

By Senator Carlton

24-1412-00

1                                   A bill to be entitled  
2           An act relating to environmental administrative  
3           penalties; amending s. 253.04, F.S.;  
4           authorizing the assessment of administrative  
5           penalties; providing for the deposit of moneys  
6           in specified trust funds; amending ss. 369.25,  
7           373.129, 377.37, 378.211, F.S.; granting the  
8           Department of Environmental Protection  
9           specified powers to assess administrative  
10          penalties; amending s. 403.121, F.S.; revising  
11          the department's enforcement procedures and  
12          schedule of administrative penalties; amending  
13          s. 403.726, F.S.; authorizing the department to  
14          recover a civil penalty and assess  
15          administrative penalties; amending ss. 403.727,  
16          403.860, F.S.; revising administrative  
17          penalties; providing an effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:  
20

21           Section 1. Subsections (2) and (7) of section 253.04,  
22 Florida Statutes, are amended to read:

23           253.04 Duty of board to protect, etc., state lands;  
24 state may join in any action brought.--

25           (2) In addition to the authority granted by subsection  
26 (1), the board may assess an administrative penalty for  
27 unauthorized use, alteration, or injury to state lands or  
28 other violation of this chapter or rules adopted under this  
29 chapter. With regard to coral reefs, the board may recover  
30 either administrative penalties under this section or civil  
31 penalties under subsection (3). The administrative penalties

1 may be assessed per day, per violation. This schedule is  
2 inadmissible in any judicial proceeding to recover civil  
3 penalties or damages for injury to state lands. Subject to the  
4 limits and requirements of s. 403.121(5)-(10), the board may  
5 assess damages for injury to state lands, and the board may  
6 assess administrative penalties according to the following  
7 schedule:

8 (a) For unauthorized alteration or injury to state  
9 lands, \$5,000.

10 (b) For unauthorized use of more than 100 square feet  
11 of state lands in an aquatic preserve, \$4,000.

12 (c) For unauthorized use of more than 200 square feet  
13 of state lands not in an aquatic preserve, \$3,000.

14 (d) For unauthorized use of 100 square feet or less of  
15 state lands in an aquatic preserve, \$2,000.

16 (e) For unauthorized use of 20 square feet or less of  
17 state lands not within an aquatic preserve, \$1,000.

18 (f) For failure to apply timely for a lease transfer,  
19 failure to renew timely a state lands lease or other  
20 authorization, or failure to comply with any other requirement  
21 that is not otherwise identified in this schedule, \$500.~~in~~  
22 ~~lieu of seeking monetary damages pursuant to subsection (1)~~  
23 ~~against any person or the agent of any person who has been~~  
24 ~~found to have willfully damaged lands of the state, the~~  
25 ~~ownership or boundaries of which have been established by the~~  
26 ~~state, to have willfully damaged or removed products thereof~~  
27 ~~in violation of state or federal law, to have knowingly~~  
28 ~~refused to comply with or willfully violated the provisions of~~  
29 ~~this chapter, or to have failed to comply with an order of the~~  
30 ~~board to remove or alter any structure or vessel that is not~~  
31 ~~in compliance with applicable rules or with conditions of~~

1 ~~authorization to locate such a structure or vessel on~~  
2 ~~state-owned land, the board may impose a fine for each offense~~  
3 ~~in an amount up to \$10,000 to be fixed by rule and imposed and~~  
4 ~~collected by the board in accordance with the provisions of~~  
5 ~~chapter 120. Each day during any portion of which such~~  
6 ~~violation occurs constitutes a separate offense. This~~  
7 ~~subsection does not apply to any act or omission which is~~  
8 ~~currently subject to litigation wherein the state or any~~  
9 ~~agency of the state is a party as of October 1, 1984, or to~~  
10 ~~any person who holds such lands under color of title. Nothing~~  
11 ~~contained herein impairs the rights of any person to obtain a~~  
12 ~~judicial determination in a court of competent jurisdiction of~~  
13 ~~such person's interest in lands that are the subject of a~~  
14 ~~claim or proceeding by the department under this subsection.~~

15       (7) All moneys collected from penalties pursuant to  
16 ~~finer~~ imposed or damages awarded pursuant to this section  
17 shall be deposited into the Internal Improvement Trust Fund  
18 created by s. 253.01 and used for the purposes provided  
19 defined in that section, except that moneys recovered for  
20 injury to all coral reefs and to natural resources situated  
21 within or offshore from an area of critical state concern  
22 shall be deposited into the Ecosystem Management and  
23 Restoration Trust Fund and used for the purposes provided in  
24 s. 380.0558.

25       Section 2. Paragraph (k) is added to subsection (3) of  
26 section 369.25, Florida Statutes, to read:

27       369.25 Aquatic plants; definitions; permits; powers of  
28 department; penalties.--

29       (3) The department has the following powers:  
30  
31

1           (k) To enforce this chapter in the same manner and to  
2 the same extent as provided in ss. 403.121, 403.131, 403.141,  
3 and 403.161.

