By Representative Ryan

A bill to be entitled

An act relating to environmental control; titling the act the "Florida Performance-Based Environmental Permitting Act"; providing legislative findings and public purpose; amending s. 403.087, F.S.; removing provisions relating to renewal of operation permits for specified domestic wastewater facilities, requirements for such renewal, and Department of Environmental Protection recordkeeping requirements with respect to such permits; revising conditions under which the department shall issue a permit to construct, operate, maintain, expand, or modify an installation which may reasonably be expected to be a source of pollution; creating s. 403.0874, F.S.; establishing the Performance-Based Environmental Permit Program; providing definitions; requiring applicants under the Florida Air and Water Pollution Control Act to submit specified information to the department; requiring the department to consider the compliance history of applicants; requiring the department to review the compliance history of applicants seeking review or modification of a permit and applicants seeking a permit for a new facility; creating a point schedule for violations, and incidents leading to violations, of environmental regulation for the purpose of assessing applicants; requiring the department to compute points based on the

schedule; providing basis for assignment of points; providing period of time during which points assessed against an applicant remain in effect; providing for burden of proof in proceedings challenging proposed agency action; providing a point threshold upon which the department is required to conduct a supplemental review and the applicant is required to submit an increased permit fee; providing actions which may be taken by the department subsequent to a supplemental review; providing actions which may be taken by the department and the applicant subsequent to a denial by the department; providing factors to be considered by the department prior to acting pursuant to a supplemental review; providing criteria to be considered in evaluating an applicant's compliance program; providing construction; providing that applicants meeting certain criteria are eligible for specified compliance incentives; providing procedure, requirements, and eligibility criteria with respect to such incentives; providing for voluntary submission of prescribed compliance forms; providing for application of the act; amending s. 403.707, F.S.; removing provisions relating to departmental refusal to issue a permit under pt. IV of ch. 403, F.S., relating to resource recovery and management, to conform; amending ss. 403.703, 403.0871, and 403.0872, F.S.; correcting cross references;

reenacting ss. 366.825(3), 378.901(9), 403.0881, 403.707(3), and 403.927(2), F.S., to incorporate the amendments to s. 403.087, F.S., in references thereto; providing an effective date.

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

Section 1. Short title.--This act shall be known and cited as the "Florida Performance-Based Environmental Permitting Act."

Section 2. Legislative findings; public purpose.--

(1) The Legislature finds and declares that:

(a) The Department of Environmental Protection has been delegated the authority to establish permitting programs for the purpose of protecting human health and the environment.

(b) Applicants for department permits incur significant expenses and invest substantial time and effort in securing these permits. The department also invests substantial resources in reviewing applications for such permits.

(c) In most cases, applicants for department permits of a given type must submit the same application forms, must submit the same level of detailed information, and must receive the same level of scrutiny by the department, regardless of their compliance history.

(d) In most cases, applicants for department permits of a given type receive a permit of the same duration, regardless of their compliance history.

(e) Applicants with a history of compliance should be provided with incentives to continue to act in the best interests of Florida's environment, while applicants for department permits who have a history of noncompliance should be required to meet more stringent requirements, and should sometimes be denied permits.

(f) The department considers the past performance of an applicant and its related entities when it determines whether the applicant has provided reasonable assurance that it will comply with the requested permit and the law. The department should also consider this compliance history in determining the level of detail of the information submitted for permit renewals, the degree of scrutiny a proposed project requires, and the duration of a permit.

(g) Permit decisionmaking that considers past compliance history and customizes the permit in recognition of that history increases protection for the environment:

1. Because it encourages compliance;

2. By allowing the department to focus financial and personnel resources on those few in the regulated community with a record of poor compliance; and

3. Because it allows permit applicants with a satisfactory record to better focus their resources.

(h) In order to maximize the benefit of a permit decisionmaking process that recognizes an applicant's compliance history, the evaluation of the compliance history should be performed in a clearer, more consistent, and predictable manner.

