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.)

BILL: SB 1896

SPONSOR: Senator Laurent

SUBJECT: Air Pollution Permits

DATE: March 21, 2000 REVISED: 04/04/00

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Poole	AG	Favorable
2.	Branning	Voigt	NR	Fav/1 amendment
3.				
4.				
5.				

I. Summary:

This bill would affect the 26 citrus processors that operate in Florida. All of these plants are subject to air emissions permitting, and most are subject to the federal Clean Air Act Title V permitting. The bill would authorize citrus juice-processing facilities to operate under specified emissions limitations rather than air pollution construction and operating permits under ch. 403, F.S., beginning July 1, 2002. It also provides for the creation and transfer of emissions allowances which would allow a facility operating better than the overall performance standard to sell credits to a lesser performing facility. This would allow a plant to be in compliance by using both control technologies and emissions allowances. The bill requires the Department of Environmental Protection to submit the law for approval by the U.S. Environmental Protection Agency and authorizes the department to explore alternative permitting procedures.

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 Protection Agency (EPA) by November, 1993. In 1992, the Legislature passed legislation that was designed to allow the DEP 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 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 26) 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.

III. Effect of Proposed Changes:

This bill would provide an innovative approach to permitting for air emissions for the citrus processing industry. If approved by the EPA, the citrus industry would not need to obtain air operation permits. Instead, the air emission requirements would be provided by statute which would essentially become a statutory permit.

Section 1. Provides emission standards for all citrus juice-processing facilities. Effective July l, 2002, all citrus juice-processing facilities must comply with this section in lieu of obtaining air pollution construction and operation permits.

Definitions:
Department - Department of Environmental Protection.

Existing sources - Emissions units constructed or modified before July 1, 2000.

Facility - A plant that processes citrus fruit to produce single-strength or frozen concentrated juice and other products and by-products identified by Major Group Standard Industrial Classification Codes 2033, 2037, and 2048 which are located within a contiguous area and are owned or operated under common control, along with all emissions units located in the contiguous area and under the same common control which directly support the operation of the citrus juice processing function.

New sources - Emissions units constructed or modified on or after July 1, 2000.

Permitted Emissions Limits:
Includes specific emission limits for all possible sources of air pollution at a citrus plant for particulate matter, nitrogen oxides, and opacity. These numbers were based upon what existing sources are currently meeting and what is believed to be a reasonable limit for new sources. Requires all facilities authorized to construct and operate under this section to operate within the most stringent of the following emission limits for each new and existing source:

- The lowest emissions limit required by any standard promulgated by the U.S. Environmental Protection Agency.
- The emission limitations of each facility's Title V permit until October 31, 2002.
- After October 31, 2002, for volatile organic compounds, the level of emissions achievable by a 65 percent recovery of oil from citrus fruits processed.
- After October 31, 2002, a facility may not fire fuel oil containing greater than 0.5 percent sulfur by weight.
- After October 31, 2002, for particulate matter of 10 microns or less, the emissions level, expressed in pounds per million British Thermal Units of heat input, unless otherwise specified, established for specified types of new and existing sources.
- After October 31, 2002, for nitrogen oxides, the emissions level, expressed in pounds of nitrogen dioxide per million British Thermal Units of heat produced, unless otherwise specified, established for specified types of new and existing sources.
- After October 31, 2002, for visible emissions, the level of visible emissions at all times during operation, expressed as a percent of opacity, established for specified types of emission sources.

Emissions Determination and Reporting:
Outlines compliance reporting requirements that are required of all Title V sources. All information submitted to the department must be certified as true, accurate, and complete by a responsible official of the facility. Defines "responsible official" to mean that person who would be allowed to certify information and take action under the department's Title V permitting rules. Requires all emissions limited by standards of the U.S. Environmental Protection Agency to be determined and reported by a responsible official. Reports must be certified and submitted to the department. Requires all emissions for which the facility is limited to be determined on a calendar-year basis and reported to the department no later than April 1 of the following year. Provides criteria for determination of each emission unit. Requires each facility authorized to operate to submit annual operating reports. Requires each facility to have a responsible official provide and certify the annual and semiannual statements of compliance required under the department's Title

V permitting rules. Specifies certain records that must be made available at a facility, for a period of 5 years, for inspection by the department. Sets up specific test methods for Volatile Organic Compound emissions that the industry must use to demonstrate compliance.