4           Section 3. Subsection (7) of section 373.129, Florida  
5 Statutes, is amended to read:

6           373.129 Maintenance of actions.--The department, the  
7 governing board of any water management district, any local  
8 board, or a local government to which authority has been  
9 delegated pursuant to s. 373.103(8), is authorized to commence  
10 and maintain proper and necessary actions and proceedings in  
11 any court of competent jurisdiction for any of the following  
12 purposes:

13           (7) Enforce the provisions of part IV of this chapter  
14 in the same manner and to the same extent as provided in ss.  
15 373.430, 403.121~~(1)~~ and ~~(2)~~, 403.131, 403.141, and 403.161.

16           Section 4. Paragraph (a) of subsection (1) of section  
17 377.37, Florida Statutes, is amended to read:

18           377.37 Penalties.--

19           (1)(a) Any person who violates any provision of this  
20 law or any rule, regulation, or order of the division made  
21 under this chapter or who violates the terms of any permit to  
22 drill for or produce oil, gas, or other petroleum products  
23 referred to in s. 377.242(1), or any lessee, permitholder, or  
24 operator of equipment or facilities used in the exploration  
25 for, drilling for, or production of oil, gas, or other  
26 petroleum products who refuses inspection by the division as  
27 provided in this chapter, is liable to the state for any  
28 damage caused to the air, waters, or property, including  
29 animal, plant, or aquatic life, of the state and for  
30 reasonable costs and expenses of the state in tracing the  
31 source of the discharge, in controlling and abating the source

1 and the pollutants, and in restoring the air, waters, and  
2 property, including animal, plant, and aquatic life, of the  
3 state. Furthermore, such person, lessee, permitholder, or  
4 operator is subject to the judicial imposition of a civil  
5 penalty in an amount of not more than \$10,000 for each  
6 offense. However, the court may receive evidence in  
7 mitigation. Each day during any portion of which such  
8 violation occurs constitutes a separate offense. The  
9 department may assess administrative penalties for violations  
10 of this chapter in accordance with s. 403.121. Penalties  
11 collected under this paragraph shall be deposited in the  
12 Minerals Trust Fund. The department may use a portion of the  
13 fund to contract for services to help in the collection of the  
14 administrative penalties assessed under this paragraph. The  
15 schedule of administrative penalties provided in this  
16 paragraph are not admissible as evidence in any judicial  
17 action brought by the department to seek, impose, or recover  
18 civil penalties.~~Nothing in this section gives herein shall~~  
19 ~~give~~ the department the right to bring an action on behalf of  
20 any private person.

21 Section 5. Subsection (2) of section 378.211, Florida  
22 Statutes, is amended to read:

23 378.211 Violations; damages; penalties.--

24 (2) The department may institute a civil action in a  
25 court of competent jurisdiction or an administrative action  
26 under s. 403.121 to impose and recover a civil penalty for  
27 violation of this part or of any rule adopted or order issued  
28 pursuant to this part. ~~The penalty shall not exceed the~~  
29 ~~following amounts, and the court shall consider evidence in~~  
30 ~~mitigation.~~

31

1           ~~(a) For violations of a minor or technical nature,~~  
2 ~~\$100 per violation.~~

3           ~~(b) For major violations by an operator on which a~~  
4 ~~penalty has not been imposed under this paragraph during the~~  
5 ~~previous 5 years, \$1,000 per violation.~~

6           ~~(c) For major violations not covered by paragraph (b),~~  
7 ~~\$5,000 per violation.~~

8  
9 ~~Subject to the provisions of subsection (4), each day or any~~  
10 ~~portion thereof in which the violation continues shall~~  
11 ~~constitute a separate violation.~~

12           Section 6. Section 403.121, Florida Statutes, is  
13 amended to read:

14           403.121 Enforcement; procedure; remedies.--The  
15 department has ~~shall have~~ the following judicial and  
16 ~~administrative~~ remedies and administrative proceedings  
17 available to it for violations of this chapter, as specified  
18 in s. 403.161(1).

19           (1) Judicial remedies:

20           (a) The department may institute a civil action in a  
21 court of competent jurisdiction to establish liability and to  
22 recover damages for any injury to the air, waters, or  
23 property, including animal, plant, and aquatic life, of the  
24 state caused by any violation.

25           (b) The department may institute a civil action in a  
26 court of competent jurisdiction to impose and to recover a  
27 civil penalty for each violation in an amount of not more than  
28 \$10,000 per offense. However, the court may receive evidence  
29 in mitigation. Each day during any portion of which such  
30 violation occurs constitutes a separate offense.

31

1           (c) It shall not be a defense to, or ground for  
2 dismissal of, these judicial remedies for damages and civil  
3 penalties that the department has failed to exhaust its  
4 administrative remedies, has failed to serve a notice of  
5 violation, or has failed to hold an administrative hearing  
6 prior to the institution of a civil action.