(2) It is therefore declared to be the purpose of this act to:

(a) Enhance the protection of the state's natural resources by establishing and making available to the regulated community incentives to encourage compliance and to reward those who meet or exceed compliance requirements;

(b) Provide the department with clear and specific authority to consider the compliance history of permit applicants and their related entities when evaluating reasonable assurance and when designing and implementing its permitting programs;

(c) Clearly define the extent to which the department may consider compliance history in its decisionmaking with regard to permitting;

(d) Provide the regulated community with a more objective, unambiguous process for evaluating compliance history; and

(e) Promote objectivity and consistency in the evaluation process throughout the state by establishing criteria for the mandatory review of compliance history, the measuring of violations through a point system, and the defining of the potential permitting consequences.

Section 3. Subsection (3) of section 403.087, Florida Statutes, is repealed, subsections (4) through (9) are renumbered as subsections (3) through (8), respectively, and present subsection (5) of said section is renumbered and amended, to read:

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

~~(3) A renewal of an operation permit for a domestic wastewater treatment facility other than a facility regulated under the National Pollutant Discharge Elimination System (NPDES) Program under s. 403.0885 must be issued upon request~~

~~for a term of up to 10 years, for the same fee and under the same conditions as a 5-year permit, in order to provide the owner or operator with a financial incentive, if:~~

~~(a) The waters from the treatment facility are not discharged to Class I municipal injection wells or the treatment facility is not required to comply with the federal standards under the Underground Injection Control Program under chapter 62-528 of the Florida Administrative Code;~~

~~(b) The treatment facility is not operating under a temporary operating permit or a permit with an accompanying administrative order and does not have any enforcement action pending against it by the United States Environmental Protection Agency, the department, or a local program approved under s. 403.182;~~

~~(c) The treatment facility has operated under an operation permit for 5 years and, for at least the preceding 2 years, has generally operated in conformance with the limits of permitted flows and other conditions specified in the permit;~~

~~(d) The department has reviewed the discharge-monitoring reports required under department rule and is satisfied that the reports are accurate;~~

~~(e) The treatment facility has generally met water quality standards in the preceding 2 years, except for violations attributable to events beyond the control of the treatment plant or its operator, such as destruction of equipment by fire, wind, or other abnormal events that could not reasonably be expected to occur; and~~

~~(f) The department, or a local program approved under s. 403.182, has conducted, in the preceding 12 months, an inspection of the facility and has verified in writing to the~~

~~operator of the facility that it is not exceeding the permitted capacity and is in substantial compliance.~~

~~The department shall keep records of the number of 10-year permits applied for and the number and duration of permits issued for longer than 5 years.~~

(4)~~(5)~~ The department shall issue permits to construct, operate, maintain, expand, or modify an installation which may reasonably be expected to be a source of pollution only if the applicant affirmatively provides the department with reasonable assurance that the proposed activity will not cause or contribute to a violation of this chapter, chapter 161, chapter 253, chapter 373, or chapter 376, where applicable, applicable department rules, or applicable ordinances or regulations of a water management district, or local government agency acting on behalf of the department through a delegation or similar operating agreement ~~when it determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules adopted by the department~~, except as provided in s. 403.088 or s. 403.0872. However, separate construction permits shall not be required for installations permitted under s. 403.0885, except that the department may require an owner or operator proposing to construct, expand, or modify such an installation to submit for department review, as part of application for permit or permit modification, engineering plans, preliminary design reports, or other information 90 days prior to commencing construction. The department may also require the engineer of record or another registered professional engineer, within 30 days after

construction is complete, to certify that the construction was completed in accordance with the plans submitted to the department, noting minor deviations which were necessary because of site-specific conditions.

