

By Senator Smith

5-1346-01

See HB

1 A bill to be entitled
2 An act relating to environmental control;
3 titling the act the "Florida Performance-Based
4 Environmental Permitting Act"; providing
5 legislative findings and public purpose;
6 amending s. 403.087, F.S.; removing provisions
7 relating to renewal of operation permits for
8 specified domestic wastewater facilities,
9 requirements for such renewal, and Department
10 of Environmental Protection recordkeeping
11 requirements with respect to such permits;
12 revising conditions under which the department
13 shall issue a permit to construct, operate,
14 maintain, expand, or modify an installation
15 which may reasonably be expected to be a source
16 of pollution; creating s. 403.0874, F.S.;
17 establishing the Performance-Based
18 Environmental Permit Program; providing
19 definitions; requiring applicants under the
20 Florida Air and Water Pollution Control Act to
21 submit specified information to the department;
22 requiring the department to consider the
23 compliance history of applicants; requiring the
24 department to review the compliance history of
25 applicants seeking review or modification of a
26 permit and applicants seeking a permit for a
27 new facility; creating a point schedule for
28 violations, and incidents leading to
29 violations, of environmental regulation for the
30 purpose of assessing applicants; requiring the
31 department to compute points based on the

1 schedule; providing basis for assignment of
2 points; providing period of time during which
3 points assessed against an applicant remain in
4 effect; providing for burden of proof in
5 proceedings challenging proposed agency action;
6 providing a point threshold upon which the
7 department is required to conduct a
8 supplemental review and the applicant is
9 required to submit an increased permit fee;
10 providing actions which may be taken by the
11 department subsequent to a supplemental review;
12 providing actions which may be taken by the
13 department and the applicant subsequent to a
14 denial by the department; providing factors to
15 be considered by the department prior to acting
16 pursuant to a supplemental review; providing
17 criteria to be considered in evaluating an
18 applicant's compliance program; providing
19 construction; providing that applicants meeting
20 certain criteria are eligible for specified
21 compliance incentives; providing procedure,
22 requirements, and eligibility criteria with
23 respect to such incentives; providing for
24 voluntary submission of prescribed compliance
25 forms; providing for application of the act;
26 repealing s. 403.707(8), F.S., which governs
27 departmental refusal to issue a permit under
28 pt. IV of ch. 403, F.S., relating to resource
29 recovery and management, to conform; amending
30 ss. 403.703, 403.0871, 403.0872, F.S.;
31 conforming cross-references; reenacting ss.

1 366.825(3), 378.901(9), 403.0881, 403.707(3),
2 and 403.927(2), F.S., to incorporate the
3 amendments to s. 403.087, F.S., in references
4 thereto; providing an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Short title.--This act shall be known and
9 cited as the "Florida Performance-Based Environmental
10 Permitting Act."

11 Section 2. Legislative findings; public purpose.--

12 (1) The Legislature finds and declares that:

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

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

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

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

30 (e) Applicants with a history of compliance should be
31 provided with incentives to continue to act in the best

1 interests of Florida's environment, while applicants for
2 department permits who have a history of noncompliance should
3 be required to meet more stringent requirements, and should
4 sometimes be denied permits.

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

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

- 16 1. Because it encourages compliance;
17 2. By allowing the department to focus financial and
18 personnel resources on those few in the regulated community
19 with a record of poor compliance; and
20 3. Because it allows permit applicants with a
21 satisfactory record to better focus their resources.

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

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

29 (a) Enhance the protection of the state's natural
30 resources by establishing and making available to the

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1 regulated community incentives to encourage compliance and to
2 reward those who meet or exceed compliance requirements;