7           (2) Administrative proceedings.--~~remedies~~

8           (a) The department may institute an administrative  
9 proceeding to establish liability and to recover damages for  
10 any injury to the air, waters, or property, including animal,  
11 plant, or aquatic life, of the state caused by any violation.  
12 The department may order that the violator pay a specified sum  
13 as damages to the state. Judgment for the amount of damages  
14 determined by the department may be entered in any court  
15 having jurisdiction thereof and may be enforced as any other  
16 judgment.

17           (b) If the department has reason to believe a  
18 violation has occurred, it may institute an administrative  
19 proceeding to order the prevention, abatement, or control of  
20 the conditions creating the violation or other appropriate  
21 corrective action.

22           (c) An administrative proceeding shall be instituted  
23 by the department's serving of a written notice of violation  
24 upon the alleged violator by certified mail. The notice shall  
25 specify the provision of the law, rule, regulation, permit,  
26 certification, or order of the department alleged to be  
27 violated and the facts alleged to constitute a violation  
28 thereof. An order for corrective action may be included with  
29 the notice. However, no order shall become effective until  
30 after service and an administrative hearing, if requested  
31 within 20 days after service. Failure to request an

1 administrative hearing within this time period shall  
2 constitute a waiver thereof.

3 (d) Nothing herein shall be construed as preventing  
4 any other legal or administrative action in accordance with  
5 law.

6 (3) In an administrative proceeding under subsection  
7 (2), the department may assess the following administrative  
8 penalties:

9 (a) For a violation involving domestic or waste water,  
10 the department may assess an administrative penalty of \$3,000  
11 for an unpermitted or unauthorized discharge; plus \$2,000 if  
12 the discharge jeopardized human health or safety; plus \$1,000  
13 if the discharge has resulted in a water quality violation;  
14 plus \$1,000 if the receiving water is an Aquatic Preserve, an  
15 Outstanding Florida Water, or Class I, II, or III surface  
16 water; and plus \$1,000 if the discharge was from a Type I  
17 facility. The department may assess an administrative penalty  
18 of \$4,000 for failure to install, maintain, or use a required  
19 air pollution control system or device.

20 (b) For a violation involving air pollution, the  
21 department may assess an administrative penalty of \$2,000 for  
22 an unpermitted or unauthorized air emission; plus \$2,000 if  
23 the emission has jeopardized human health or safety; plus  
24 \$1,000 if the emission has resulted in an air quality  
25 violation; plus \$1,000 if the emission was from a major  
26 source; and plus \$1,000 if the emission was more than 150  
27 percent of the allowable level. The department may assess an  
28 administrative penalty of \$4,000 for failure to install,  
29 maintain or use a required air pollution control system or  
30 device.

31



1           (c) For a violation involving drinking water, the  
2 department may assess an administrative penalty of \$3,000 for  
3 a maximum-contaminant-level violation; plus \$2,000 if the  
4 violation is for a primary inorganic, organic, or radiological  
5 maximum-contaminant-level or it is a fecal-coliform-bacteria  
6 violation; plus \$1,000 if the violation occurs at a large  
7 system; and plus \$1,000 if any maximum-contaminant-level is  
8 exceeded by more than 100 percent.

9           (d) For a violation involving solid waste, the  
10 department may assess an administrative penalty of \$3,000 for  
11 the unpermitted or unauthorized disposal or storage of solid  
12 waste; plus \$1,000 if the solid waste is Class I or Class III  
13 (excluding yard trash) or if the solid waste is construction  
14 and demolition debris in excess of 20 cubic yards; plus \$1,000  
15 if the waste is disposed of or stored in any natural or  
16 artificial body of water or within 500 feet of a potable water  
17 well; plus \$1,000 if the waste is PCB at a concentration of 50  
18 ppm or greater, is untreated biomedical waste, friable  
19 asbestos greater than 1 cubic meter which is not wetted,  
20 bagged, and covered, is used oil greater than 25 gallons, or  
21 is 10 or more lead acid batteries. The department may assess  
22 an administrative penalty of \$3,000 for the failure to  
23 properly maintain leachate control; for unauthorized burning;  
24 for failure to have a trained spotter on duty during  
25 operation; for failure to provide access control for three  
26 consecutive inspections; or for failure to construct or  
27 maintain a required stormwater management system.

28           (e) For a violation involving dredge and fill, the  
29 department may assess an administrative penalty of \$1,000 for  
30 unpermitted or unauthorized dredging or filling; plus \$1,000  
31 if the dredging or filling occurs in or contiguous to an

1 Aquatic Preserve, Outstanding Florida Water or a Class I, II,  
2 or III surface water; plus \$1,000 if the dredging or filling  
3 results in a water quality violation; and plus \$1,000 if the  
4 area dredged or filled is one-half acre or more. The  
5 department may assess an administrative penalty of \$3,000 for  
6 failure to complete required mitigation or for failure to  
7 record a required conservation easement. The department may  
8 assess a penalty of \$2,000 for the failure to properly  
9 construct a stormwater management system within the designated  
10 time.

