

By Representative Dockery

1 A bill to be entitled
 2 An act relating to phosphogypsum stack
 3 management; amending s. 378.035, F.S.;
 4 authorizing the transfer of funds between trust
 5 funds; authorizing the expenditure of closure
 6 funds for abandoned stack systems from reserve
 7 funds in the Nonmandatory Land Reclamation
 8 Trust Fund; establishing a deadline for filing
 9 applications for funds; amending s. 403.4154,
 10 F.S.; defining the terms "phosphogypsum stack
 11 system" and "process wastewater"; authorizing
 12 the Department of Environmental Protection to
 13 abate imminent hazards from a phosphogypsum
 14 stack system through the use of funds from the
 15 Phosphogypsum Stack System Safety Assurance
 16 Trust Fund; providing for registration fees;
 17 providing a right of action and lien in favor
 18 of the state to seek reimbursement of expended
 19 abatement funds; providing for closure of
 20 abandoned systems; providing an effective date.

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 22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Subsections (8), (9), and (10) are added to
 25 section 378.035, Florida Statutes, to read:

26 378.035 Department responsibilities and duties with
 27 respect to Nonmandatory Land Reclamation Trust Fund.--

28 (8) The department may transfer up to \$10 million from
 29 the Nonmandatory Land Reclamation Trust Fund to the
 30 Phosphogypsum Stack System Safety Assurance Trust Fund when
 31 the fund balance of the Phosphogypsum Stack System Safety

1 Assurance Trust Fund is inadequate to meet the obligations of
2 that fund. Any such transfer from the Nonmandatory Land
3 Reclamation Trust Fund must be repaid from the Phosphogypsum
4 Stack System Safety Assurance Trust Fund within 30 days after
5 funds sufficient to make such payment are available in the
6 Phosphogypsum Stack System Safety Assurance Trust Fund;
7 however, any funds up to a total amount of \$5 million dollars
8 transferred before June 30, 2002, are not required to be
9 repaid.

10 (9) The department may expend funds from the
11 \$30-million reserve fund established by subsection (5) for the
12 purpose of closing an abandoned phosphogypsum stack system and
13 carrying out post-closure care as provided by s. 403.4154(5).
14 The department may impose a lien on the real property on which
15 a closed phosphogypsum stack system and its formerly
16 associated phosphate fertilizer production facilities are
17 located equal in amount to the moneys expended from the
18 Nonmandatory Land Reclamation Trust Fund pursuant to s.
19 403.4154(5) for closure and post-closure care. The owner of
20 any property on which such a lien is imposed is entitled to a
21 release of the lien upon payment to the department of the lien
22 amount and execution of an agreement to carry out post-closure
23 care in accordance with applicable department rules.

24 (10) The department may not accept any applications
25 for nonmandatory land reclamation programs after November 1,
26 2008.

27 Section 2. Section 403.4154, Florida Statutes, is
28 amended to read:

29 403.4154 Phosphogypsum management program.--

30 (1) DEFINITIONS.--As used in this section, the term:

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1 (a) "Department" means the Department of Environmental
2 Protection.

3 (b) "Existing stack" means a phosphogypsum stack, as
4 defined in paragraph (d), that is:

- 5 1. In existence in this state on May 12, 1993; or
- 6 2. Constructed in this state after May 12, 1993, and
7 for which the department has received a certification of
8 completion of construction submitted by the owner of the newly
9 constructed phosphogypsum stack.

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11 The term "existing stack" does not include a phosphogypsum
12 stack that has been closed pursuant to a department permit or
13 order.

14 (c) "Phosphogypsum" means calcium sulfate and
15 byproducts produced by the reaction of sulfuric acid with
16 phosphate rock to produce phosphoric acid.

17 (d) "Phosphogypsum stack" means any defined geographic
18 area associated with a phosphoric acid production facility in
19 which phosphogypsum is disposed of or stored, other than
20 within a fully enclosed building, container, or tank.

21 (e) "Phosphogypsum stack system" means the
22 phosphogypsum stack (or pile, or landfill), together with all
23 pumps, piping, ditches, drainage conveyances, water control
24 structures, collection pools, cooling ponds, surge ponds, and
25 any other collection or conveyance system associated with the
26 transport of phosphogypsum from the plant to the phosphogypsum
27 stack, its management at the stack, and the process wastewater
28 return to the phosphoric acid production or other process. The
29 term specifically includes toe drain systems and ditches and
30 other leachate collection systems, but does not include
31 conveyances within the confines of the fertilizer production

1 plant or existing areas used in an emergency caused by
2 rainfall events of high volume or duration for the temporary
3 storage of process wastewater to avoid discharges to surface
4 waters of the state, which process wastewater must be removed
5 from the temporary storage area as expeditiously as possible
6 within 120 days after the emergency.

