

1 A bill to be entitled
2 An act relating to air pollution control;
3 amending s. 215.22, F.S.; exempting the Air
4 Pollution Control Trust Fund from the general
5 revenue service charge deduction; amending s.
6 403.0872, F.S., relating to operation permits
7 for major sources of air pollution; revising
8 provisions relating to calculation of the
9 annual operation license fee; providing for
10 adjustments to the license fee factor;
11 providing restrictions on calculating whether
12 there is a revenue shortage; providing for
13 continued funding of certain activities;
14 restricting use of annual operation license
15 fees collected; revising elements of the major
16 stationary source air-operation permit program
17 for purposes of establishing annual operation
18 license fees; revising program audit
19 requirements; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Paragraph (t) is added to subsection (1) of
24 section 215.22, Florida Statutes, to read:

25 215.22 Certain income and certain trust funds
26 exempt.--

27 (1) The following income of a revenue nature or the
28 following trust funds shall be exempt from the deduction
29 required by s. 215.20(1):

30 (t) The Air Pollution Control Trust Fund.

31

1 Section 2. Subsection (11) of section 403.0872,
2 Florida Statutes, is amended to read:

3 403.0872 Operation permits for major sources of air
4 pollution; annual operation license fee.--Provided that
5 program approval pursuant to 42 U.S.C. s. 7661a has been
6 received from the United States Environmental Protection
7 Agency, beginning January 2, 1995, each major source of air
8 pollution, including electrical power plants certified under
9 s. 403.511, must obtain from the department an operation
10 permit for a major source of air pollution under this section,
11 which is the only department operation permit for a major
12 source of air pollution required for such source. Operation
13 permits for major sources of air pollution, except general
14 permits issued pursuant to s. 403.814, must be issued in
15 accordance with the following procedures and in accordance
16 with chapter 120; however, to the extent that chapter 120 is
17 inconsistent with the provisions of this section, the
18 procedures contained in this section prevail:

19 (11) Commencing in 1993, each major source of air
20 pollution permitted to operate in this state must pay between
21 January 15 and March 1 of each year, upon written notice from
22 the department, an annual operation license fee in an amount
23 determined by department rule. The annual operation license
24 fee shall be terminated immediately in the event the United
25 States Environmental Protection Agency imposes annual fees
26 solely to implement and administer the major source
27 air-operation permit program in Florida under 40 C.F.R. s.
28 70.10(d).

29 (a) The annual fee must be assessed based upon the
30 source's previous year's emissions and must be calculated by
31 multiplying the applicable annual operation license fee factor

1 times the tons of each regulated air pollutant (except carbon
2 monoxide) allowed to be emitted per hour by specific condition
3 of the source's most recent construction or operation permit,
4 times the annual hours of operation allowed by permit
5 condition; provided, however, that:

6 1. ~~For 1993 and 1994, the license fee factor is \$10.~~
7 ~~For 1995, the license fee factor is \$25. In succeeding years,~~
8 The license fee factor is \$25 or another amount determined by
9 department rule which ensures that the revenue provided by
10 each year's operation license fees is sufficient to cover all
11 reasonable direct and indirect costs of the major stationary
12 source air-operation permit program established by this
13 section. The license fee factor may be adjusted by rule only
14 after an audit required under paragraph (c) and increased
15 beyond \$25 only if the secretary of the department
16 affirmatively finds that a shortage or surplus of revenue for
17 support of the major stationary source air-operation permit
18 program will occur in the absence of a fee factor adjustment.
19 Only expenditures made or funded by the department which meet
20 the requirements of subparagraph 10. and paragraph (b) may be
21 used in calculating whether there is a shortage of revenue.
22 The annual operation license fees collected by the department
23 shall be used solely to cover the costs of meeting the
24 functions of the permitting program as described in
25 subparagraph 10. and paragraph (b).The annual license fee
26 factor may never exceed \$35. ~~The department shall retain a~~
27 ~~nationally recognized accounting firm to conduct a study to~~
28 ~~determine the reasonable revenue requirements necessary to~~
29 ~~support the development and administration of the major source~~
30 ~~air-operation permit program as prescribed in paragraph (b).~~
31 ~~The results of that determination must be considered in~~

1 ~~assessing whether a \$25-per-ton fee factor is sufficient to~~
2 ~~adequately fund the major source air-operation permit program.~~
3 ~~The results of the study must be presented to the Governor,~~
4 ~~the President of the Senate, the Speaker of the House of~~
5 ~~Representatives, and the Public Service Commission, including~~
6 ~~the Public Counsel's Office, by no later than October 31,~~
7 ~~1994.~~

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

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

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

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

12 6. The amount of each regulated air pollutant in
13 excess of 4,000 tons per year allowed to be emitted by any
14 source, or group of sources belonging to the same Major Group
15 as described in the Standard Industrial Classification Manual,
16 1987, may not be included in the calculation of the fee. Any
17 source, or group of sources, which does not emit any regulated
18 air pollutant in excess of 4,000 tons per year, is allowed a
19 one-time credit not to exceed 25 percent of the first annual
20 licensing fee for the prorated portion of existing
21 air-operation permit application fees remaining upon
22 commencement of the annual licensing fees.

