the applicant, to the United States Environmental

1 Protection Agency, and to any contiguous state whose air
2 quality could be affected or which is within 50 miles of the
3 source.

4 (5) Any person whose substantial interests are
5 affected by a draft permit or the denial determination may
6 request an administrative hearing under ss. 120.569 and
7 120.57, in accordance with the rules of the department. A
8 draft permit must notify the permit applicant of any review
9 process applicable to the permit decision of the department.
10 The department shall prescribe, by rule, a suitable standard
11 format for such notification.

12 (6) If a hearing is not requested under ss. 120.569
13 and 120.57, the draft permit will become the department's
14 proposed permit but does not become final until the time for
15 federal review of the proposed permit has elapsed. The
16 department shall furnish the United States Environmental
17 Protection Agency a copy of each proposed permit and its
18 written response to any comments regarding the permit
19 submitted by contiguous states within 30 days following the
20 conclusion of the comment period on the last draft permit. If
21 no objection to the proposed permit is made by the United
22 States Environmental Protection Agency within the time
23 established by 42 U.S.C. s. 7661d, the proposed permit must
24 become final no later than 55 days after the date on which the
25 proposed permit was mailed to the United States Environmental
26 Protection Agency. The department shall issue a conformed copy
27 of the final permit as soon as is practicable thereafter.

28 (7) If a draft permit is the subject of an
29 administrative hearing under ss. 120.569 and 120.57, a
30 proposed permit containing changes, if any, resulting from the
31 hearing process, after the conclusion of the hearing, must be

1 issued and a copy must be provided to the applicant, to the
2 United States Environmental Protection Agency, and to any
3 contiguous state whose air quality could be affected or which
4 is within 50 miles of the source, as soon as practicable, but
5 no later than 30 days after the date the final order is
6 required to be filed pursuant to s. 120.57(1)(k). The proposed
7 permit shall not become final until the time for review, by
8 the United States Environmental Protection Agency, of the
9 proposed permit has elapsed. If comments from a contiguous
10 state regarding the permit are received, the department must
11 provide a written response to the applicant, to the state, and
12 to the United States Environmental Protection Agency. If no
13 objection to the proposed permit is made by the United States
14 Environmental Protection Agency within the time established by
15 42 U.S.C. s. 7661d, the proposed permit must become final no
16 later than 55 days after the date on which the proposed permit
17 was mailed to the United States Environmental Protection
18 Agency. The department shall issue a conformed copy of the
19 final permit as soon as is practicable thereafter.

20 (8) If the administrator of the United States
21 Environmental Protection Agency timely objects to a proposed
22 permit under this section, the department must not issue a
23 final permit until the objection is resolved or withdrawn. A
24 copy of the written objection of the administrator must be
25 provided to the permit applicant as soon as practicable after
26 the department receives it. Within 45 days after the date on
27 which the department serves the applicant with a copy of an
28 objection by the United States Environmental Protection Agency
29 to a proposed permit, the applicant may file a written reply
30 to the objection. The written reply must include any
31 supporting materials that the applicant desires to include in

1 the record relevant to the issues raised by the objection. The
2 written reply must be considered by the department in issuing
3 a final permit to resolve the objection of the administrator.
4 A final permit issued by the department to resolve an
5 objection of the administrator is not subject to ss. 120.569
6 and 120.57.

7 (9) A final permit issued under this section is
8 subject to judicial review under s. 120.68. If judicial review
9 of a final permit results in material changes to the
10 conditions of the permit, the department shall notify the
11 United States Environmental Protection Agency and any state
12 that is contiguous to this state whose air quality could be
13 affected or that is within 50 miles of the source, pursuant to
14 rules of the department.

15 (10) If the department is notified by the
16 administrator of the United States Environmental Protection
17 Agency that cause exists to terminate, modify, or revoke and
18 reissue a permit under this section, the department shall,
19 within 90 days after receipt of such notification, furnish to
20 the administrator and the permittee a proposed determination
21 of termination, modification, or revocation and reissuance as
22 appropriate. Within 45 days after the date on which the
23 department notifies the permittee that the United States
24 Environmental Protection Agency proposes action regarding its
25 permit, the permittee may file a written response concerning
26 the proposed action. The written response must include any
27 supporting materials that the permittee desires to include in
28 the record relevant to the issues raised by the proposed
29 action. The permittee's written response must be considered by
30 the department in formulating its proposed determination under
31 this subsection.