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

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

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

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

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

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

26 ~~(3) A renewal of an operation permit for a domestic~~
27 ~~wastewater treatment facility other than a facility regulated~~
28 ~~under the National Pollutant Discharge Elimination System~~
29 ~~(NPDES) Program under s. 403.0885 must be issued upon request~~
30 ~~for a term of up to 10 years, for the same fee and under the~~
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1 ~~same conditions as a 5-year permit, in order to provide the~~
2 ~~owner or operator with a financial incentive, if:~~
3 ~~(a) The waters from the treatment facility are not~~
4 ~~discharged to Class I municipal injection wells or the~~
5 ~~treatment facility is not required to comply with the federal~~
6 ~~standards under the Underground Injection Control Program~~
7 ~~under chapter 62-528 of the Florida Administrative Code;~~
8 ~~(b) The treatment facility is not operating under a~~
9 ~~temporary operating permit or a permit with an accompanying~~
10 ~~administrative order and does not have any enforcement action~~
11 ~~pending against it by the United States Environmental~~
12 ~~Protection Agency, the department, or a local program approved~~
13 ~~under s. 403.182;~~
14 ~~(c) The treatment facility has operated under an~~
15 ~~operation permit for 5 years and, for at least the preceding 2~~
16 ~~years, has generally operated in conformance with the limits~~
17 ~~of permitted flows and other conditions specified in the~~
18 ~~permit;~~
19 ~~(d) The department has reviewed the~~
20 ~~discharge-monitoring reports required under department rule~~
21 ~~and is satisfied that the reports are accurate;~~
22 ~~(e) The treatment facility has generally met water~~
23 ~~quality standards in the preceding 2 years, except for~~
24 ~~violations attributable to events beyond the control of the~~
25 ~~treatment plant or its operator, such as destruction of~~
26 ~~equipment by fire, wind, or other abnormal events that could~~
27 ~~not reasonably be expected to occur; and~~
28 ~~(f) The department, or a local program approved under~~
29 ~~s. 403.182, has conducted, in the preceding 12 months, an~~
30 ~~inspection of the facility and has verified in writing to the~~
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1 ~~operator of the facility that it is not exceeding the~~
2 ~~permitted capacity and is in substantial compliance.~~

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

7 ~~(4)(5)~~ The department shall issue permits to
8 construct, operate, maintain, expand, or modify an
9 installation which may reasonably be expected to be a source
10 of pollution only if the applicant affirmatively provides the
11 department with reasonable assurance that the proposed
12 activity will not cause or contribute to a violation of this
13 chapter, chapter 161, chapter 253, chapter 373, or chapter
14 376, where applicable, applicable department rules, or
15 applicable ordinances or regulations of a water management
16 district, or local government agency acting on behalf of the
17 department through a delegation or similar operating agreement
18 ~~when it determines that the installation is provided or~~
19 ~~equipped with pollution control facilities that will abate or~~
20 ~~prevent pollution to the degree that will comply with the~~
21 ~~standards or rules adopted by the department, except as~~
22 ~~provided in s. 403.088 or s. 403.0872. However, separate~~
23 ~~construction permits shall not be required for installations~~
24 ~~permitted under s. 403.0885, except that the department may~~
25 ~~require an owner or operator proposing to construct, expand,~~
26 ~~or modify such an installation to submit for department~~
27 ~~review, as part of application for permit or permit~~
28 ~~modification, engineering plans, preliminary design reports,~~
29 ~~or other information 90 days prior to commencing construction.~~
30 The department may also require the engineer of record or
31 another registered professional engineer, within 30 days after

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

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

7 403.0874 Performance-Based Environmental Permit
8 Program.--

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

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

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

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

28 (d) "Department statutes" means chapters 161, 253,
29 373, 376, and 403, Florida Statutes.

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

4 (f) "Related entities" means:

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

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

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

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

22
23 For purposes of this section, different state, county, or
24 municipal departments and different federal installations are
25 considered separate and unrelated business entities.

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

1 applicant for which points may be assessed under subsection
2 (7).

3 (3) Unless specifically exempted by this section:
4 (a) Every applicant for a permit to construct or
5 operate a new installation, activity, or facility who has not
6 held a department permit at any installation, activity, or
7 facility during the 5 years preceding submission of an
8 application shall report the names, addresses, and any
9 information concerning any criminal convictions of any related
10 entities for which points may be assessed under subsection
11 (7); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 10. Constructing or operating an installation,
7 activity, or facility without a required permit, where the
8 installation, activity, or facility was not permissible as
9 constructed: 10 points.