Emissions Trading:
Provides for the creation and transfer of emissions allowances. Defines "allowance" as a credit equal to emission of 1 ton per year of certain pollutants subject to limitations. Allows a facility operating better than the overall performance standard to sell credits to a lesser performing facility. This would allow a plant to be in compliance by using both control technologies and emissions allowances. Allowances may only be applied on a pollutant-specific basis only. Prohibits cross-pollutant trading.

Emission Fees:
Requires annual emissions fees to be paid in the same amount as the facility would be subject to under the department's Title V program. Provides for temporary fees until the effective date of the bill. Provides a method for determining fees after the effective date of the bill. Requires all annual emissions fees to be paid by April 1 for the preceding calendar year. Provides for interest and penalties if fees are not paid in a timely manner. Requires all fees to be deposited into the Air Pollution Control Trust Fund.

Modifications and New Construction:
Requires any new facility, or any facility currently authorized to operate which makes any physical change or change to the method of operation, to comply with all requirements at all times. Provides an exception for facilities located in an area designated as nonattainment for any pollutant and for facilities subject to the federal acid rain program. In these cases, limits established by the department rules would apply.

Rules:
Authorizes the department to adopt rules to administer the provisions of this bill. The rules must, to the maximum extent practicable, assure compliance with substantive Clean Air Act requirements. To the extent the rules provide for establishing Best Available Control Technology, Lowest Achievable Emissions Rate, or case-by-case Maximum Achievable Control Technology, the rules are not subject to the requirement of s. 120.54, F.S., for adoption of the lowest regulatory cost alternative.

Report to the Legislature:
Requires the department to report to the Legislature by March, 2004 concerning implementation of the provisions of this bill and to make recommendations for any improvements.

Federal Approval:
Requires the department to submit this law to the U.S. Environmental Protection Agency (EPA) by October 1, 2000, as a revision of Florida's State Implementation Plan and as a revision of Florida's approved state Title V program. Provides for regulation of facilities in the event that the EPA fails to approve this law within 2 years after submittal.

Section 2. Authorizes the department to explore alternatives to traditional methods of regulatory permitting if there is no material increase in pollution emissions. Specifies that any pilot projects

using alternative methods may operate for no more than 3 years unless the Legislature enacts a law to continue that pilot. Requires the department to submit a report to the President of the Senate and the Speaker of the House of Representatives before implementation of any alternative regulatory permitting.

Section 3. Provides that this act shall take effect July 1, 2000.

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 will not add any costs to those that the industry is already subject to and should actually reduce costs. Facilities would not need the initial prevention of Significant Deterioration permit, which would be a one-time savings of up to $500,000 for consultants, attorneys, etc. In addition, there would be no re-permitting every 5 years, saving the industry $25,000 per year.

C. Government Sector Impact:

The Department of Environmental Protection estimates a nonrecurring savings of $250,000 in permitting time saved and $100,000 every 5 years in permitting time saved. This bill will reduce the administrative burden for both the citrus industry and the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

1. It is not clear if there are adequate checks and balances in the emissions trading provisions to assure that the credits have been earned and verified before they are sold, and to assure that such transactions are recorded in a centralized location such as the Department of Environmental Protection. Also, it is not clear if credits would be offered to all eligible companies to avoid unfair business practices.

2. The provision in section 2 of the bill, relating to alternatives to traditional methods of regulatory permitting, is an overly broad delegation of legislative authority to the Department of Environmental Protection to conduct nontraditional pilot projects for the regulation of pollution emissions. Without any legislative criteria or guidance, pilot projects are authorized for up to 3 years and without any requirements for administrative rules.

