

By Senator Forman

32-481-98

1 A bill to be entitled
2 An act relating to hazardous waste; amending s.
3 403.061, F.S.; authorizing the Department of
4 Environmental Protection to exercise control
5 over hazardous waste corrective-action
6 programs; amending s. 403.087, F.S.; providing
7 additional rulemaking authority for permit
8 fees; amending s. 403.703, F.S.; redefining the
9 term "hazardous waste facility"; amending s.
10 403.721, F.S.; providing for closure plan
11 requirements; providing additional rulemaking
12 authority for corrective-action orders;
13 amending s. 403.722, F.S.; providing for a
14 post-closure permit; creating s. 403.79, F.S.;
15 providing legislative intent for the state
16 implementation of the corrective-action
17 provisions of federal law; providing for
18 consistency with the federal program; creating
19 s. 403.791, F.S.; providing for the delegation
20 of the federal corrective-action program to the
21 department; providing criteria for the state
22 corrective-action program for hazardous waste
23 facilities; providing an implementation
24 schedule; requiring reports; amending s.
25 403.809, F.S.; providing additional
26 requirements for certain permit application
27 reviews; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

30
31

1 Section 1. Subsection (8) of section 403.061, Florida
2 Statutes, is amended to read:

3 403.061 Department; powers and duties.--The department
4 shall have the power and the duty to control and prohibit
5 pollution of air and water in accordance with the law and
6 rules adopted and promulgated by it and, for this purpose, to:

7 (8) Issue such orders as are necessary to effectuate
8 the control of air and water pollution and enforce the same by
9 all appropriate administrative and judicial proceedings. In
10 any enforcement action or permit issued to effectuate the
11 control of water pollution resulting from a discharge of solid
12 or hazardous waste, including, but not limited to, the
13 department's corrective-action program established under ss.
14 403.79-403.791, the department shall incorporate, to the
15 maximum extent feasible, risk-based corrective-action
16 principles to achieve protection of human health and safety
17 and the environment in a cost-effective manner as provided in
18 this subsection. In effectuating the control of water
19 pollution resulting from a discharge of solid or hazardous
20 waste, the department shall use criteria that address risk
21 assessment and risk-based corrective action.

22 Section 2. Paragraph (a) of subsection (6) of section
23 403.087, Florida Statutes, is amended to read:

24 403.087 Permits; general issuance; denial; revocation;
25 prohibition; penalty.--

26 (6)(a) The department shall require a processing fee
27 in an amount sufficient, to the greatest extent possible, to
28 cover the costs of reviewing and acting upon any application
29 for a permit or request for site-specific alternative criteria
30 or for an exemption from water quality criteria and to cover
31 the costs of surveillance and other field services and related

1 support activities associated with any permit issued pursuant
2 to this chapter. However, when an application is received
3 without the required fee, the department shall acknowledge
4 receipt of the application and shall immediately return the
5 unprocessed application to the applicant and shall take no
6 further action until the application is received with the
7 appropriate fee. The department shall adopt a schedule of
8 fees by rule, subject to the following limitations:

9 1. The permit fee for any of the following permits may
10 not exceed \$32,500:

11 a. Hazardous waste, construction permit.

12 b. Hazardous waste, operation permit, including the
13 corrective-action requirements of the 1984 Hazardous and Solid
14 Waste Amendments to the Resource Conservation and Recovery
15 Act, amending the Solid Waste Disposal Act, 42 U.S.C., s. 6901
16 et seq.

17 c. Hazardous waste, post-closure permit, including
18 1984 Hazardous and Solid Waste Amendments corrective-action
19 requirements.

20 2. The department shall establish a sliding scale of
21 fees by rule for a closure plan submitted pursuant to s.
22 403.721(2). The sliding scale of fees must be based upon the
23 extent of the release of hazardous waste or hazardous
24 constituents and the complexity of the closure plan, with the
25 highest fee not to exceed \$32,500.