11 (f) For a violation involving hazardous waste, the  
12 department may assess an administrative penalty of \$10,000 for  
13 an unpermitted disposal, discharge, or release of hazardous  
14 waste, or for unpermitted treatment or storage of hazardous  
15 waste. The department may assess an administrative penalty of  
16 \$5,000 for failure to perform a required hazardous waste  
17 determination; for failure to notify proper authorities about  
18 hazardous waste activities; for failure to use a required  
19 hazardous waste manifest; or for accumulation of drums or  
20 containers for 31 to 60 days past the storage limit. The  
21 department may assess an administrative penalty of \$3,000 for  
22 the accumulation of drums or containers for 1 to 30 days past  
23 the storage limit.

24 (4) In an administrative proceeding, in addition to  
25 the penalties that may be assessed under subsection (3), the  
26 department may assess administrative penalties according to  
27 the following schedule:

28 (a) For failure to satisfy financial responsibility  
29 requirements or a violation of chapter 377 that results in  
30 injury to lands or waters, \$5,000.

31

1           (b) For failure to obtain a required permit; operating  
2 a storage tank system without a required registration;  
3 unauthorized emission, discharge, or disposal of pollutants  
4 not previously identified in subsection (3), \$3,000.

5           (c) For failure to conduct required monitoring or  
6 testing; failure to conduct required release detection;  
7 failure to construct in compliance with a permit; violation of  
8 a special permit condition; or failure to plug oil, gas,  
9 injection, or disposal wells, \$2,000.

10           (d) For failure to maintain required staff to respond  
11 to emergencies; failure to conduct required training; failure  
12 to prepare, maintain, or update required contingency plans;  
13 failure to adequately respond to emergencies or to bring an  
14 emergency situation under control; failure to comply with  
15 geophysical seismic line safety onsite reclamation  
16 requirements; failure to properly operate, maintain, or close  
17 a storage tank system; or failure to submit required  
18 notification to the department, \$1,000.

19           (e) For failure to prepare, submit, maintain, or use  
20 required reports or other required documentation or failure to  
21 comply with any other requirement not otherwise identified in  
22 this section, \$500.

23           (5) The administrative penalties in subsections (3)  
24 and (4) may be assessed per day, per violation. Once the  
25 assessment has become final and effective, the department may  
26 refuse to issue, modify, transfer, or renew a permit to the  
27 facility or installation until the penalty has been paid.

28           (6) The total administrative penalties assessed may  
29 not exceed \$50,000 per assessment for all violations  
30 attributable to a specific person or facility. The department  
31 may not assess an administrative penalty against a facility if

1 the proposed assessment of an administrative penalty is  
2 pending against that facility.

3 (7) The department's assessment of an administrative  
4 penalty is in lieu of any civil action that may be instituted  
5 by the department in a court of competent jurisdiction to  
6 impose and recover civil penalties for any violation that  
7 resulted in the administrative penalty.

8 (8) Fees collected under this subsection must be  
9 deposited in the Ecosystem Management and Restoration Trust  
10 Fund. The department may use a portion of the fund to contract  
11 for services to help in the collection of the administrative  
12 penalties assessed under this section.

13 (9) The schedule of administrative penalties provided  
14 in this section may not be considered in any judicial action  
15 brought to impose and recover civil penalties or damages. The  
16 schedule of administrative penalties in no way prevents the  
17 department from entering into consent orders for greater or  
18 lesser amounts or from pursuing greater penalties in a  
19 judicial proceeding.

20 (10) Subject to the limitation in subsection (6), if  
21 the same facility or installation is assessed an  
22 administrative penalty under this section two times within a  
23 1-year period, the department shall increase the second  
24 assessed penalty by 50 percent. If the same facility or  
25 installation is assessed an administrative penalty under this  
26 section three or more times within a 2-year period, the  
27 department shall increase the third or subsequent assessed  
28 penalty by 100 percent.