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

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

17 (8) Each point shall remain in effect for a period of
18 5 years from the date of the underlying incident that resulted
19 in a violation, except that points in effect on the date an
20 applicant submits a permit application to the department will
21 remain in effect until the agency takes final action on the
22 permit application, even if more than 5 years have passed
23 since the violation occurred.

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

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

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

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

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

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

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

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

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

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

12 (d) The department may deny the permit.

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

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

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

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

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

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

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

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

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

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

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

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

28 (b) Whether the program provides that specific
29 individuals who have substantial control over the applicant or
30 who have a substantial role in the applicant's policymaking
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1 have been assigned overall responsibility to oversee
2 compliance with such standards and procedures;

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

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

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

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

25 (13) General provisions:

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

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

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

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

19 (14) Compliance incentives:

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (c) Notwithstanding the provisions of this subsection,
12 an applicant may voluntarily submit the prescribed compliance
13 form in order to demonstrate that it has had a consistently
14 good compliance history, which may include the period before
15 July 1, 2001. If the applicant can demonstrate that the
16 applicant, and its related entities if relevant, would have
17 met the requirements set forth in paragraph (b) during the
18 5-year period preceding submission of the permit application
19 had this act been in effect during the entire 5-year period,
20 the applicant shall be eligible for the compliance incentives
21 set forth in this subsection.

22 (15) This section shall apply to all permit
23 applications submitted to the department on or after July 1,
24 2001, unless otherwise specifically provided by statute,
25 department rule, or federal regulation. This section does not
26 apply to general permit notifications, and only subsection
27 (14) shall apply to closure permit applications. Crimes and
28 violations referenced in this section shall include only those
29 based upon incidents that occurred on or after July 1, 2001.
30 The department may, on a case-by-case basis, take into
31 consideration, pursuant to Rule 62-4.070, Florida

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

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

8 Section 6. Paragraph (b) of subsection (17) of section
9 403.703, Florida Statutes, is amended to read:

10 403.703 Definitions.--As used in this act, unless the
11 context clearly indicates otherwise, the term:

12 (17) "Construction and demolition debris" means
13 discarded materials generally considered to be not
14 water-soluble and nonhazardous in nature, including, but not
15 limited to, steel, glass, brick, concrete, asphalt roofing
16 material, pipe, gypsum wallboard, and lumber, from the
17 construction or destruction of a structure as part of a
18 construction or demolition project or from the renovation of a
19 structure, and including rocks, soils, tree remains, trees,
20 and other vegetative matter that normally results from land
21 clearing or land development operations for a construction
22 project, including such debris from construction of structures
23 at a site remote from the construction or demolition project
24 site. Mixing of construction and demolition debris with other
25 types of solid waste will cause it to be classified as other
26 than construction and demolition debris. The term also
27 includes:

28 (b) Except as provided in s. 403.707~~(11)~~~~(12)~~(j),
29 unpainted, nontreated wood scraps from facilities
30 manufacturing materials used for construction of structures or
31 their components and unpainted, nontreated wood pallets

1 provided the wood scraps and pallets are separated from other
2 solid waste where generated and the generator of such wood
3 scraps or pallets implements reasonable practices of the
4 generating industry to minimize the commingling of wood scraps
5 or pallets with other solid waste; and

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

8 403.0871 Florida Permit Fee Trust Fund.--There is
9 established within the department a nonlapsing trust fund to
10 be known as the "Florida Permit Fee Trust Fund." All funds
11 received from applicants for permits pursuant to ss. 161.041,
12 161.053, 161.0535, 403.087(5)~~(6)~~, and 403.861(8) shall be
13 deposited in the Florida Permit Fee Trust Fund and shall be
14 used by the department with the advice and consent of the
15 Legislature to supplement appropriations and other funds
16 received by the department for the administration of its
17 responsibilities under this chapter and chapter 161. In no
18 case shall funds from the Florida Permit Fee Trust Fund be
19 used for salary increases without the approval of the
20 Legislature.