Section 4. Section 403.0874, Florida Statutes, is created to read:

403.0874 Performance-Based Environmental Permit Program.--

(1) For purposes of this section, the following terms have the following meanings:

(a) "Applicant" means the owner, operator, or president of an existing or proposed installation, activity, or facility, the construction or operation of which requires a permit under the provisions of this chapter or chapter 161, chapter 253, chapter 373, or chapter 376; and the proposed permittee, if different from the owner or operator of such installation, activity, or facility.

(b) "Business entity" means a general or limited partnership, limited liability company, public or private corporation, syndicate, joint venture, or association. The term also includes federal, state, and local government agencies.

(c) "Department" means the Department of Environmental Protection. It also includes water management districts, local government agencies acting on behalf of the department through a delegation or other operating agreement, and the Board of Trustees of the Internal Improvement Trust Fund.

(d) "Department statutes" means chapters 161, 253, 373, 376, and 403, Florida Statutes.

(e) "Incident" means a specific set of facts or circumstances resulting in one or more related violations at an installation, activity, or facility.

(f) "Related entities" means:

1. Any individual who is or was an officer, manager, or partner of the applicant during the 5 years preceding submission of a permit application, but only if that individual has or had operational control of the applicant or the applicant's environmental affairs during that period;

2. Any other business entity in this state in which an individual described in subparagraph 1. is or was an officer, manager, or partner having operational control of the entity or its environmental affairs, but only for the 5 years preceding submission of the permit application and only for the time period during which such individual was an officer, manager, or partner;

3. If the applicant is a business entity, a stockholder owning 50 percent or more of the stock of the entity; and

4. If the applicant is a subsidiary corporation, the parent of that corporation.

For purposes of this section, different state, county, or municipal departments and different federal installations are considered separate and unrelated business entities.

(2) Unless specifically exempted by this section, every applicant shall provide the department with the name and address of the owner, the operator, and the permittee, or the name and address of the president of the owner, the operator, and the permittee, if it is a business entity, and any information concerning any criminal convictions of the

applicant for which points may be assessed under subsection (7).

(3) Unless specifically exempted by this section:

(a) Every applicant for a permit to construct or operate a new installation, activity, or facility who has not held a department permit at any installation, activity, or facility during the 5 years preceding submission of an application shall report the names, addresses, and any information concerning any criminal convictions of any related entities for which points may be assessed under subsection (7); and

(b) Every applicant for a permit to operate an installation, activity, or facility that has been operated by a related entity at any time during the 5 years preceding submission of the application shall report the names, addresses, and any information concerning any criminal convictions of each related entity operating the installation, activity, or facility during that period for which points may be assessed under subsection (7).

(4) The department shall establish by rule a form to be used by permit applicants to report the information under this section.

(5) The department shall consider the compliance history of the applicant and its related entities, if applicable, for the 5-year period preceding the submission of the application. The department shall consider these compliance histories in conjunction with other relevant factors when evaluating whether the applicant has provided reasonable assurance.

(6) If the applicant is seeking renewal or modification of a permit, the department shall review the

compliance history of the applicant at the site at which the installation, activity, or facility for which renewal or modification is being sought is located. The department shall compute points for the applicant based on the point schedule contained in subsection (7) and assign those points to the applicant. If the applicant is seeking a permit for a new facility, the department shall review the compliance history of the applicant and its related entities, if applicable, at all sites in the state. The department shall compute the points for all such violations based on the point schedule contained in subsection (7), divide the total number of points by the number of sites in this state owned or operated by the applicant and its related entities, if applicable, and assign the resulting average to the applicant. For the purpose of this subsection, a "site" is a single parcel, or multiple contiguous parcels, of land owned by the applicant or its related entities, or on which the applicant or its related entities conduct their operations.

(7) Points shall be based upon incidents leading to violations at each facility, not upon the number of violations that may result from each incident. If the incident results in multiple violations, points shall be assigned for the highest scoring violation. The department shall use the following point schedule:

(a) Each incident resulting in a felony criminal conviction of an environmental crime in this state, regardless of whether adjudication was withheld: 15 points.