26 3. The department shall establish a sliding scale of
27 fees by rule based on the number of solid waste management
28 units identified that require further action under the 1984
29 Hazardous and Solid Waste Amendments corrective-action
30 program. The permit fees for the facility including the 1984
31

1 Hazardous and Solid Waste Amendments corrective-action program
2 requirements may not exceed \$32,500.
3 ~~4.2.~~ The permit fee for a Class I injection well
4 construction permit may not exceed \$12,500.
5 ~~5.3.~~ The permit fee for any of the following permits
6 may not exceed \$10,000:
7 a. Solid waste, construction permit.
8 b. Solid waste, operation permit.
9 c. Class I injection well, operation permit.
10 ~~6.4.~~ The permit fee for any of the following permits
11 may not exceed \$7,500:
12 a. Air pollution, construction permit.
13 b. Solid waste, closure permit.
14 c. Drinking water, construction or operation permit.
15 d. Domestic waste residuals, construction or operation
16 permit.
17 e. Industrial waste, operation permit.
18 f. Industrial waste, construction permit.
19 ~~7.5.~~ The permit fee for any of the following permits
20 may not exceed \$5,000:
21 a. Domestic waste, operation permit.
22 b. Domestic waste, construction permit.
23 ~~8.6.~~ The permit fee for any of the following permits
24 may not exceed \$4,000:
25 a. Wetlands resource management--(dredge and fill),
26 standard form permit.
27 b. Hazardous waste, research and development permit.
28 c. Air pollution, operation permit, for sources not
29 subject to s. 403.0872.
30 d. Class III injection well, construction, operation,
31 or abandonment permits.

1 9.7. The permit fee for Class V injection wells,
2 construction, operation, and abandonment permits may not
3 exceed \$750.

4 10.8. The permit fee for any of the following permits
5 may not exceed \$500:

6 a. Domestic waste, collection system permits.

7 b. Wetlands resource management--(dredge and fill and
8 mangrove alterations), short permit form.

9 c. Drinking water, distribution system permit.

10 11.9. The permit fee for stormwater operation permits
11 may not exceed \$100.

12 12.10. The general permit fees for permits that
13 require certification by a registered professional engineer or
14 professional geologist may not exceed \$500. The general
15 permit fee for other permit types may not exceed \$100.

16 13.11. The fee for a permit issued pursuant to s.
17 403.816 is \$5,000, and the fee for any modification of such
18 permit requested by the applicant is \$1,000.

19 14.12. The regulatory program and surveillance fees
20 for facilities permitted pursuant to s. 403.088 or s.
21 403.0885, or for facilities permitted pursuant to s. 402 of
22 the Clean Water Act, as amended, 33 U.S.C. ss. 1251 et seq.,
23 and for which the department has been granted administrative
24 authority, shall be limited as follows:

25 a. The fees for domestic wastewater facilities shall
26 not exceed \$7,500 annually. The department shall establish a
27 sliding scale of fees based on the permitted capacity and
28 shall ensure smaller domestic waste dischargers do not bear an
29 inordinate share of costs of the program.

30 b. The annual fees for industrial waste facilities
31 shall not exceed \$11,500. The department shall establish a

1 sliding scale of fees based upon the volume, concentration, or
2 nature of the industrial waste discharge and shall ensure
3 smaller industrial waste dischargers do not bear an inordinate
4 share of costs of the program.

5 c. The department may establish a fee, not to exceed
6 the amounts in subparagraphs 4. and 5., to cover additional
7 costs of review required for permit modification or
8 construction engineering plans.

9 Section 3. Subsection (22), of section 403.703,
10 Florida Statutes, is amended to read:

11 403.703 Definitions.--As used in this act, unless the
12 context clearly indicates otherwise, the term:

13 (22) "Hazardous waste facility" means:

14 (a) All contiguous land, and structures, other
15 appurtenances, and improvements on the land, used for
16 treating, storing, or disposing of hazardous waste. A facility
17 may consist of several treatment, storage, or disposal
18 operational units (e.g., one or more landfills, surface
19 impoundments, or combinations of them).

