



CHAMBER ACTION

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The Committee on Appropriations recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to phosphate mining; amending s. 211.3103, F.S.; revising the distribution of the excise tax on the severance of phosphate rock; setting the tax rate for specified periods; revising provisions with respect to application of the tax to the total production of the producer; revising dates with respect to calculation of the base rate adjustment for phosphate rock; setting a minimum base-rate limit; providing for review of the distribution of the tax by a specified date; amending s. 373.414, F.S.; revising conditions under which wetlands reclamation activities for phosphate and heavy minerals mining are considered appropriate mitigation under pt. IV of ch. 373, F.S.; requiring the Department of Environmental Protection to study cumulative impacts of changes in landform and hydrology in the Peace River Basin; providing study requirements; requiring the department to prepare and adopt a resource management plan



29 | for the Peace River Basin; providing plan requirements;
30 | providing for submission of the plan by a specified date;
31 | authorizing the department to use specified funds from the
32 | Nonmandatory Land Reclamation Trust Fund to prepare the
33 | study and plan; authorizing the department to establish a
34 | technical advisory committee for specified purposes;
35 | amending s. 378.021, F.S.; requiring the Department of
36 | Environmental Protection to amend the master reclamation
37 | plan that provides guidelines for the reclamation of
38 | specified lands mined or disturbed by the severance of
39 | phosphate rock and not subject to mandatory reclamation;
40 | providing additional criteria to be included in the
41 | amended master reclamation plan; amending s. 378.031,
42 | F.S.; clarifying provisions with respect to legislative
43 | intent to provide economic incentives for reclamation or
44 | acquisition of nonmandatory lands; amending s. 378.035,
45 | F.S.; revising provisions relating to the use of funds in
46 | the Nonmandatory Land Reclamation Trust Fund; deleting
47 | obsolete provisions; deleting provisions relating to the
48 | deposit and use of funds derived from registration fees
49 | under the phosphogypsum management program; revising the
50 | date after which the Department of Environmental
51 | Protection may not accept applications for nonmandatory
52 | land reclamation programs; eliminating requirements with
53 | respect to a specified report of the Bureau of Mine
54 | Reclamation; authorizing the department to petition the
55 | State Board of Administration for the issuance of bonds;
56 | setting a limit on the total amount of such bonds;



57 providing for use of revenues derived from such bonds;
58 amending s. 378.036, F.S.; authorizing specified entities
59 to form a nonprofit corporation the purpose of which
60 includes creating plans for and assisting in the
61 development of recreational opportunities on lands mined
62 for phosphate; providing composition, organization, and
63 responsibilities of the corporation; requiring a report;
64 providing for dissolution of the corporation; providing
65 for reversion of funds and tangible assets of the
66 corporation; amending s. 378.101, F.S.; requiring the
67 Florida Institute of Phosphate Research to conduct a
68 specified bench and pilot scale study; providing an
69 appropriation to fund the study; amending s. 378.212,
70 F.S.; providing an additional reason for the granting of a
71 variance from pt. III of ch. 378, F.S., relating to
72 phosphate land reclamation; creating s. 403.0613, F.S.,
73 the "Environmental Good Samaritan Act"; providing immunity
74 from civil liability for specified persons and entities in
75 the event of a declared actual or impending environmental
76 emergency; providing applicability; creating s. 403.162,
77 F.S.; providing civil remedy to the Department of
78 Environmental Protection in the event that an owner or
79 operator fails to abate a release or threatened release of
80 any hazardous substance, pollutant, or contaminant, or
81 abate an imminent danger to the environment or to public
82 health, and the department expends a specified amount on
83 such abatement; providing procedure and requirements with
84 respect thereto; amending s. 403.4154, F.S.; providing a