7 (f) "Process wastewater" means any water that, during
8 manufacturing or processing, comes into direct contact with or
9 results from the production or use of any raw material,
10 intermediate product, finished product, by-product, or waste
11 product, along with any leachate or runoff from the
12 phosphogypsum stack system. The term does not include
13 contaminated nonprocess wastewater as that term is defined in
14 40 C.F.R. 418.11(c).

15 (2) REGULATORY PROGRAM.--

16 (a) It is the intent of the Legislature that the
17 department develop a program for the sound and effective
18 regulation of phosphogypsum stack systems in the state. ~~It is~~
19 ~~further the intent of the Legislature that such regulatory~~
20 ~~program include the imposition of an annual registration fee~~
21 ~~on stacks that have not been closed and that such fees be used~~
22 ~~for the purpose of paying the costs of the department's review~~
23 ~~of applications to permit the closure of stack systems or the~~
24 ~~construction of new or expanded stack systems and of the~~
25 ~~department's review of requests for deferral of mandatory~~
26 ~~closure requirements.~~

27 (b) The department shall adopt rules that prescribe
28 acceptable construction designs for new or expanded
29 phosphogypsum stack systems and that prescribe permitting
30 criteria for operation, closure criteria, long-term care
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1 requirements, and closure financial responsibility
2 requirements for phosphogypsum stack systems.

3 (3) ABATEMENT OF IMMINENT HAZARD.--

4 (a) The department may provide financial assistance to
5 abate or substantially reduce any imminent hazard caused by
6 the physical condition or operation of a phosphogypsum stack
7 system. The department may use moneys from the Phosphogypsum
8 Stack System Safety Assurance Trust Fund to finance such
9 actions subject to the procedures and limitations set forth in
10 this section.

11 (b) An imminent hazard exists if the physical
12 condition or operation of a phosphogypsum stack system creates
13 an immediate and substantial danger to human health, safety,
14 or welfare, or to the environment. A phosphogypsum stack
15 system is presumed not to cause an imminent hazard if the
16 physical condition and operation of the system are in
17 substantial compliance with all applicable department rules.

18 (c) If the department determines that the physical
19 condition or operation of a phosphogypsum stack system poses
20 an imminent hazard, the department may issue a notice to the
21 owner of the phosphogypsum stack system, which notice must be
22 in writing and must:

23 1. Identify the location of the phosphogypsum stack
24 system;

25 2. State the basis of the determination by the
26 department that an imminent hazard exists;

27 3. Identify actions determined by the department to be
28 necessary to abate or substantially reduce the imminent
29 hazard; and

30 4. Provide a reasonable time, taking into account the
31 nature of the imminent hazard, within which the owner must

1 provide reasonable assurance to the department that the owner
2 will initiate and complete the actions described in
3 subparagraph 3. or alternative actions acceptable to the
4 department, using the owner's own resources.

5 (d) If the owner of the phosphogypsum stack system who
6 receives a notice issued under paragraph (c) does not provide
7 reasonable assurance to the department that the owner will
8 initiate and complete the actions using the owner's own
9 resources, the department may pay the fees and costs of
10 third-party contractors retained by the owner of the
11 phosphogypsum stack system to perform some or all of the
12 actions necessary to abate or substantially reduce the
13 imminent hazard.

14 (e) The department shall recover from the owner of the
15 phosphogypsum stack system for the use of the Phosphogypsum
16 Stack System Safety Assurance Trust Fund all moneys expended
17 from the fund to abate an imminent hazard posed by the
18 phosphogypsum stack system plus interest on such funds from
19 the date of payment from the fund at a rate equal to the rate
20 being earned on the fund plus 15 percent. If the department
21 prevails in any action to recover funds under this subsection,
22 it is entitled to recover reasonable attorney's fees and costs
23 incurred. Phosphogypsum may not be deposited on a stack until
24 all moneys expended from the fund in connection with the stack
25 have been repaid, unless the department determines that such
26 placement is necessary to abate or avoid an imminent hazard or
27 unless otherwise authorized by the department.

28 (f) The department may impose a lien on the real
29 property on which the phosphogypsum stack system that poses an
30 imminent hazard and associated phosphate fertilizer production
31 facilities are located, equal in amount to the moneys expended

1 from the Phosphogypsum Stack System Safety Assurance Trust
2 Fund under paragraph (d) including attorney's fees and court
3 costs. The owner of any property on which such a lien is
4 imposed is entitled to a release of the lien upon payment to
5 the department of the lien amount.

6 (g) The authority granted by this section to pay for
7 the cost of abatement of an imminent hazard is intended to
8 supplement and not to limit any other enforcement authority
9 granted to the department by law.