29 ~~(3)(a) In addition to any judicial or administrative~~  
30 ~~remedy authorized by this part, the department may assess a~~  
31 ~~noncompliance fee for failure of any owner or operator of a~~

1 ~~domestic wastewater treatment facility to comply with a permit~~  
2 ~~condition that requires the submittal of monthly operating~~  
3 ~~reports or the reporting of the characteristics of the waste~~  
4 ~~stream or the effects of the facility on surface or ground~~  
5 ~~water. For the first and second violations of the reporting~~  
6 ~~requirements, the fee shall not be assessed until the~~  
7 ~~department has given the owner or operator at least 30 days to~~  
8 ~~comply with the reporting requirement. The time shall not~~  
9 ~~begin until the department has given the owner or operator~~  
10 ~~written notice of the facts alleged to constitute the~~  
11 ~~reporting violation, the specific provision of law, rule, or~~  
12 ~~order alleged to have been violated by the owner or operator,~~  
13 ~~the corrective action needed to bring the facility into~~  
14 ~~compliance, and the potential penalties that may be imposed as~~  
15 ~~a result of the owner's or operator's failure to comply with~~  
16 ~~the notice. For subsequent violations, the department does~~  
17 ~~not have to provide 30 days' written notice of the violations~~  
18 ~~prior to assessing a noncompliance fee, except as follows:~~  
19       1. ~~If any additional reporting violations occur prior~~  
20 ~~to the expiration of either of the 30-day notices issued by~~  
21 ~~the department, the department must provide the owner or~~  
22 ~~operator with 30 days' written notice to correct these~~  
23 ~~violations as well.~~  
24       2. ~~Upon the renewal of the permit, the department~~  
25 ~~shall reinstate the 30-day notice requirements provided in~~  
26 ~~this subsection prior to assessing a noncompliance fee during~~  
27 ~~the new permit period.~~  
28       (b) ~~At the time of assessment of a noncompliance fee,~~  
29 ~~the department shall give the owner or operator written notice~~  
30 ~~setting forth the amount assessed, the specific provision of~~  
31 ~~law, rule, or order alleged to be violated, the facts alleged~~

1 ~~to constitute the violation, the corrective action needed to~~  
2 ~~bring the party into compliance, and the rights available~~  
3 ~~under chapter 120 to challenge the assessment. The assessment~~  
4 ~~shall be final and effective unless an administrative~~  
5 ~~proceeding is requested within 20 days after receipt of the~~  
6 ~~written notice, and shall be enforceable pursuant to s.~~  
7 ~~120.69. Once the assessment has become final and effective,~~  
8 ~~the department may refuse to issue, modify, transfer, or renew~~  
9 ~~a permit to the facility until the fee has been paid.~~

10 ~~(c) Before assessing a noncompliance fee, the~~  
11 ~~department shall adopt rules to implement the provisions of~~  
12 ~~this subsection. The rules shall establish specific procedures~~  
13 ~~and assessment amounts for noncompliance fees authorized by~~  
14 ~~paragraph (a). Noncompliance fees shall be set on a sliding~~  
15 ~~scale based upon the type of violation, the degree of~~  
16 ~~noncompliance, and the potential for harm. Such rules shall~~  
17 ~~also authorize the application of adjustment factors~~  
18 ~~subsequent to the initial assessment to increase or decrease~~  
19 ~~the total amount assessed, such as the good faith efforts or~~  
20 ~~the lack of good faith efforts of the owner or operator to~~  
21 ~~comply with the reporting requirement, the lack of or degree~~  
22 ~~of willfulness or negligence on the part of the owner or~~  
23 ~~operator, the economic benefits associated with the owner's or~~  
24 ~~operator's failure to comply, the owner's or operator's~~  
25 ~~previous history of reporting violations, and the owner's or~~  
26 ~~operator's ability to pay the noncompliance fee. No~~  
27 ~~noncompliance fee shall exceed \$250, and total noncompliance~~  
28 ~~fees assessed shall not exceed \$1,000 per assessment for all~~  
29 ~~reporting violations attributable to a specific facility~~  
30 ~~during any one month. No noncompliance fee may be assessed~~  
31 ~~unless the department has, within 90 days of the reporting~~

1 ~~violation, provided the owner or operator written notice of~~  
2 ~~the violation.~~

3 ~~(d) The department's assessment of a noncompliance fee~~  
4 ~~shall be in lieu of any civil action which may be instituted~~  
5 ~~by the department in a court of competent jurisdiction to~~  
6 ~~impose and recover civil penalties for any violation that~~  
7 ~~resulted in the fee assessment, unless the department~~  
8 ~~initiates a civil action for nonpayment of a fee properly~~  
9 ~~assessed pursuant to this subsection.~~

10 ~~(e) Fees collected pursuant to this subsection shall~~  
11 ~~be deposited in the Ecosystem Management and Restoration Trust~~  
12 ~~Fund. The department may use a portion of the fund to~~  
13 ~~contract for services to help in the collection of the fees~~  
14 ~~assessed pursuant to this subsection.~~

15 Section 7. Subsection (2) of section 403.726, Florida  
16 Statutes, is amended to read:

17 403.726 Abatement of imminent hazard caused by  
18 hazardous substance.--

19 (2) The department shall take any action necessary  
20 pursuant to s. 403.121 or s. 403.131 to abate or substantially  
21 reduce any imminent hazard caused by a hazardous substance,  
22 including a spill into the environment of a hazardous  
23 substance. The department is authorized to use moneys from the  
24 Water Quality Assurance Trust Fund to finance such actions,  
25 and such expenditures from the fund shall be recoverable  
26 pursuant to s. 376.307. Furthermore, the department may  
27 recover a civil penalty of not more than \$25,000 for each day  
28 of continued violation. The department may assess  
29 administrative penalties for violations of this section in  
30 accordance with s. 403.121.