85 | third degree felony penalty for willfully, knowingly, or
86 | with reckless indifference or gross carelessness making
87 | specified distributions prior to correction of
88 | noncompliance with departmental rules requiring
89 | demonstration of financial responsibility with respect to
90 | closure of a phosphogypsum stack or stack system;
91 | providing a specified fine and term of imprisonment;
92 | providing that the failure of an owner or operator of a
93 | phosphogypsum stack system to comply with department rules
94 | requiring demonstration of financial responsibility with
95 | respect to closure may be considered by the department as
96 | evidence that a phosphogypsum stack poses an imminent
97 | hazard for purposes of initiating actions to abate or
98 | reduce the hazard; deleting provisions that provide for
99 | the refund of specified fee payments to the owner of a
100 | closed phosphogypsum stack; requiring the Department of
101 | Environmental Protection, by a specified date, to initiate
102 | rulemaking to require that phosphogypsum stack system
103 | operation plans be amended to add an interim stack system
104 | management plan; providing plan requirements; requiring
105 | the department, by a specified date, to initiate
106 | rulemaking to require that general plans and schedules for
107 | the closure of phosphogypsum stack systems include
108 | specified components; requiring the department to revise
109 | specified administrative rules to require the owner or
110 | operator of a phosphogypsum stack system to demonstrate
111 | financial responsibility for the costs of terminal closure
112 | in a manner that protects the environment and the public



113 health and safety; amending s. 403.4155, F.S.; requiring
 114 the Department of Environmental Protection to revise
 115 specified administrative rules to require the owner or
 116 operator of a phosphogypsum stack system to demonstrate
 117 financial responsibility for the costs of terminal closure
 118 of the phosphogypsum stack system in a manner that
 119 protects the environment and the public health and safety;
 120 providing minimum requirements for such rules; providing
 121 severability; providing effective dates.

122

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

124

125 Section 1. Section 211.3103, Florida Statutes, is amended
 126 to read:

127 211.3103 Levy of tax on severance of phosphate rock; rate,
 128 basis, and distribution of tax.--

129 (1) There is hereby levied an excise tax upon every person
 130 engaging in the business of severing phosphate rock from the
 131 soils or waters of this state for commercial use. The tax shall
 132 be collected, administered, and enforced by the department.

133 (2) Beginning July 1, 2003, the proceeds of all taxes,
 134 interest, and penalties imposed under this section shall be paid
 135 into the State Treasury as follows:

136 (a) The first \$10 million of the revenue collected from
 137 the tax during each fiscal year shall be paid to the credit of
 138 the Conservation and Recreation Lands Trust Fund.

139 (b) \$11.14 million shall be paid to the credit of the
 140 General Revenue Fund.



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141 (c) \$2.7 million of the revenue collected from the tax
142 during each fiscal year shall be applied to the purchase of a
143 surety bond or a policy of insurance, the proceeds of which
144 would pay the cost of restoration, reclamation, and cleanup of
145 any phosphogypsum stack system and phosphate mining activities
146 in the event that an operator or permittee thereof has been
147 subject to a final order of bankruptcy and all funds available
148 therefrom are determined to be inadequate to accomplish such
149 restoration, reclamation, and cleanup. Nothing in this section
150 shall be construed to imply that such operator or permittee is
151 thereby relieved of its obligations or relieved of any
152 liabilities pursuant to any other remedies at law,
153 administrative remedies, statutory remedies, or remedies
154 pursuant to bankruptcy law. The department shall adopt rules to
155 implement the provisions of this paragraph, including the
156 purchase and oversight of the bond or policy.

157 (d) The remaining revenue collected from the tax during
158 the fiscal year, after the required payment under paragraphs (a)
159 and (b), shall be paid into the State Treasury as follows:

160 1. To the credit of the Nonmandatory Land Reclamation
161 Trust Fund, 51 percent.

162 2. For payment to counties in proportion to the number of
163 tons of phosphate rock produced from a phosphate rock matrix
164 located within such political boundary, 25 percent. The
165 department shall distribute this portion of the proceeds
166 annually based on production information reported by the
167 producers on the annual returns for the taxable year.



168 3. To the credit of the Phosphate Research Trust Fund in
 169 the Department of Education, Division of Universities, 14
 170 percent.

171 4. To the credit of the Minerals Trust Fund, 10 percent or
 172 \$3.5 million, whichever is greater.