10 (4)(3) REGISTRATION FEES.--

11 (a) The owner of each existing phosphogypsum stack
12 shall pay to the department a registration fee as set forth in
13 this subsection. All registration fees must be deposited in
14 the Phosphogypsum Stack System Safety Assurance Trust Fund.

15 (b) Except as provided in paragraph (c), the amount of
16 the registration fee for each existing stack is \$50,000 for
17 each of the five 12-month periods following the effective date
18 of this section and \$5,000 for each subsequent 12 month
19 period.

20 (c) If the total amount of the Phosphogypsum Stack
21 System Safety Assurance Trust Fund is less than the aggregate
22 total of refunds authorized by paragraph (d) as of July 1 of
23 any year after calendar year 2006, the registration fee for
24 each existing phosphogypsum stack is \$50,000 for each
25 subsequent 12-month period until the total amount of the fund
26 is larger than the aggregate total of such refunds as of July
27 1 of any subsequent year.

28 (d) Within 30 days after an existing phosphogypsum
29 stack has been certified as closed under department rules
30 62-673.620(2) and (3), the department shall refund to the
31 owner of the closed phosphogypsum stack an amount from the

1 Phosphogypsum Stack System Safety Assurance Trust Fund equal
2 to the total amount of registration fee payments made by the
3 owner to the fund in connection with the closed phosphogypsum
4 stack. If there is an insufficient amount in the trust fund to
5 make such payment, the refund must be made within 30 days
6 after sufficient funds become available.

7 ~~(a) The total annual registration fees for all~~
8 ~~existing stacks shall be the amount required by the department~~
9 ~~to accomplish the following activities:~~

10 1. ~~Review and processing of a request by an owner of a~~
11 ~~phosphogypsum stack system that it be relieved of any~~
12 ~~mandatory obligation to close the system, or any portion~~
13 ~~thereof, prior to using the system for its entire remaining~~
14 ~~useful life.~~

15 2. ~~Review and processing of an application to~~
16 ~~construct a new or expanded phosphogypsum stack system.~~

17 3. ~~Review and processing of an application to close a~~
18 ~~phosphogypsum stack system, or portion thereof.~~

19 (e)~~(b)~~ On or before August 1 of each ~~fiscal~~ year, the
20 department shall provide written notice to each owner of an
21 existing stack of the ~~annual~~ registration fee payable for the
22 12-month period commencing on the immediately preceding July 1
23 ~~that fiscal year~~. Each owner shall remit the ~~annual~~
24 registration fee to the department on or before August 31 of
25 each year ~~within 30 days after receipt of the notice~~. The
26 ~~notice required by this section shall be accompanied by a~~
27 ~~report prepared by the department presenting the expenditures~~
28 ~~using annual registration fees required by this section made~~
29 ~~by the department during the immediately preceding fiscal year~~
30 ~~and indicating the amount of any unexpended funds.~~

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1 ~~(c) The total annual registration fees for all~~
2 ~~existing stacks shall not exceed \$500,000. The annual~~
3 ~~registration fee for each existing stack shall be the amount~~
4 ~~calculated by dividing the maximum total registration fees~~
5 ~~collectible in a particular fiscal year by the total number of~~
6 ~~existing stacks as of June 30 of the immediately preceding~~
7 ~~fiscal year.~~

8 (5) CLOSURE OF ABANDONED SYSTEMS.--

9 (a) The department may take all steps necessary to
10 close an abandoned phosphogypsum stack system and to carry out
11 post-closure care in accordance with department rules in
12 effect on the date of commencement of closure activities. The
13 department may accomplish such closure and post-closure care
14 by the use of department personnel and equipment, by the use
15 of other state or federal agency personnel and equipment, by
16 the use of a private contractor, or by a combination of the
17 use of those persons and equipment. Department employees,
18 agents, and contractors may enter all land owned by the owner
19 of an abandoned phosphogypsum stack system for the performance
20 of closure activities.

21 (b) A phosphogypsum stack system may be considered
22 abandoned for the purpose of this subsection only after the
23 department has exhausted all administrative and judicial
24 remedies available to it to require the owner of the
25 phosphogypsum stack system to close the stack and has
26 determined that closure must be implemented to protect human
27 health or the environment.

28 Section 3. This act shall take effect July 1, 2001.

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SENATE SUMMARY

Authorizes the Department of Environmental Protection to abate imminent hazards from phosphogypsum stack systems through the use of funds from the Nonmandatory Land Reclamation Trust Fund and the Phosphogypsum Stack System Safety Assurance Trust Fund. Provides for registration fees. Provides for a right of action and lien to seek reimbursement of expended funds. Provides for the closure of abandoned stack systems.