31

1 Section 8. Subsection (3) of section 403.727, Florida  
2 Statutes, is amended to read:

3 403.727 Violations; defenses, penalties, and  
4 remedies.--

5 (3) Violations of the provisions of this act are  
6 punishable as follows:

7 (a) Any person who violates the provisions of this  
8 act, the rules or orders of the department, or the conditions  
9 of a permit is liable to the state for any damages specified  
10 in s. 403.141 and for a civil penalty of not more than \$50,000  
11 for each day of continued violation, except as otherwise  
12 provided herein. The department may revoke any permit issued  
13 to the violator. In any action by the department against a  
14 small hazardous waste generator for the improper disposal of  
15 hazardous wastes, a rebuttable presumption of improper  
16 disposal shall be created if the generator was notified  
17 pursuant to s. 403.7234; the generator shall then have the  
18 burden of proving that the disposal was proper. If the  
19 generator was not so notified, the burden of proving improper  
20 disposal shall be placed upon the department. Furthermore, the  
21 department may assess administrative penalties for violations  
22 of this section in accordance with s. 403.121.

23 (b) Any person who knowingly or by exhibiting reckless  
24 indifference or gross careless disregard for human health:

25 1. Transports or causes to be transported any  
26 hazardous waste, as defined in s. 403.703, to a facility which  
27 does not have a permit when such a permit is required under s.  
28 403.707 or s. 403.722;

29 2. Disposes of, treats, or stores hazardous waste:

30 a. At any place but a hazardous waste facility which  
31 has a current and valid permit pursuant to s. 403.722;



1           b. In knowing violation of any material condition or  
2 requirement of such permit if such violation has a substantial  
3 likelihood of endangering human health, animal or plant life,  
4 or property; or

5           c. In knowing violation of any material condition or  
6 requirement of any applicable rule or standard if such  
7 violation has a substantial likelihood of endangering human  
8 health, animal or plant life, or property;

9           3. Makes any false statement or representation or  
10 knowingly omits material information in any hazardous waste  
11 application, label, manifest, record, report, permit, or other  
12 document required by this act;

13           4. Generates, stores, treats, transports, disposes of,  
14 or otherwise handles any hazardous waste and who knowingly  
15 destroys, alters, conceals, or fails to file any record,  
16 application, manifest, report, or other document required to  
17 be maintained or filed for purposes of compliance with this  
18 act; or

19           5. Transports without a manifest, or causes to be  
20 transported without a manifest, any hazardous waste required  
21 by rules adopted by the department to be accompanied by a  
22 manifest

23  
24 is, upon conviction, guilty of a felony of the third degree,  
25 punishable for the first such conviction by a fine of not more  
26 than \$50,000 for each day of violation or imprisonment not to  
27 exceed 5 years, or both, and for any subsequent conviction by  
28 a fine of not more than \$100,000 per day of violation or  
29 imprisonment of not more than 10 years, or both.

30           ~~(c)1. As used in this paragraph, "Class II violation"~~  
31 ~~means a violation of this part, or the rules promulgated~~

1 ~~pursuant to this part, which pertains to small quantity~~  
2 ~~generators as defined by applicable department rules and which~~  
3 ~~does not result in a discharge or serious threat of a~~  
4 ~~discharge of hazardous waste to the environment, or does not~~  
5 ~~involve the failure to ensure that groundwater will be~~  
6 ~~protected or that hazardous waste will be destined for and~~  
7 ~~delivered to permitted facilities. Class II violations shall~~  
8 ~~include, but need not be limited to, the failure to submit~~  
9 ~~manifest exception reports in a timely manner, failure to~~  
10 ~~provide a generator's United States Environmental Protection~~  
11 ~~Agency identification number on the manifest, failure to~~  
12 ~~maintain complete personnel training records, and failure to~~  
13 ~~meet inspection schedule requirements for tanks and containers~~  
14 ~~that hold hazardous waste.~~

15       2. ~~In addition to any other judicial or administrative~~  
16 ~~remedy authorized by this part, the department may assess a~~  
17 ~~noncompliance fee for any Class II violation by a small~~  
18 ~~quantity generator. For the first and second violations, the~~  
19 ~~fee shall not be assessed until the generator has failed to~~  
20 ~~comply after notice of noncompliance and has been given a~~  
21 ~~reasonable time to comply. If the owner or operator fails~~  
22 ~~after three or more notifications to comply with the~~  
23 ~~requirement to correct the Class II violation, the department~~  
24 ~~may assess the fee without waiting for compliance.~~