20 (b) For the purpose of implementing corrective action
21 under 40 C.F.R., s. 264.101, all contiguous property under the
22 control of the owner or operator seeking a permit under
23 Subtitle C of the Resource Conservation and Recovery Act. This
24 definition also applies to facilities implementing corrective
25 action under Section 3008(h) of the Resource Conservation and
26 Recovery Act.~~any building, site, structure, or equipment at~~
27 ~~or by which hazardous waste is disposed of, stored, or~~
28 ~~treated.~~

29 Section 4. Subsections (2) and (6) of section 403.721,
30 Florida Statutes, are amended to read:

31

1 403.721 Standards, requirements, and procedures for
2 generators and transporters of hazardous waste and owners and
3 operators of hazardous waste facilities.--

4 (2) The department shall establish by rule such
5 standards, requirements, and procedures as are needed to
6 protect human health and the environment, which standards,
7 requirements, and procedures shall apply to persons who
8 generate or transport hazardous waste; to persons who own or
9 operate hazardous waste disposal, storage, or treatment
10 facilities; and to hazardous waste disposal facilities. The
11 department may establish standards, requirements, and
12 procedures which may vary based on differences in amounts of,
13 types of, concentrations of, and methods of handling hazardous
14 waste and on differences in the size and location of hazardous
15 waste facilities and which may take into account standards,
16 requirements, and procedures imposed by other laws not in
17 conflict with this act. If closure at a facility is required
18 of any person under this subsection, that person may submit a
19 closure plan, for department approval, sufficient to address
20 the release of hazardous waste or hazardous constituents at
21 the facility in a manner that is protective of human health
22 and the environment. Solid waste determined to be special
23 wastes by the United States Environmental Protection Agency
24 shall be regulated pursuant to this act consistent with
25 federal regulations for special wastes under Subtitle C of the
26 Resource Conservation and Recovery Act.

27 (6) The department, with respect to owners and
28 operators of hazardous waste disposal, storage, or treatment
29 facilities, and with respect to such facilities, shall adopt
30 rules governing:
31

1 (a) The maintenance of records concerning all
2 hazardous wastes which are identified or listed pursuant to
3 this act and which are treated, stored, or disposed of and the
4 manner of treatment, storage, or disposal;

5 (b) Satisfactory reporting, monitoring, and inspection
6 for compliance with the manifest system required in paragraph
7 (3)(e);

8 (c) The treatment, storage, or disposal of all
9 hazardous waste received by the facility pursuant to operating
10 methods, techniques, and practices approved by the department;

11 (d) The location, design, and construction of such
12 hazardous waste treatment, disposal, or storage facilities;

13 (e) Contingency plans for effective action to minimize
14 unanticipated damage resulting from any accident occurring
15 during the treatment, storage, or disposal of any such
16 hazardous waste;

17 (f) The maintenance or operation of such facilities
18 and the requirement of such additional qualifications as to
19 ownership, continuity of operation, training for personnel,
20 and financial responsibility as may be necessary or desirable;
21 and

22 (g) Compliance with s. 403.722~~i~~;

23 (h) Corrective action at a hazardous waste facility
24 which shall be taken beyond a facility boundary where
25 necessary to protect human health and the environment, unless
26 the owner or operator demonstrates that despite her or his
27 best efforts she or he was unable to obtain the necessary
28 permission to undertake such action~~i~~;

29 (i) Conditions on a permit which require cleanup of
30 releases of hazardous waste and hazardous constituents from
31

1 any solid waste management unit, regardless of when the waste
2 was placed in the unit;~~;~~

3 (j) Groundwater monitoring, unsaturated zone
4 monitoring, and corrective action requirements for land
5 disposal facilities accepting hazardous waste after July 26,
6 1982;~~;~~

7 (k) The prohibition of the land disposal and storage
8 of certain hazardous waste based on the requirements and
9 criteria set forth in s. 201(g) through (j) of the Hazardous
10 and Solid Waste Amendments of 1984, Pub. L. No. 98-616; and-

11 (l) Corrective-action orders at interim-status
12 facilities equivalent to the federal statutory authority of 42
13 U.S.C., s. 6928(h), Resource Conservation and Recovery Act s.
14 3008(h). Such orders may be issued only by the Secretary, as
15 head of the department, and authority to issue such orders may
16 not be delegated to district or subdistrict managers, water
17 management districts, or any unit of local government.