(b) Each incident resulting in a misdemeanor conviction of an environmental crime involving dishonesty, fraud, deceit, or misrepresentation in this state, regardless of whether adjudication was withheld: 10 points.

(c) Each incident involving one or more of the following violations that was the subject of a consent order, notice of violation, final order, complaint, or final judgment entered or filed by a court of competent jurisdiction, the department, a water management district, or an approved local pollution control program:

1. A violation of department ambient air standards caused by an emission: 10 points.

2. A violation of a department air permit emission limit in excess of 150 percent of the permitted limit: 10 points.

3. A violation of visible emission limits in excess of plus 30 percent opacity of the applicable opacity limit: 10 points.

4. A violation in excess of 160 percent of water quality criteria, or permit limits if applicable, caused by a discharge: 10 points.

5. A violation of the acute toxicity minimum criteria for waters caused by a discharge: 10 points.

6. A violation involving the circumvention of pollution control equipment required by department rules, statutes, orders, or permit conditions: 10 points.

7. A violation involving the knowing submission of any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained by department rules, statutes, orders, or permit conditions, or involving failure to install, maintain, or operate, or falsifying, tampering with, or knowingly rendering inaccurate, any monitoring device or method required to be maintained by department rules, statutes, orders, or permit conditions: 10 points.

8. Dredging or filling an area in excess of 1 acre without a required permit: 10 points.

9. Illegal disposal of in excess of 20 cubic yards of Class 1 solid waste or any quantity of hazardous waste, as defined by department rule: 10 points.

10. Constructing or operating an installation, activity, or facility without a required permit, where the installation, activity, or facility was not permittable as constructed: 10 points.

11. Constructing or operating an installation, activity, or facility without a required permit, where the installation, activity, or facility was permittable as constructed: 5 points.

(d) Each final judgment entered in favor of the department resulting from a petition for enforcement: 10 points.

(8) Each point shall remain in effect for a period of 5 years from the date of the underlying incident that resulted in a violation, except that points in effect on the date an applicant submits a permit application to the department will remain in effect until the agency takes final action on the permit application, even if more than 5 years have passed since the violation occurred.

(9) The department shall consider all violations described in paragraph (7)(c) that were committed during the relevant review period, whether or not they have been resolved by consent order or formally adjudicated prior to the time the department makes its determination on the application. However, if no consent order, final order, or final judgment has been entered, the violation must be established by appropriate evidence in any subsequent proceeding challenging

the department's proposed agency action. In all such proceedings:

(a) The permit applicant has the initial burden in any proceeding challenging the proposed agency action of establishing a prima facie case that it has provided reasonable assurance and is entitled to the permit;

(b) The department, or any party seeking to establish violations under this subsection, then has the burden of presenting by appropriate evidence a prima facie case supporting the violations it contends warrant denial of the permit; and

(c) The permit applicant retains the ultimate burden of persuasion that it has provided reasonable assurance with respect to all issues.

(10) If an applicant has accumulated 15 points at the time the application is submitted to the department, the department shall conduct a supplemental review as part of the permit review process. Notwithstanding any other provisions of this chapter or chapter 161, chapter 253, chapter 373, or chapter 376 that limit maximum permit fees, an applicant whose points exceed the threshold shall be required to submit an increased permit fee to be determined by the department sufficient to cover the costs of the supplemental review. As a result of the review, the department may, in its discretion, take one or more of the following actions:

(a) The department may issue a permit with an accompanying administrative order. The administrative order shall include a schedule for coming into compliance with department rules, statutes, orders or permit conditions, additional training or auditing procedures necessary to assure compliance, stipulated penalties for noncompliance, and

financial assurance in the form of a bond or letter of credit sufficient to cover damages or cleanup costs which could foreseeably result from future violations. The applicant shall not be eligible for any permits to expand a facility unless it can provide reasonable assurance that it is in compliance with the permit and the accompanying administrative order and will remain in compliance in the foreseeable future.