21 Section 8. Paragraph (a) of subsection (11) of section
22 403.0872, Florida Statutes, is amended to read:

23 403.0872 Operation permits for major sources of air
24 pollution; annual operation license fee.--Provided that
25 program approval pursuant to 42 U.S.C. s. 7661a has been
26 received from the United States Environmental Protection
27 Agency, beginning January 2, 1995, each major source of air
28 pollution, including electrical power plants certified under
29 s. 403.511, must obtain from the department an operation
30 permit for a major source of air pollution under this section.
31 This operation permit is the only department operation permit

1 for a major source of air pollution required for such source;
2 provided, at the applicant's request, the department shall
3 issue a separate acid rain permit for a major source of air
4 pollution that is an affected source within the meaning of 42
5 U.S.C. s. 7651a(1). Operation permits for major sources of air
6 pollution, except general permits issued pursuant to s.
7 403.814, must be issued in accordance with the procedures
8 contained in this section and in accordance with chapter 120;
9 however, to the extent that chapter 120 is inconsistent with
10 the provisions of this section, the procedures contained in
11 this section prevail.

12 (11) Each major source of air pollution permitted to
13 operate in this state must pay between January 15 and March 1
14 of each year, upon written notice from the department, an
15 annual operation license fee in an amount determined by
16 department rule. The annual operation license fee shall be
17 terminated immediately in the event the United States
18 Environmental Protection Agency imposes annual fees solely to
19 implement and administer the major source air-operation permit
20 program in Florida under 40 C.F.R. s. 70.10(d).

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

29 1. The license fee factor is \$25 or another amount
30 determined by department rule which ensures that the revenue
31 provided by each year's operation license fees is sufficient

1 to cover all reasonable direct and indirect costs of the major
2 stationary source air-operation permit program established by
3 this section. The license fee factor may be increased beyond
4 \$25 only if the secretary of the department affirmatively
5 finds that a shortage of revenue for support of the major
6 stationary source air-operation permit program will occur in
7 the absence of a fee factor adjustment. The annual license fee
8 factor may never exceed \$35.

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

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

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

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

12 6. The amount of each regulated air pollutant in
13 excess of 4,000 tons per year allowed to be emitted by any
14 source, or group of sources belonging to the same Major Group
15 as described in the Standard Industrial Classification Manual,
16 1987, may not be included in the calculation of the fee. Any
17 source, or group of sources, which does not emit any regulated
18 air pollutant in excess of 4,000 tons per year, is allowed a
19 one-time credit not to exceed 25 percent of the first annual
20 licensing fee for the prorated portion of existing
21 air-operation permit application fees remaining upon
22 commencement of the annual licensing fees.

23 7. If the department has not received the fee by
24 February 15 of the calendar year, the permittee must be sent a
25 written warning of the consequences for failing to pay the fee
26 by March 1. If the fee is not postmarked by March 1 of the
27 calendar year, the department shall impose, in addition to the
28 fee, a penalty of 50 percent of the amount of the fee, plus
29 interest on such amount computed in accordance with s.
30 220.807. The department may not impose such penalty or
31 interest on any amount underpaid, provided that the permittee

1 has timely remitted payment of at least 90 percent of the
2 amount determined to be due and remits full payment within 60
3 days after receipt of notice of the amount underpaid. The
4 department may waive the collection of underpayment and shall
5 not be required to refund overpayment of the fee, if the
6 amount due is less than 1 percent of the fee, up to \$50. The
7 department may revoke any major air pollution source operation
8 permit if it finds that the permit holder has failed to timely
9 pay any required annual operation license fee, penalty, or
10 interest.

11 8. Notwithstanding the computational provisions of
12 this subsection, the annual operation license fee for any
13 source subject to this section shall not be less than \$250,
14 except that the annual operation license fee for sources
15 permitted solely through general permits issued under s.
16 403.814 shall not exceed \$50 per year.