25       3. ~~At the time of assessment of a noncompliance fee,~~  
26 ~~the department shall give the small quantity generator written~~  
27 ~~notice setting forth the amount assessed, the specific~~  
28 ~~provision of law, rule, or order alleged to be violated, the~~  
29 ~~facts alleged to constitute the violation, the corrective~~  
30 ~~action needed to bring the party into compliance, and the~~  
31 ~~rights available under chapter 120 to challenge the~~

1 ~~assessment. The assessment shall be final and effective~~  
2 ~~unless an administrative proceeding is requested within 20~~  
3 ~~days after receipt of the written notice, and shall be~~  
4 ~~enforceable pursuant to s. 120.69. Once the assessment has~~  
5 ~~become final and effective, the department shall refuse to~~  
6 ~~issue, modify, transfer, or renew a permit or issue an~~  
7 ~~identification number to the facility until the fee has been~~  
8 ~~paid.~~

9 ~~4. Before assessing any noncompliance fee, the~~  
10 ~~department shall adopt rules to implement the provisions of~~  
11 ~~this paragraph, which shall include a description of~~  
12 ~~activities that constitute Class II violations and the setting~~  
13 ~~of appropriate amounts for the noncompliance fees, based upon~~  
14 ~~the type of violation, but not to exceed \$250. Total~~  
15 ~~noncompliance fees assessed shall not exceed \$1,000 per~~  
16 ~~assessment for all violations attributable to a specific~~  
17 ~~facility during any one month.~~

18 ~~5. The department's assessment of a noncompliance fee~~  
19 ~~shall be in lieu of any civil action that may be instituted by~~  
20 ~~the department in a court of competent jurisdiction to impose~~  
21 ~~and recover civil penalties for any violation that resulted in~~  
22 ~~the fee assessment, unless the department initiates a civil~~  
23 ~~action for nonpayment of a fee properly assessed pursuant to~~  
24 ~~this paragraph.~~

25 ~~6. Noncompliance fees collected pursuant to this~~  
26 ~~paragraph shall be deposited in the Ecosystem Management and~~  
27 ~~Restoration Trust Fund. The department may use a portion of~~  
28 ~~the fund to contract for services to help in the collection of~~  
29 ~~fees assessed pursuant to this paragraph.~~

30 Section 9. Subsections (5), (6), and (7) of section  
31 403.860, Florida Statutes, are amended to read:

1           403.860 Penalties and remedies.--  
2           (5) In addition to any judicial or administrative  
3 remedy authorized by this part, the department or a county  
4 health department that has received approval by the department  
5 pursuant to s. 403.862(1)(c) may assess administrative  
6 penalties for violations of this section in accordance with s.  
7 403.121.a noncompliance fee for failure of any supplier of  
8 water of a public water system to comply with department  
9 requirements for the reporting, in the manner and time  
10 provided by department rule, of test results for  
11 microbiological, inorganic, or organic contaminants; or  
12 turbidity, radionucleides, or secondary standards.  
13           ~~(a) For the first and second violations of the~~  
14 ~~microbiological reporting requirements, and for the first~~  
15 ~~violation of other reporting requirements, the fee shall not~~  
16 ~~be assessed until the department has given the supplier at~~  
17 ~~least 30 days to comply with the reporting requirement. The~~  
18 ~~time shall not begin until the department has given the~~  
19 ~~supplier written notice of the facts alleged to constitute the~~  
20 ~~reporting violation, the specific provision of law, rule, or~~  
21 ~~order alleged to have been violated by the owner or operator,~~  
22 ~~the corrective action needed to bring the facility into~~  
23 ~~compliance, and the potential penalties that may be imposed as~~  
24 ~~a result of the supplier's failure to comply with the notice.~~  
25 ~~For subsequent violations of the microbiological reporting~~  
26 ~~requirements, the department does not have to provide 30-day~~  
27 ~~written notice of the violations prior to assessing a~~  
28 ~~noncompliance fee, provided, however, that if any additional~~  
29 ~~reporting violations occur prior to the expiration of either~~  
30 ~~30-day notice issued by the department, the department must~~  
31 ~~provide the supplier with a 30-day written notice to correct~~

1 ~~those violations as well. Upon expiration of 36 months, the~~  
2 ~~department shall reinstate the 30-day notice requirements~~  
3 ~~provided in this subsection prior to assessing a noncompliance~~  
4 ~~fee.~~

5 ~~(b) At the time of assessment of a noncompliance fee,~~  
6 ~~the department shall give the supplier written notice setting~~  
7 ~~forth the amount assessed, the specific provision of law,~~  
8 ~~rule, or order alleged to be violated, the facts alleged to~~  
9 ~~constitute the violation, the corrective action needed to~~  
10 ~~bring the party into compliance, and the rights available~~  
11 ~~under chapter 120 to challenge the assessment. The assessment~~  
12 ~~shall be final and effective unless an administrative~~  
13 ~~proceeding is requested within 20 days after receipt of the~~  
14 ~~written notice, and shall be enforceable pursuant to s.~~  
15 ~~120.69.~~