(b) The department may require independent compliance audits or programs at the facility.

(c) The department may issue a permit with a duration of less than 5 years, if not prohibited by federal law.

(d) The department may deny the permit.

1. An applicant who has accumulated more than 15 points but less than 25 points and whose permit has been denied under this subsection shall not be entitled to a permit for the facility or activity for a period of 6 months from the time a final order denying the permit has been entered.

2. An applicant who had accumulated more than 25 points at the time the application is submitted and whose permit has been denied under this subsection shall not be entitled to a permit for the facility or activity for a period of 1 year from the time a final order denying the permit has been entered.

3. After the applicable time period has passed, the applicant may reapply for a permit, and the department shall evaluate the applicant's compliance history in the same manner it would have had the earlier permit application not been denied.

(11) In determining whether to take one or more actions authorized under subsection (10), the department may consider:

(a) Whether the violations resulted in a significant threat to human health or the environment;

(b) Whether the violations establish a pattern of noncompliance or were isolated events, not likely to be repeated;

(c) Whether the applicant has developed a compliance program designed to eliminate or reduce the likelihood of similar violations reoccurring;

(d) Whether the violations involved regulatory programs that are the same as, or similar to, the regulatory program from which the permit is being requested;

(e) Any relevant evidence offered in mitigation by the applicant; and

(f) Whether the applicant has acted reasonably to resolve all previous violations by the applicant or its related entities that have resulted in points being assessed under this section.

(12) In determining whether the applicant has developed a compliance program designed to eliminate or reduce the likelihood of reoccurrence of similar violations as provided for in subsection (11), the department shall consider the following criteria when evaluating such a compliance program:

(a) Whether the program establishes compliance standards and procedures to be followed by the applicant's employees and agents that are reasonably capable of reducing the prospect of violations;

(b) Whether the program provides that specific individuals who have substantial control over the applicant or who have a substantial role in the applicant's policymaking

have been assigned overall responsibility to oversee compliance with such standards and procedures;

(c) Whether the program provides that the applicant uses due care not to delegate substantial discretionary authority to individuals whom the applicant knows, or should have known through the exercise of due diligence, engaged in violations;

(d) Whether the program is communicated effectively to all employees and other agents by requiring routine participation in training programs and by disseminating publications that explain program requirements in a practical manner;

(e) Whether the program establishes monitoring and auditing systems reasonably designed to detect environmental violations by the applicant's employees and other agents, and includes a readily available reporting system whereby employees and other agents can report environmental violations by others within the organization without fear of retribution; and

(f) Whether the compliance program can be consistently enforced through appropriate disciplinary and incentive mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an environmental violation.

(13) General provisions:

(a) Every permit application subject to this section that is submitted to the department shall be accompanied by the form described in subsection (5) in order to be considered complete. During the permit review process, the form shall be updated by the applicant to reflect any changes in the compliance history of the applicant, and its related entities

if applicable, until such time as the application is determined to be complete.

(b) Nothing in this section precludes the department from attributing the acts of one individual or entity to another if such attribution is allowed under other existing principles of law. In such cases, the department shall have the burden of establishing the facts that allow such attribution.

(c) Nothing in this section shall prohibit the department from considering the compliance history of an applicant or its related entities when establishing specific conditions in a permit, if such conditions are necessary for reasonable assurance, nor shall this section be construed to prohibit the department from considering the compliance history of a person applying for a department permit or license other than those specifically subject to this section, including a general permit, when evaluating whether that person is entitled to that permit or license.

(14) Compliance incentives:

(a) Any applicant who meets the criteria set forth in paragraph (b) is eligible for the following incentives, unless otherwise prohibited by statute, department rule, or federal regulation, and provided that the applicant meets all other applicable criteria for the issuance of a permit. In order to obtain an incentive, the applicant must affirmatively request it as part of the permit application.