17 9. Notwithstanding the provisions of s.
18 403.087(5)~~(6)~~(a)4.a., authorizing air pollution construction
19 permit fees, the department may not require such fees for
20 changes or additions to a major source of air pollution
21 permitted pursuant to this section, unless the activity
22 triggers permitting requirements under Title I, Part C or Part
23 D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.
24 Costs to issue and administer such permits shall be considered
25 direct and indirect costs of the major stationary source
26 air-operation permit program under s. 403.0873. The department
27 shall, however, require fees pursuant to the provisions of s.
28 403.087(5)~~(6)~~(a)4.a. for the construction of a new major
29 source of air pollution that will be subject to the permitting
30 requirements of this section once constructed and for
31 activities triggering permitting requirements under Title I,

1 Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss.
2 7470-7514a.

3 Section 9. For the purpose of incorporating the
4 amendments to section 403.087, Florida Statutes, in references
5 thereto, subsection (3) of section 366.825, subsection (9) of
6 section 378.901, section 403.0881, subsection (3) of section
7 403.707, and subsection (2) of section 403.927, Florida
8 Statutes, are reenacted to read:

9 366.825 Clean Air Act compliance; definitions; goals;
10 plans.--

11 (3) The commission shall review a plan to implement
12 the Clean Air Act compliance submitted by public utilities
13 pursuant to this section in order to determine whether such
14 plans, the costs necessarily incurred in implementing such
15 plans, and any effect on rates resulting from such
16 implementation are in the public interest. The commission
17 shall by order approve or disapprove plans to implement
18 compliance submitted by public utilities within 8 months after
19 the date of filing. Approval of a plan submitted by a public
20 utility shall establish that the utility's plan to implement
21 compliance is prudent and the commission shall retain
22 jurisdiction to determine in a subsequent proceeding that the
23 actual costs of implementing the compliance plan are
24 reasonable; provided, however, that nothing in this section
25 shall be construed to interfere with the authority of the
26 Department of Environmental Protection to determine whether a
27 public utility is in compliance with ss. 403.087 and 403.0872
28 or the State Air Implementation Plan for the Clean Air Act.

29 378.901 Life-of-the-mine permit.--

30 (9) Each operator of a mine that has received
31 construction approval in accordance with s. 403.087, s.

1 403.088, former part VIII of chapter 403, or part IV of
2 chapter 373 in response to an application which was submitted
3 prior to July 1, 1995, may elect either to seek renewal of
4 that permit or to seek a life-of-the-mine permit for all new
5 or existing activities that require a permit. Life-of-the-mine
6 permit applications for existing fuller's earth mining
7 activities must be reviewed as set forth in s. 373.414(15).

8 403.0881 Wastewater or reuse or disposal systems or
9 water treatment works; construction permits.--The department
10 may issue construction permits under s. 403.087 for wastewater
11 systems, treatment works, or reuse or disposal systems based
12 upon review of a preliminary design report, application forms,
13 and other required information, all of which shall be
14 formulated by department rule. Detailed construction plans
15 and specifications shall not be required prior to issuance of
16 a permit or a modification to a permit required under s.
17 403.087 or an operation permit required under s. 403.0885
18 unless such plans and specifications are required to secure
19 federal funding and the project is expected to receive federal
20 funding. Upon a demonstration that a system constructed in
21 accordance with a construction permit issued pursuant to s.
22 403.087 operates as designed, the department shall issue a
23 permit for operation of the system. However, an operation
24 permit may be issued prior to the initiation of discharge,
25 provided the department has reasonable assurance, based on the
26 system design, that the provisions of s. 403.088 will be met.

27 403.707 Permits.--

28 (3) All applicable provisions of ss. 403.087 and
29 403.088, relating to permits, apply to the control of solid
30 waste management facilities.

31

1 403.927 Use of water in farming and forestry
2 activities.--
3 (2) Agricultural activities and agricultural water
4 management systems are authorized by this section and are not
5 subject to the provisions of s. 403.087 or ss. 403.91-403.929.
6 Except for aquaculture water management systems located within
7 waters of the state, the department shall not enforce water
8 quality standards within an agricultural water management
9 system. The department may require a stormwater permit or
10 appropriate discharge permit at the ultimate point of
11 discharge from an agricultural water management system or a
12 group of connected agricultural water management systems.
13 Impacts of agricultural activities and agricultural water
14 management systems on groundwater quality shall be regulated
15 by water management districts.

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