VIII. Amendments:

#1 by Natural Resources:
This amendment rewrites the bill and provides that, if approved by the EPA, the citrus industry would not need to obtain air operation permits. Instead, the air emission requirements would be provided by statute which would essentially become a statutory permit.

Section 1. Creates s. 403.08725, F.S., to provide emission standards for all citrus juice-processing facilities. Effective July 1, 2002, all citrus juice-processing facilities must comply with this section in lieu of obtaining air-pollution construction and operation permits. The major provisions of s. 403.08725, F.S., include:

Definitions--
Existing juice processing facility - Any facility that currently has air pollution construction or operation permits issued by the department with a fruit processing capacity of two million boxes per year or more.

Facility - A plant that processes citrus fruit to produce single-strength or frozen concentrated juice and other products and by-products identified by Major Group Standard Industrial Classification Codes 2033, 2037, and 2048 which are located within a contiguous area and are owned or operated under common control, along with all emissions units located in the contiguous area and under the same common control which directly support the operation of the citrus juice processing function. Facilities that do not operate a citrus peel dryer are not subject to the requirements of paragraph (2)(c), relating to volatile organic compounds.

Department - Department of Environmental Protection.

New sources - Emissions units constructed or added to a facility on or after July 1, 2000.

Existing sources - Emissions units constructed or modified before July 1, 2000.

Permitted Emissions Limits--

Includes specific emission limits for the following sources of air pollution at a citrus plant: particulate matter, nitrogen oxides, and opacity. Requires all facilities authorized to construct and operate under this section to operate within the most stringent of the following emission limits for each new and existing source:

- Any applicable standard promulgated by the U.S. Environmental Protection Agency.
- Each facility shall comply with the emissions limitations of its Title V permit and any properly issued and currently valid preconstruction permits until October 31, 2002, at which time the requirements of this section shall supersede the requirements of the permit.
- After October 31, 2002, for volatile organic compounds, the level of emissions achievable by a 50 percent recovery of oil from citrus fruits processed must be determined by the methodology described herein. One year after EPA approval the level of emissions achievable by a 65 percent recovery of oil from citrus fruits processed must be determined by the methodology described herein.
- After October 31, 2002, a facility may not fire fuel oil containing greater than 0.5 percent sulfur by weight. Those facilities without access to natural gas shall be limited to fuel oil containing no greater than 1 percent sulfur by weight. Also, facilities may use fuel oil with no greater than 1.5 percent sulfur by weight for up to 400 hours per calendar year. The use of natural gas is not limited and the use of d-limonene as a fuel is not limited.
- After October 31, 2002, for particulate matter of 10 microns or less, the emissions level, 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.
- After October 31, 2002, for nitrogen oxides, the emissions level, expressed in pounds of nitrogen dioxide per million British Thermal Units of heat produced, are established for specified types of new and existing sources.
- After October 31, 2002, for visible emissions, the level of visible emissions at all times during operation, expressed as a percent of opacity, are established for specified types of emission sources.

Emissions Determination and Reporting--
All information required to be reported to the department must be certified as true, accurate, and complete by a responsible official of the facility. A “responsible official” mean that person who would be allow to certify information and take action under the department’s Title V permitting rules.

Information to be determined and reported includes:

- All emissions for which the facility is limited by any standard promulgated by the EPA.
- All emissions units subject to any enhanced monitoring requirement under any regulation promulgated by the EPA.
- All emissions for which the facility is limited by s. 403.08725(2)(b)-(f), F.S. This information is to be determined on a calendar-year basis and reported by the responsible official no later than April 1 of the following year.
- Operating reports from each facility authorized to operate under s. 403.0872, F.S.
- Annual and semiannual statements of compliance required under the department’s Title V permitting rules.

- Information indicating compliance by the facility with all provision of s. 403.08725, F.S., and department rules. Such records must be made available and maintained at the facility for a period of 5 years for inspection by the department during normal business hours.

Emission sources subject to limitations for particulate matter, nitrogen oxides, and visible emissions shall test emissions annually, with certain specified exceptions, in accordance with department rules using EPA test methods, or other test methods specified by department rule.