1. Extended permit. A renewal of an operation or closure permit, which may include expansions or modifications involving construction, shall be issued for a period of 5 years, and shall be automatically renewed for an additional 5 years without agency action under the following conditions:

a. At least 90 days prior to the midway point of the extended permit, the applicant shall complete and submit the prescribed form to the department. Within 10 days after submission, the department shall conduct a review of the compliance history of the applicant and shall assign points in accordance with this section.

b. The applicant shall conduct at least one public meeting within 60 days after submission of the prescribed form to allow the public the opportunity to present concerns regarding the compliance history of the applicant. The department shall attend such meetings.

c. If the applicant no longer meets the criteria set forth in paragraph (b), the department shall deny the automatic permit renewal, and shall require the applicant to submit a permit renewal application in accordance with this chapter.

d. If the applicant seeks to transfer the extended permit to another entity, the transferee shall complete and submit the prescribed form as part of the transfer application. If the department determines that the transferee and its related entities have met the criteria set forth in paragraph (b) over the previous 5 years, and if the transfer complies with all other applicable criteria, the department shall agree to the transfer of the extended permit.

2. Short-form renewals. Renewal of permits may be made upon a shortened application form prescribed by the department specifying only the changes in the facility operation, or a certification by the permittee that no changes in the facility operation are proposed if that is the case. Applicants for short-form renewals shall complete and submit the prescribed compliance form with the application and shall remain subject

to the compliance history review under this section. This provision shall supplement any expedited review processes in department rules.

(b) Eligibility for compliance incentives shall be based upon a review of the compliance history of the applicant over the 5-year period preceding submission of the permit application. To be eligible for the incentives described in this subsection, the applicant must have operated the installation, facility, or activity for at least 5 years or, if it is a new installation, facility, or activity, the applicant must have operated a similar installation, facility, or conducted a similar activity under a department permit for at least 5 years, and the applicant must not have been the subject of any department notice of violation, consent order, final order, complaint, or final judgment, except for consent orders entered to facilitate cleanup of environmental contamination under the following circumstances, provided that the consent order expressly acknowledges the existence of the pertinent condition:

1. The contamination was expressly authorized by an emergency order issued by the department before the contamination occurred and the respondent complied with the terms of the emergency order;

2. The contamination was caused by a hurricane, tropical storm, tornado, or similar meteorological event, and the permitted facility was constructed in accordance with the department's design criteria or permit, was maintained and operated in accordance with all applicable department rules, and if the respondent took all feasible precautions to prevent or minimize the discharge causing the contamination;

3. The contamination was caused by vandalism by a person not employed by or under contract with the respondent, if the respondent took all reasonable precautions to prevent any such vandalism; or

4. The respondent is the owner of contaminated property for which cleanup is authorized by the consent order and which the owner voluntarily agrees to clean up, if the contamination was caused by a third party whose acts cannot be imputed to the respondent under common law, chapter 376, or chapter 403.

(c) Notwithstanding the provisions of this subsection, an applicant may voluntarily submit the prescribed compliance form in order to demonstrate that it has had a consistently good compliance history, which may include the period before July 1, 2001. If the applicant can demonstrate that the applicant, and its related entities if relevant, would have met the requirements set forth in paragraph (b) during the 5-year period preceding submission of the permit application had this act been in effect during the entire 5-year period, the applicant shall be eligible for the compliance incentives set forth in this subsection.

(15) This section shall apply to all permit applications submitted to the department on or after July 1, 2001, unless otherwise specifically provided by statute, department rule, or federal regulation. This section does not apply to general permit notifications, and only subsection (14) shall apply to closure permit applications. Crimes and violations referenced in this section shall include only those based upon incidents that occurred on or after July 1, 2001. The department may, on a case-by-case basis, take into consideration, pursuant to Rule 62-4.070, Florida

Administrative Code, a permit applicant's violation of any department rules or environmental statutes that occurred prior to July 1, 2001, when determining whether the applicant has provided reasonable assurance of compliance, even if the permit application is submitted on or after July 1, 2001.