1 (11) Commencing in 1993, each major source of air
2 pollution permitted to operate in this state must pay between
3 January 15 and March 1 of each year, upon written notice from
4 the department, an annual operation license fee in an amount
5 determined by department rule. The annual operation license
6 fee shall be terminated immediately in the event the United
7 States Environmental Protection Agency imposes annual fees
8 solely to implement and administer the major source
9 air-operation permit program in Florida under 40 C.F.R. s.
10 70.10(d).

11 (a) The annual fee must be assessed based upon the
12 source's previous year's emissions and must be calculated by
13 multiplying the applicable annual operation license fee factor
14 times the tons of each regulated air pollutant (except carbon
15 monoxide) allowed to be emitted per hour by specific condition
16 of the source's most recent construction or operation permit,
17 times the annual hours of operation allowed by permit
18 condition; provided, however, that:

19 1. For 1993 and 1994, the license fee factor is \$10.
20 For 1995, the license fee factor is \$25. In succeeding years,
21 the license fee factor is \$25 or another amount determined by
22 department rule which ensures that the revenue provided by
23 each year's operation license fees is sufficient to cover all
24 reasonable direct and indirect costs of the major stationary
25 source air-operation permit program established by this
26 section. The license fee factor may be increased beyond \$25
27 only if the secretary of the department affirmatively finds
28 that a shortage of revenue for support of the major stationary
29 source air-operation permit program will occur in the absence
30 of a fee factor adjustment. The annual license fee factor may
31 never exceed \$35. The department shall retain a nationally

1 recognized accounting firm to conduct a study to determine the
2 reasonable revenue requirements necessary to support the
3 development and administration of the major source
4 air-operation permit program as prescribed in paragraph (b).
5 The results of that determination must be considered in
6 assessing whether a \$25-per-ton fee factor is sufficient to
7 adequately fund the major source air-operation permit program.
8 The results of the study must be presented to the Governor,
9 the President of the Senate, the Speaker of the House of
10 Representatives, and the Public Service Commission, including
11 the Public Counsel's Office, by no later than October 31,
12 1994.

13 2. For any source that operates for fewer hours during
14 the calendar year than allowed under its permit, the annual
15 fee calculation must be based upon actual hours of operation
16 rather than allowable hours if the owner or operator of the
17 source documents the source's actual hours of operation for
18 the calendar year. For any source that has an emissions limit
19 that is dependent upon the type of fuel burned, the annual fee
20 calculation must be based on the emissions limit applicable
21 during actual hours of operation.

22 3. For any source whose allowable emission limitation
23 is specified by permit per units of material input or heat
24 input or product output, the applicable input or production
25 amount may be used to calculate the allowable emissions if the
26 owner or operator of the source documents the actual input or
27 production amount. If the input or production amount is not
28 documented, the maximum allowable input or production amount
29 specified in the permit must be used to calculate the
30 allowable emissions.

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1 4. For any new source that does not receive its first
2 operation permit until after the beginning of a calendar year,
3 the annual fee for the year must be reduced pro rata to
4 reflect the period during which the source was not allowed to
5 operate.

6 5. For any source that emits less of any regulated air
7 pollutant than allowed by permit condition, the annual fee
8 calculation for such pollutant must be based upon actual
9 emissions rather than allowable emissions if the owner or
10 operator documents the source's actual emissions by means of
11 data from a department-approved certified continuous emissions
12 monitor or from an emissions monitoring method which has been
13 approved by the United States Environmental Protection Agency
14 under the regulations implementing 42 U.S.C. ss. 7651 et seq.,
15 or from a method approved by the department for purposes of
16 this section.

17 6. The amount of each regulated air pollutant in
18 excess of 4,000 tons per year allowed to be emitted by any
19 source, or group of sources belonging to the same Major Group
20 as described in the Standard Industrial Classification Manual,
21 1987, may not be included in the calculation of the fee. Any
22 source, or group of sources, which does not emit any regulated
23 air pollutant in excess of 4,000 tons per year, is allowed a
24 one-time credit not to exceed 25 percent of the first annual
25 licensing fee for the prorated portion of existing
26 air-operation permit application fees remaining upon
27 commencement of the annual licensing fees.