23 7. If the department has not received the fee by
24 February 15 of the calendar year, the permittee must be sent a
25 written warning of the consequences for failing to pay the fee
26 by March 1. If the fee is not postmarked by March 1 of the
27 calendar year, commencing with calendar year 1997, the
28 department shall impose, in addition to the fee, a penalty of
29 50 percent of the amount of the fee, plus interest on such
30 amount computed in accordance with s. 220.807. The department
31 may not impose such penalty or interest on any amount

1 underpaid, provided that the permittee has timely remitted
2 payment of at least 90 percent of the amount determined to be
3 due and remits full payment within 60 days after receipt of
4 notice of the amount underpaid. The department may waive the
5 collection of underpayment and shall not be required to refund
6 overpayment of the fee, if the amount due is less than 1
7 percent of the fee, up to \$50. The department may revoke any
8 major air pollution source operation permit if it finds that
9 the permit holder has failed to timely pay any required annual
10 operation license fee, penalty, or interest.

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

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

21 10. Notwithstanding the provisions of s.
22 403.087(6)(a)4.a., authorizing air pollution construction
23 permit fees, the department may not require such fees for
24 changes or additions to a major source of air pollution
25 permitted pursuant to this section, unless the activity
26 triggers permitting requirements under Title I, Part C or Part
27 D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.
28 Costs to issue and administer such permits shall be considered
29 direct and indirect costs of the major stationary source
30 air-operation permit program under s. 403.0873. The department
31 shall, however, require fees pursuant to the provisions of s.

1 403.087(6)(a)4.a. for the construction of a new major source
2 of air pollution that will be subject to the permitting
3 requirements of this section once constructed and for
4 activities triggering permitting requirements under Title I,
5 Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss.
6 7470-7514a.

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

17 1. Reviewing and acting upon any application for such
18 a permit.

19 2. Implementing and enforcing the terms and conditions
20 of any such permit, excluding court costs or other costs
21 associated with any enforcement action.

22 3. ~~Emissions and~~ Ambient air monitoring, only to the
23 extent site-specific monitoring is necessary for the issuance
24 of any major stationary source air-operation permit or
25 permits, as documented in the permit or permits.

26 4. Preparing ~~generally applicable~~ regulations or
27 guidance, only to the extent required for the implementation
28 of the major stationary source air-operation permit program.

29 5. Modeling, analyses, ~~and~~ demonstrations, and
30 site-specific emissions monitoring, only to the extent
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1 required for the implementation of the major stationary source
2 air-operation permit program.

3 6. Preparing inventories and tracking emissions, only
4 to the extent required for the implementation of the major
5 stationary source air-operation permit program.

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

8 8. Conducting or providing for the conduct of the
9 ~~study conducted under subparagraph (a)1. and any audits~~
10 required conducted under paragraph (c).

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12 However, each activity described in subparagraphs 1.-8., as
13 created by section 3 of chapter 92-132, Laws of Florida, which
14 was in existence before July 1, 1998, shall be funded from the
15 Air Pollution Control Trust Fund after July 1, 1998.

16 (c) An audit of the major stationary source
17 air-operation permit program shall not be commenced until
18 January 1, 2002, and must be completed by January 1, 2003 ~~must~~
19 ~~be conducted 2 years after the United States Environmental~~
20 ~~Protection Agency has given full approval of the program, or~~
21 ~~by the end of 1996, whichever comes later, to ascertain~~
22 whether the annual operation license fees collected by the
23 department are sufficient and used by the department and local
24 programs solely to cover the support any reasonable direct and
25 indirect costs as listed in subparagraph (a)10. and paragraph
26 (b). In addition, the audit shall evaluate the department's
27 system for measuring program performance, efficiency, and
28 accountability.A program audit must be performed every 5
29 years ~~biennially~~ after the first audit.

30 Section 3. This act shall take effect July 1 of the
31 year in which enacted.