Section 5. Subsection (8) of section 403.707, Florida Statutes, is repealed:

403.707 Permits.--

~~(8) The department may refuse to issue a permit to an applicant who by past conduct in this state has repeatedly violated pertinent statutes, rules, or orders or permit terms or conditions relating to any solid waste management facility and who is deemed to be irresponsible as defined by department rule. For the purposes of this subsection, an applicant includes the owner or operator of the facility, or if the owner or operator is a business entity, a parent of a subsidiary corporation, a partner, a corporate officer or director, or a stockholder holding more than 50 percent of the stock of the corporation.~~

Section 6. Paragraph (b) of subsection (17) of section 403.703, Florida Statutes, is amended to read:

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

(17) "Construction and demolition debris" means discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees,

and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause it to be classified as other than construction and demolition debris. The term also includes:

(b) Except as provided in s. 403.707(11)~~(12)~~(j), unpainted, nontreated wood scraps from facilities manufacturing materials used for construction of structures or their components and unpainted, nontreated wood pallets provided the wood scraps and pallets are separated from other solid waste where generated and the generator of such wood scraps or pallets implements reasonable practices of the generating industry to minimize the commingling of wood scraps or pallets with other solid waste; and

Section 7. Section 403.0871, Florida Statutes, is amended to read:

403.0871 Florida Permit Fee Trust Fund.--There is established within the department a nonlapsing trust fund to be known as the "Florida Permit Fee Trust Fund." All funds received from applicants for permits pursuant to ss. 161.041, 161.053, 161.0535, 403.087(5)~~(6)~~, and 403.861(8) shall be deposited in the Florida Permit Fee Trust Fund and shall be used by the department with the advice and consent of the Legislature to supplement appropriations and other funds received by the department for the administration of its responsibilities under this chapter and chapter 161. In no case shall funds from the Florida Permit Fee Trust Fund be

used for salary increases without the approval of the Legislature.

Section 8. Paragraph (a) of subsection (11) of section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.--Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section. This operation permit is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate acid rain permit for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the procedures contained in this section and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section prevail.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and March 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to

implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant (except carbon monoxide) allowed to be emitted per hour by specific condition of the source's most recent construction or operation permit, times the annual hours of operation allowed by permit condition; provided, however, that:

1. The license fee factor is $25 or another amount determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never exceed $35.

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

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

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

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

6. The amount of each regulated air pollutant in excess of 4,000 tons per year allowed to be emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated

air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

7. If the department has not received the fee by February 15 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by March 1. If the fee is not postmarked by March 1 of the calendar year, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and shall not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The department may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

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

9. Notwithstanding the provisions of s. 403.087(5)~~(6)~~(a)4.a., authorizing air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873. The department shall, however, require fees pursuant to the provisions of s. 403.087(5)~~(6)~~(a)4.a. for the construction of a new major source of air pollution that will be subject to the permitting requirements of this section once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

Section 9. For the purpose of incorporating the amendments to section 403.087, Florida Statutes, in references thereto, the sections or subdivisions of Florida Statutes set forth below are reenacted to read:

366.825 Clean Air Act compliance; definitions; goals; plans.--

(3) The commission shall review a plan to implement the Clean Air Act compliance submitted by public utilities pursuant to this section in order to determine whether such plans, the costs necessarily incurred in implementing such plans, and any effect on rates resulting from such implementation are in the public interest. The commission shall by order approve or disapprove plans to implement compliance submitted by public utilities within 8 months after

the date of filing. Approval of a plan submitted by a public utility shall establish that the utility's plan to implement compliance is prudent and the commission shall retain jurisdiction to determine in a subsequent proceeding that the actual costs of implementing the compliance plan are reasonable; provided, however, that nothing in this section shall be construed to interfere with the authority of the Department of Environmental Protection to determine whether a public utility is in compliance with ss. 403.087 and 403.0872 or the State Air Implementation Plan for the Clean Air Act.