173 (d) Funds distributed pursuant to subparagraph (c)2. shall
 174 be used for the following purposes:

175 1. Planning, preparing, and financing of infrastructure
 176 projects for job creation and capital investment, especially
 177 those infrastructure projects related to industrial and
 178 commercial sites. Infrastructure investments may include the
 179 following public or public-private partnership facilities:

- 180 a. Stormwater systems;
- 181 b. Telecommunications facilities;
- 182 c. Roads or other remedies to transportation impediments;
- 183 d. Nature-based tourism facilities; or
- 184 e. Other physical requirements necessary to facilitate
 185 trade and economic development activities.

186 2. Maximizing the use of federal, local, and private
 187 resources, including, but not limited to, those available under
 188 the Small Cities Community Development Block Grant Program.

189 3. Projects that improve inadequate infrastructure that
 190 has resulted in regulatory action that prohibits economic or
 191 community growth, provided such projects are related to specific
 192 job creation or job retention opportunities.

193 ~~(2) The proceeds of all taxes, interest, and penalties~~
 194 ~~imposed under this section shall be paid into the State Treasury~~
 195 ~~through June 30, 1995, as follows:~~



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196 ~~(a) The first \$10 million in revenue collected from the~~
197 ~~tax during each fiscal year shall be paid to the credit of the~~
198 ~~Conservation and Recreation Lands Trust Fund.~~

199 ~~(b) The remaining revenues collected from the tax during~~
200 ~~that fiscal year, after the required payment under paragraph~~
201 ~~(a), shall be paid into the State Treasury as follows:~~

202 ~~1. To the credit of the General Revenue Fund of the state,~~
203 ~~60 percent. However, from this amount the amounts of \$7.4~~
204 ~~million, \$8.2 million, and \$8.1 million, respectively, shall be~~
205 ~~transferred to the Nonmandatory Land Reclamation Trust Fund on~~
206 ~~January 1, 1993, January 1, 1994, and January 1, 1995.~~

207 ~~2. To the credit of the Nonmandatory Land Reclamation~~
208 ~~Trust Fund which is established for reclamation and acquisition~~
209 ~~of unreclaimed lands disturbed by phosphate mining and not~~
210 ~~subject to mandatory reclamation, 20 percent.~~

211 ~~3. To the credit of the Phosphate Research Trust Fund in~~
212 ~~the Department of Education, Division of Universities, to carry~~
213 ~~out the purposes set forth in s. 378.101, 10 percent.~~

214 ~~4. For payment to counties in proportion to the number of~~
215 ~~tons of phosphate rock produced from a phosphate rock matrix~~
216 ~~located within such political boundary, 10 percent. The~~
217 ~~department shall distribute this portion of the proceeds~~
218 ~~annually based on production information reported by producers~~
219 ~~on the annual returns for the taxable year. Any such proceeds~~
220 ~~received by a county shall be used only for phosphate-related~~
221 ~~expenses.~~



222 ~~(3) Beginning July 1, 1995, the proceeds of all taxes,~~
 223 ~~interest, and penalties imposed under this section shall be paid~~
 224 ~~into the State Treasury as follows:~~

225 ~~(a) The first \$10 million in revenue collected from the~~
 226 ~~tax during each fiscal year shall be paid to the credit of the~~
 227 ~~Conservation and Recreation Lands Trust Fund.~~

228 ~~(b) The remaining revenues collected from the tax during~~
 229 ~~that fiscal year, after the required payment under paragraph~~
 230 ~~(a), shall be paid into the State Treasury as follows:~~

231 ~~1. To the credit of the General Revenue Fund of the state,~~
 232 ~~58 percent.~~

233 ~~2. To the credit of the Nonmandatory Land Reclamation~~
 234 ~~Trust Fund for reclamation and acquisition of unreclaimed lands~~
 235 ~~disturbed by phosphate mining and not subject to mandatory~~
 236 ~~reclamation, 14.5 percent.~~

237 ~~3. To the credit of the Phosphate Research Trust Fund in~~
 238 ~~the Department of Education, Division of Universities, to carry~~
 239 ~~out the purposes set forth in s. 378.101, 10 percent.~~

240 ~~4. For payment to counties in proportion to the number of~~
 241 ~~tons of phosphate rock produced from a phosphate rock matrix~~
 242 ~~located within such political boundary, 10 percent. The~~
 243 ~~department shall distribute this portion of the proceeds~~
 244 ~~annually based on production information reported by producers~~
 245 ~~on the annual returns for the taxable year. Any such proceeds~~
 246 ~~received by a county shall be used only for phosphate-related~~
 247 ~~expenses.~~