28 7. If the department has not received the fee by
29 February 15 of the calendar year, the permittee must be sent a
30 written warning of the consequences for failing to pay the fee
31 by March 1. If the department has not received the fee by

1 March 1 of the calendar year, the department shall impose, in
2 addition to the fee, a penalty of 50 percent of the amount of
3 the fee, plus interest on such amount computed in accordance
4 with s. 220.807. The department may not impose such penalty
5 or interest on any amount underpaid, provided that the
6 permittee has timely remitted payment of at least 90 percent
7 of the amount determined to be due and remits full payment
8 within 60 days after receipt of notice of the amount
9 underpaid. The department may waive the collection of
10 underpayment and shall not be required to refund overpayment
11 of the fee, if the amount due is less than 1 percent of the
12 fee, up to \$50. The department may revoke any major air
13 pollution source operation permit if it finds that the
14 permit holder has failed to timely pay any required annual
15 operation license fee, penalty, or interest.

16 8. During the years 1993 through 1999, inclusive, no
17 fee shall be required to be paid under this section with
18 respect to emissions from any unit which is an affected unit
19 under 42 U.S.C. s. 7651c.

20 9. Notwithstanding the computational provisions of
21 this subsection, the annual operation license fee for any
22 source subject to this section shall not be less than \$250,
23 except that the annual operation license fee for sources
24 permitted solely through general permits issued under s.
25 403.814 shall not exceed \$50 per year.

26 10. Notwithstanding the provisions of s.
27 403.087(5)(a)4.a., authorizing air pollution construction
28 permit fees, the department may not require such fees for
29 changes or additions to a major source of air pollution
30 permitted pursuant to this section, unless the activity
31 triggers permitting requirements under Title I, Part C or Part

1 D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.
2 Costs to issue and administer such permits shall be considered
3 direct and indirect costs of the major stationary source
4 air-operation permit program under s. 403.0873. The department
5 shall, however, require fees pursuant to the provisions of s.
6 403.087(5)(a)4.a. for the construction of a new major source
7 of air pollution that will be subject to the permitting
8 requirements of this section once constructed and for
9 activities triggering permitting requirements under Title I,
10 Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss.
11 7470-7514a.

12 (b) Annual operation license fees collected by the
13 department must be sufficient to cover all reasonable direct
14 and indirect costs required to develop and administer the
15 major stationary source air-operation permit program, which
16 shall consist of the following elements to the extent that
17 they are reasonably related to the regulation of major
18 stationary air pollution sources, in accordance with United
19 States Environmental Protection Agency regulations and
20 guidelines:

- 21 1. Reviewing and acting upon any application for such
22 a permit.
- 23 2. Implementing and enforcing the terms and conditions
24 of any such permit, excluding court costs or other costs
25 associated with any enforcement action.
- 26 3. Emissions and ambient monitoring.
- 27 4. Preparing generally applicable regulations or
28 guidance.
- 29 5. Modeling, analyses, and demonstrations.
- 30 6. Preparing inventories and tracking emissions.

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1 7. Implementing the Small Business Stationary Source
2 Technical and Environmental Compliance Assistance Program.

3 8. The study conducted under subparagraph (a)1. and
4 any audits conducted under paragraph (c).

5 (c) An audit of the major stationary source
6 air-operation permit program must be conducted 2 years after
7 the United States Environmental Protection Agency has given
8 full approval of the program, or by the end of 1996, whichever
9 comes later, to ascertain whether the annual operation license
10 fees collected by the department are used solely to support
11 any reasonable direct and indirect costs as listed in
12 paragraph (b). A program audit must be performed biennially
13 after the first audit.

14 (12) Permits issued under this section must allow
15 changes within a permitted facility without requiring a permit
16 revision, if the changes are not physical changes in, or
17 changes in the method of operation of, the facility which
18 increase the amount of any air pollutant emitted by the
19 facility or which result in the emission of any air pollutant
20 not previously emitted by the facility, and the changes do not
21 exceed the emissions allowable under the permit (whether
22 expressed therein as a rate of emissions or in terms of total
23 emissions), provided that the facility provides the
24 administrator and the department with 30 days' written,
25 advance notice of the proposed changes. The department shall
26 adopt rules implementing this flexibility requirement.

27 (13)(a) In order to ensure statewide consistency in
28 the implementation of the national Acid Deposition Control
29 Allowance Transfer System, a department district office or
30 local pollution control program may not issue or administer
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1 permits under this section for any electrical power plant or
2 any source that participates in the allowance transfer system.

3 (b) For emission units that are subject to continuous
4 monitoring requirements under 42 U.S.C. ss. 7661-7661f or 40
5 C.F.R. part 75, compliance with nitrogen oxides emission
6 limits shall be demonstrated based on a 30-day rolling
7 average, except as specifically provided by 40 C.F.R. part 60
8 or part 76.