16 ~~(c) Before assessing a noncompliance fee, the~~  
17 ~~department shall adopt rules to implement the provisions of~~  
18 ~~this subsection. The rules shall establish specific procedures~~  
19 ~~and assessment amounts for noncompliance fees authorized by~~  
20 ~~paragraph (a). Noncompliance fees shall be set on a sliding~~  
21 ~~scale based upon the type of violation, the degree of~~  
22 ~~noncompliance, and the potential for harm. Such rules shall~~  
23 ~~also authorize the application of adjustment factors~~  
24 ~~subsequent to initial assessment to increase or decrease the~~  
25 ~~total amount assessed, such as the good faith efforts or the~~  
26 ~~lack of good faith efforts of the supplier to comply with the~~  
27 ~~reporting requirements, the lack of or degree of willfulness~~  
28 ~~or negligence on the part of the supplier, the economic~~  
29 ~~benefits associated with the supplier's failure to comply with~~  
30 ~~the reporting violation, the supplier's previous history of~~

31

1 ~~reporting violations, and the supplier's ability to pay the~~  
2 ~~noncompliance fee.~~

3 ~~(d) For microbiological reporting requirements, no~~  
4 ~~noncompliance fee shall exceed \$250, and total noncompliance~~  
5 ~~fees assessed shall not exceed \$1,000 per assessment for all~~  
6 ~~reporting violations attributable to a specific facility~~  
7 ~~during any one month.~~

8 ~~(e) For violations of reporting requirements other~~  
9 ~~than microbiological, the fee shall be no greater than \$50 per~~  
10 ~~day for each day of violation, and the total amount assessed~~  
11 ~~shall not exceed \$2,000.~~

12 ~~(f) The department's assessment of a noncompliance fee~~  
13 ~~shall be in lieu of any civil action which may be instituted~~  
14 ~~by the department in a court of competent jurisdiction to~~  
15 ~~impose and recover civil penalties for any violation that~~  
16 ~~resulted in the fee assessment, unless the department~~  
17 ~~initiates a civil action for nonpayment of a fee properly~~  
18 ~~assessed pursuant to this subsection.~~

19 ~~(g) No noncompliance fee may be assessed unless the~~  
20 ~~department has, within 90 days of the reporting violation,~~  
21 ~~provided the supplier written notice of the violation.~~

22 ~~(6) The department is authorized to assess~~  
23 ~~administrative penalties for failure to comply with the~~  
24 ~~requirements of the Florida Safe Drinking Water Act.~~

25 ~~(a) Prior to the assessment of an administrative~~  
26 ~~penalty, the department shall provide the public water system~~  
27 ~~a reasonable amount of time to complete the corrective action~~  
28 ~~necessary to bring the system back into compliance.~~

29 ~~(b)1. At the time of assessment of the administrative~~  
30 ~~penalty, the department shall give the public water system~~  
31 ~~notice setting forth the amount assessed, the specific~~

1 ~~provision of law, rule, or order alleged to be violated, the~~  
2 ~~facts alleged to constitute the violation, the corrective~~  
3 ~~action needed to bring the party into compliance, and the~~  
4 ~~rights available under chapter 120 to challenge the~~  
5 ~~assessment. The assessment shall be final and effective,~~  
6 ~~unless an administrative hearing is requested within 20 days~~  
7 ~~after receipt of the written notice, and shall be enforceable~~  
8 ~~pursuant to s. 120.69.~~

9         ~~2. The department shall adopt rules to implement the~~  
10 ~~provisions of this subsection. The rules shall establish~~  
11 ~~specific procedures for implementing the penalties and shall~~  
12 ~~identify assessment amounts. The rules shall authorize the~~  
13 ~~application of adjustment factors for the purpose of~~  
14 ~~increasing or decreasing the total amount assessed subsequent~~  
15 ~~to initial assessment. Such factors may include the lack or~~  
16 ~~degree of good faith to comply with the requirements, the lack~~  
17 ~~or degree of willfulness or negligence on the part of the~~  
18 ~~owner, the compliance history of the public water system, the~~  
19 ~~economic benefit derived by the failure to comply with the~~  
20 ~~requirements, and the ability to pay.~~

21         ~~(c) The amount of the penalties assessed shall be as~~  
22 ~~follows:~~

23             ~~1. In the case of a public water system serving a~~  
24 ~~population of more than 10,000, the penalty shall be not less~~  
25 ~~than \$1,000 per day per violation.~~

26             ~~2. In the case of any other public water system, the~~  
27 ~~penalty shall be adequate to ensure compliance.~~

28  
29 ~~However, the total amount of the penalty assessed on any~~  
30 ~~public water system may not exceed \$10,000 per violation.~~

31