18 Section 5. Subsection (1) of section 403.722, Florida
19 Statutes, is amended to read:

20 403.722 Permits; hazardous waste disposal, storage,
21 and treatment facilities.--

22 (1) Each person who intends to construct, modify,
23 operate, or close a hazardous waste disposal, storage, or
24 treatment facility shall obtain a construction, operation, or
25 closure permit from the department prior to constructing,
26 modifying, operating, or closing the facility. A hazardous
27 waste disposal, storage, or treatment facility that is unable
28 to close sufficiently to address the release of hazardous
29 waste or hazardous constituents at the facility in a manner
30 that is protective of human health and the environment,
31 pursuant to its approved closure plan, must obtain a

1 post-closure permit from the department. By rule, the
2 department may provide for the issuance of a single permit
3 instead of any two or more hazardous waste facility permits.

4 Section 6. Section 403.79, Florida Statutes, is
5 created to read:

6 403.79 Legislative intent; establishment of state
7 corrective-action program.--It is the intent of the
8 Legislature that the Department of Environmental Protection
9 apply for and obtain authorization from the United States
10 Environmental Protection Agency to implement the
11 corrective-action provisions of the Subtitle C program of the
12 1984 Hazardous and Solid Waste Amendments to the Resource
13 Conservation and Recovery Act, amending the Solid Waste
14 Disposal Act, 42 U.S.C., s. 6901 et seq. Effective upon the
15 date of authorization, there is established within the
16 department a corrective-action program to implement the
17 authorized provisions. It is the further intent of the
18 Legislature that all rules, procedures, guidance documents,
19 and other provisions of such program, including any
20 interpretation and implementation of the program, be
21 consistent and remain consistent with the federal program.

22 Section 7. Section 403.791, Florida Statutes, is
23 created to read:

24 403.791 Corrective-action program for hazardous waste
25 facilities.--

26 (1) The corrective-action program is designed to
27 address releases to the environment of hazardous waste or
28 hazardous constituents from solid-waste-management units. The
29 following corrective-action program activities, among others,
30 are to be conducted:

31

1 (a) A facility-assessment report. The report must
2 identify the solid-waste-management units where releases to
3 the environment of hazardous waste or hazardous constituents
4 could have occurred and which require corrective action. The
5 department shall conduct facility assessments at all
6 facilities where assessments have not been conducted, to
7 determine whether corrective action is required.

8 (b) Review and determinations by the department
9 concerning:

10 1. Facility-investigation workplans and reports, each
11 of which must include the characterization, by the facility
12 owner or operator, of suspected releases of hazardous wastes
13 or hazardous constituents that are identified in a
14 department-approved facility-assessment report.

15 2. Interim-measures workplan and report to remediate
16 releases.

17 3. Corrective-measures studies.

18 4. Corrective-measures implementation.

19 5. Long-term operation and maintenance of
20 department-approved remediation measures.

21 6. Permit-modification application submitted by the
22 facility owner or operator, and permit modifications initiated
23 by the department.

24 7. Applications for permit renewals and for permit
25 extensions.

26 8. The status of the facility within the
27 corrective-action program, based on the review of documents
28 that have been submitted to the department or the United
29 States Environmental Protection Agency and the issuance of
30 post-closure and corrective-action permits.

31

1 9. Area of contamination that the facility owner or
2 operator proposes for managing waste consisting of the
3 consolidation of contamination to a single unit, whereas
4 movement within that unit does not constitute placement.
5 Placement does not occur when waste is consolidated within an
6 area of contamination, when it is treated on site, or when it
7 is left in place.

8 10. Closure certification submitted by a facility
9 owner or operator.

10 (2) The department may not request additional
11 information concerning a revision or resubmittal of a
12 previously approved document unless the department can
13 demonstrate that the information or action is necessary to
14 abate or substantially reduce a hazard to the public health,
15 safety, or welfare, or to the environment which was not
16 previously considered by the United States Environmental
17 Protection Agency or the department.

18 (3) The department shall request a meeting with the
19 owner or operator of each facility to discuss the status of
20 the facility within the corrective-action program before the
21 department implements its authorized 1984 Hazardous and Solid
22 Waste Amendments program for the facility. The department is
23 authorized to enter into agreements between the facility and
24 the United States Environmental Protection Agency so that the
25 agency can continue with the corrective-action review process
26 to an agreed-upon milestone. The United States Environmental
27 Protection Agency shall retain jurisdiction over orders issued
28 under section 3008(h) of the Resource Conservation and
29 Recovery Act for which the United States Environmental
30 Protection Agency has entered into an Administrative Consent
31 Order or issued a Unilateral Order or Statement of Basis prior

1 to the date of authorization, unless the facility otherwise
2 elects to have the department take jurisdiction.