9 (14) In order to ensure statewide consistency in the
10 permitting of major sources, a local pollution control program
11 may not issue permits under this section for sources that
12 belong to Major Group 26, Paper and Allied Products; for
13 sources that belong to Major Group 28, Chemicals and Allied
14 Products; or for sources that belong to Industry Number 2061,
15 Cane Sugar, Except Refining, as defined in the Standard
16 Industrial Classification Manual, 1987.

17 (15) Any permittee that operates in compliance with an
18 air-operation permit issued under this section is deemed to be
19 in compliance with applicable ~~permit~~ requirements of the Clean
20 Air Act, and all implementing state, ~~local,~~ and federal air
21 pollution control rules and regulations, and all provisions of
22 this part ~~chapter,~~ relating to air pollution, and rules
23 adopted thereunder, and all local air pollution control
24 ordinances, regulations, and rules.

25 (16) The department shall adopt a rule to provide for
26 a procedure for notice to the appropriate approved local
27 pollution control programs, pursuant to s. 403.182, of any
28 draft permits, amended draft permits, or final permits issued
29 by the department.

30 (17) The administrator of the United States
31 Environmental Protection Agency may intervene as a matter of

1 right in any administrative or judicial proceeding relating to
2 an operation permit for a major source of air pollution
3 required under this section.

4 (18) The department shall require certification of all
5 applications, submittals, and reports by a responsible
6 official of a major source of air pollution and shall require
7 the inclusion of those specific federal requirements listed at
8 42 U.S.C. s. 7661a(f)(1), (2), and (3) in all permits to which
9 such terms apply.

10 (19) Local air pollution control ordinances,
11 regulations, or rules that have been adopted prior to July 1,
12 1997, may be included as applicable requirements in a major
13 source air operation permit. A local air pollution control
14 ordinance, regulation, or rule that is adopted on or after
15 July 1, 1997, may be included as a condition in a major source
16 air operation permit only if the local government:

17 (a) Publishes notice in a newspaper of general
18 circulation and provides actual notice to all Title V sources
19 within its jurisdiction of its intent to adopt the ordinance,
20 regulation, or rule at least 30 days prior to adoption;

21 (b) Considers all comments submitted within 30 days
22 after notice is received; and

23 (c) Holds a public hearing prior to adoption of the
24 ordinance, regulation, or rule, if requested.

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26 Notwithstanding the provisions of s. 403.182 or agreement by
27 the department, major source air operation permit conditions
28 based on local ordinances, regulations, or rules shall not be
29 enforceable by the department and shall be designated in the
30 permit as being enforceable only by the local government with
31 jurisdiction. Title V permit conditions that simply

1 incorporate conditions from a federally enforceable
2 construction permit issued prior to July 1, 1997, shall
3 continue to be enforceable by the department, even if
4 originally based on local ordinances, regulations, or rules.
5 After July 1, 1997, air construction permits shall not include
6 conditions based on local ordinances, regulations, or rules.

7 (20) Consistent with the provisions of 40 C.F.R. s.
8 70.6(b)(2), the department shall specifically designate as not
9 being federally enforceable under the Clean Air Act any terms
10 or conditions included in major source air operation permits
11 that are not required under the Clean Air Act or under any of
12 the Clean Air Act's applicable requirements, unless otherwise
13 requested by a permit applicant.

14 (21) All major source air operation permits shall be
15 consistent with this section. By no later than April 1, 1998,
16 the department shall revise any previously issued major source
17 air operation permits to be consistent with this section.

18 Section 2. This act shall take effect July 1, 1997.
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HOUSE SUMMARY

Revises provisions relating to Department of Environmental Protection operation permits for major sources of air pollution, to provide that such permit is the only air-operation permit required by such source, that compliance with such permit constitutes compliance with applicable federal, state, and local requirements, and that, notwithstanding certain department agreements, permit requirements based on local ordinances, regulations, or rules, except for certain air construction permits, are not enforceable by the department.

Authorizes continued operation of a permitted source until conclusion of certain application proceedings or the effective date of the new permit, whichever is later. Provides timeframes for the department's issuance of revised draft permits containing significant changes resulting from public comments, for provision of proposed permits and certain comments to the United States Department of Environmental Protection, and for issuance of permits containing changes resulting from administrative hearings.

Authorizes the department to include local air pollution control ordinances, regulations, or rules adopted before July 1, 1997, as applicable permit requirements. Specifies notice, comment, and public hearing conditions for inclusion of such requirements on or after that date. Requires the department to specify permit terms or conditions that are not federally enforceable under the Clean Air Act. Requires the department to revise air-operation permits for consistency with the act by April 1, 1998.