An affirmative defense to an enforcement action is provided for a situation arising from a sudden and unforeseeable event beyond the control of the source which causes an exceedence of a technology-based emission limitation because of unavoidable increases in emissions attributable to the situation and which require immediate corrective action to restore normal operation. It is not a defense for a permittee in an enforcement action that maintaining compliance with any permit condition would necessitate halting of or reduction of the source activity.

Emissions Trading--
Provides for the creation and transfer of emissions allowances. Defines "allowance" as a credit equal to emissions of 1 ton per year of certain pollutants subject to certain limitations. Emissions allowances may be obtained from any other facility authorized to operate under s. 403.08725, F.S., provided such allowances are real, excess, and are not resulting from the shutdown of an emission unit. Emissions allowances must be obtained for each pollutant the emissions limit of which was exceeded in the calendar year. Allowances can be applied on a pollutant-specific basis only. Prohibits cross-pollutant trading. Real allowances are those created by the difference between the emissions limit imposed by s. 403.08725, F.S., and the lower emissions actually measured during the calendar years. Clarifies how the measurements are to be made for determining the creation of allowances. Excess allowances are those not used for any other regulatory purpose. Prior to the sale of any earned emission credits, the facility shall submit appropriate information to the department regarding the number of emission credits earned by the facility and potentially available for sale. Within 30 days of the sale of any available emission credits, the facility shall notify the department of such transaction so that a record may be maintained against the number of credits available for sale.

No facility located in an area designated nonattainment for ozone shall be allowed to acquire allowances of volatile organic compounds. Nothing shall preclude such a facility from trading volatile organic compounds allowances that it might generate to facilities not located in a nonattainment area for ozone.

Emissions Fees--
Requires annual emissions fees to be paid in the same amount as the facility would be subject to under the department's Title V program. Provides for temporary fees until October 31, 2002. Provides a method for determining fees after October 31, 2002. Requires all annual emissions fees to be paid by April 1 for the preceding calendar year. Provides for the calculation of fees in the event adequate records are not maintained regarding hours of operation. Provides for interest and penalties if fees are not paid in a timely manner. Requires all fees to be deposited into the Air Pollution Control Trust Fund.

Modifications and New Construction--

Requires any facility currently authorized to operate which makes any physical change or change to the method of operation, to comply with the requirements of s. 403.08725, F.S., at all times. Provides an exception for facilities located in an area designated as nonattainment for any pollutant and for facilities subject to the federal acid rain program. In these cases, limits established by department rules would apply.

Rules--
Requires the department to adopt rules to administer the provisions of s. 403.08725, F.S. The rules must, to the maximum extent practicable, assure compliance with substantive federal Clean Air Act requirements.

Legislative Review--
By March 2004, 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.

Environmental Protection Agency Approval--
Requires the department to submit s. 403.08725, F.S., as recreated by this bill, to the EPA by October 1, 2000, as a revision of Florida's State Implementation Plan and as a revision of Florida's approved state Title V program. Provides for regulation of facilities in the event that the EPA fails to approve this law within 2 years after submittal.

Section 2. Amends s. 120,80, F.S., to provide that the department, in undertaking rulemaking to establish best available control technology, lowest achievable emissions rate, or case-by-case maximum available control technology for purposes of s. 403.08725, F.S., shall not adopt the lowest regulatory cost alternative if such would prevent the agency from implementing federal requirements.

Section 3. Authorizes the department to explore alternatives to traditional methods of regulatory permitting if there is no material increase in pollution emissions or discharges. Working with industry, business associations, other government agencies and interested parties, the department is directed to consider specific limited pilot projects to test new compliance measures. These measures should include, but not be limited to, reducing transaction costs for business and government and providing economic incentives for emissions reduction. The department will report to the Legislature prior to implementation of a pilot initiated pursuant to this section.

Section 4. Provides that this act shall take effect July 1, 2000. (WITH TITLE AMENDMENT)