3 (4) The department shall give due consideration to the
4 use of an area of contamination for the purposes of waste
5 management to enhance corrective-action efforts and may not
6 unduly withhold the use of an area of contamination as
7 proposed by a facility.

8 (5) The department shall submit a report to the
9 Governor, to the President of the Senate, to the Speaker of
10 the House of Representatives, and to each facility within the
11 program 3 years after the corrective-action program is
12 established under s. 403.79 and this section. The report must
13 include a description of the program objectives that have been
14 accomplished and a description of how the department
15 implements the program, including a list of the employees
16 implementing the state corrective-action program which
17 specifies their training, experience, and technical capability
18 to properly develop and administer the state corrective-action
19 program. The department shall adjust its staffing and its
20 implementation of the authorized 1984 Hazardous and Solid
21 Waste Amendments corrective-action program based on the
22 results of the report.

23 (6) An internal audit of the state corrective-action
24 program must be conducted annually after the United States
25 Environmental Protection Agency has given full approval of the
26 program, to evaluate the timeliness of responses to submittals
27 of plans and information, to assess the timeliness of
28 implementation and completion of corrective actions, and to
29 ascertain whether the fees collected by the department, if
30 any, are used solely to support any direct and indirect costs

31

1 required to develop and administer the state corrective-action
2 program established under s. 403.79.

3 (7) Within 6 months after the corrective-action
4 program is established under s. 403.79, the department must
5 implement s. 403.79 and this section. This implementation must
6 include performance criteria for timely submission and review
7 of documents. The department shall also develop a process for
8 coordinating the corrective-action program with other cleanup
9 programs of the department or the United States Environmental
10 Protection Agency to reduce duplication in monitoring of
11 ground water, plume delineation, and other corrective actions.
12 The department implementation process must include criteria
13 that address training, experience, and technical capability to
14 properly develop and administer the state corrective-action
15 program.

16 (8) The authority of the department obtained by
17 authorization from the United States Environmental Protection
18 Agency for operation of this program may not be further
19 delegated to any other unit of government.

20 Section 8. Subsection (3) of section 403.809, Florida
21 Statutes, is amended to read:

22 403.809 Environmental districts; establishment;
23 managers; functions.--

24 (3)(a) Field services and inspections required in
25 support of the decisions of the department relating to the
26 issuance of permits, licenses, certificates, or exemptions
27 shall be accomplished at the environmental district center
28 level to the maximum extent practicable, except where
29 otherwise delegated by the secretary.

30 (b) The processing of all applications for permits,
31 licenses, certificates, and exemptions shall be accomplished

1 at the district center or the branch office, except for those
2 applications specifically assigned elsewhere in the department
3 under s. 403.805 or to the water management districts under s.
4 403.812 and those applications assigned by interagency
5 agreement as provided in this act. However, the secretary, as
6 head of the department, may not delegate to district or
7 subdistrict managers, water management districts, or any unit
8 of local government the authority to act on the following
9 types of permit applications:

- 10 1. Permits issued under s. 403.0885, except such
11 permit issuance may be delegated to district managers.
- 12 2. Construction of major air pollution sources.
- 13 3. Certifications under the Florida Electrical Power
14 Plant Siting Act or the Transmission Line Siting Act and the
15 associated permit issued under s. 403.0885, if applicable.
- 16 4. Permits issued under s. 403.0885 to steam electric
17 generating facilities regulated pursuant to 40 C.F.R. part
18 423.
- 19 5. Permits issued under s. 378.901.
- 20 6. Permits and other necessary department approval or
21 determinations issued under ss. 403.721(2), 403.722(1), and
22 403.79-403.791 to electric utilities, as defined in ss.
23 403.522, to land disposal facilities, and to other facilities
24 with multiple locations in the state.

25 Section 9. This act shall take effect July 1, 1998.

26 *****

27
28 SENATE SUMMARY

29 Directs the Department of Environmental Protection to
30 seek authorization for the delegation of the federal
31 corrective-action program for hazardous waste facilities.
Provides criteria and rulemaking authority for the
implementation of the federal corrective-action program
through state permits and fees.