378.901 Life-of-the-mine permit.--

(9) Each operator of a mine that has received construction approval in accordance with s. 403.087, s. 403.088, former part VIII of chapter 403, or part IV of chapter 373 in response to an application which was submitted prior to July 1, 1995, may elect either to seek renewal of that permit or to seek a life-of-the-mine permit for all new or existing activities that require a permit. Life-of-the-mine permit applications for existing fuller's earth mining activities must be reviewed as set forth in s. 373.414(15).

403.0881 Wastewater or reuse or disposal systems or water treatment works; construction permits.--The department may issue construction permits under s. 403.087 for wastewater systems, treatment works, or reuse or disposal systems based upon review of a preliminary design report, application forms, and other required information, all of which shall be formulated by department rule. Detailed construction plans and specifications shall not be required prior to issuance of a permit or a modification to a permit required under s. 403.087 or an operation permit required under s. 403.0885 unless such plans and specifications are required to secure

federal funding and the project is expected to receive federal funding. Upon a demonstration that a system constructed in accordance with a construction permit issued pursuant to s. 403.087 operates as designed, the department shall issue a permit for operation of the system. However, an operation permit may be issued prior to the initiation of discharge, provided the department has reasonable assurance, based on the system design, that the provisions of s. 403.088 will be met.

403.707 Permits.--

(3) All applicable provisions of ss. 403.087 and 403.088, relating to permits, apply to the control of solid waste management facilities.

403.927 Use of water in farming and forestry activities.--

(2) Agricultural activities and agricultural water management systems are authorized by this section and are not subject to the provisions of s. 403.087 or ss. 403.91-403.929. Except for aquaculture water management systems located within waters of the state, the department shall not enforce water quality standards within an agricultural water management system. The department may require a stormwater permit or appropriate discharge permit at the ultimate point of discharge from an agricultural water management system or a group of connected agricultural water management systems. Impacts of agricultural activities and agricultural water management systems on groundwater quality shall be regulated by water management districts.

Section 10. This act shall take effect July 1, 2001.

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HOUSE SUMMARY

Creates the "Florida Performance-Based Environmental Permitting Act." Provides legislative findings and public purpose. Removes provisions relating to renewal of operation permits for specified domestic wastewater facilities, requirements for such renewal, and Department of Environmental Protection recordkeeping requirements with respect to such permits. Revises conditions under which the department shall issue a permit to construct, operate, maintain, expand, or modify an installation which may reasonably be expected to be a source of pollution.

Establishes the Performance-Based Environmental Permit Program. Defines terms for purposes of the act. Requires applicants under the Florida Air and Water Pollution Control Act to submit specified information to the department. Requires the department to consider and review the compliance history of applicants seeking review or modification of a permit and applicants seeking a permit for a new facility. Creates a point schedule for violations of environmental regulation for the purpose of assessing applicants. Requires the department to compute points based on the schedule, provides the basis for assignment of points, and the period of time during which points assessed against an applicant remain in effect. Provides for burden of proof in proceedings challenging proposed agency action. Provides a point threshold upon which the department is required to conduct a supplemental review and the applicant is required to submit an increased permit fee. Provides actions which may be taken by the department subsequent to a supplemental review and actions which may be taken by the department and the applicant subsequent to a denial by the department. Provides factors to be considered by the department prior to acting pursuant to a supplemental review. Provides factors and criteria to be considered in evaluating an applicant's compliance program. Provides that applicants meeting certain criteria are eligible for specified compliance incentives. Provides procedure, requirements, and eligibility criteria with respect to such incentives. Provides for voluntary submission of prescribed compliance forms. Provides for application of the act.