248 ~~5. To the credit of the Minerals Trust Fund, 7.5 percent.~~



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249 ~~(4) If the base rate is reduced pursuant to paragraph~~
250 ~~(5)(c), then the proceeds of the tax shall be paid into the~~
251 ~~State Treasury as follows:~~

252 ~~(a) The first \$10 million in revenue collected from the~~
253 ~~tax during each fiscal year shall be paid to the credit of the~~
254 ~~Conservation and Recreation Lands Trust Fund.~~

255 ~~(b) The remaining revenues collected from the tax during~~
256 ~~that fiscal year, after the required payment under paragraph~~
257 ~~(a), shall be paid into the State Treasury as follows:~~

258 ~~1. To the credit of the General Revenue Fund of the state,~~
259 ~~55.15 percent.~~

260 ~~2. To the credit of the Phosphate Research Trust Fund in~~
261 ~~the Department of Education, Division of Universities, 12.5~~
262 ~~percent.~~

263 ~~3. For payment to counties in proportion to the number of~~
264 ~~tons of phosphate rock produced from a phosphate rock matrix~~
265 ~~located within such political boundary, 18 percent. The~~
266 ~~department shall distribute this portion of the proceeds~~
267 ~~annually based on production information reported by producers~~
268 ~~on the annual returns for the taxable year. Any such proceeds~~
269 ~~received by a county shall be used only for phosphate-related~~
270 ~~expenses.~~

271 ~~4. To the credit of the Minerals Trust Fund, 14.35~~
272 ~~percent.~~

273 (3) Beginning July 1, 2003, the tax rate shall be the base
274 rate of \$1.62 per ton severed.

275 (4) Beginning July 1, 2004, and annually thereafter, the
276 tax rate shall be the base rate times the base rate adjustment



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277 | of the tax years as calculated by the department in accordance
278 | with subsection (6).

279 | (5) The excise tax levied by this section shall apply to
280 | the total production of the producer during the taxable year,
281 | measured on the basis of bone-dry tons produced at the point of
282 | severance, ~~subject to the following rates:~~

283 | ~~(a) Beginning July 1, 1987, to December 31, 1987, the tax~~
284 | ~~rate shall be \$1.79 per ton severed.~~

285 | ~~(b) For 1988, the tax rate shall be the base rate of \$1.35~~
286 | ~~per ton severed.~~

287 | ~~(c) For 1989 and subsequent years, the tax rate shall be~~
288 | ~~the base rate times the base rate adjustment for the tax year as~~
289 | ~~calculated by the department in accordance with subsection (6).~~
290 | ~~However, for 2000 and subsequent taxable years, the base rate~~
291 | ~~shall be reduced by 20 percent, unless additional funding of the~~
292 | ~~Nonmandatory Land Reclamation Trust Fund is approved by law.~~

293 | (6)(a) On or before March 30, 2004 ~~1989~~, and annually
294 | thereafter, the department shall calculate the base rate
295 | adjustment, if any, for phosphate rock based on the change in
296 | the unadjusted annual producer price index for the prior
297 | calendar year in relation to the unadjusted annual producer
298 | price index for calendar year 1999 ~~1987~~.

299 | (b) For the purposes of determining the base rate
300 | adjustment for any year, the base rate adjustment shall be a
301 | fraction, the numerator of which is the unadjusted annual
302 | producer price index for the prior calendar year and the
303 | denominator of which is the unadjusted annual producer price
304 | index for calendar year 1999 ~~1987~~.



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305 (c) The department shall provide the base rate, the base
306 rate adjustment, and the resulting tax rate to affected
307 producers by written notice on or before April 15 of the current
308 year.

309 (d) If the producer price index for phosphate rock primary
310 products is substantially revised, the department shall make
311 appropriate adjustment in the method used to compute the base
312 rate adjustment under this subsection which will produce results
313 reasonably consistent with the result which would have been
314 obtained if the producer price index for phosphate rock primary
315 products had not been revised. However, the base rate shall not
316 be less than \$1.56 per ton severed.

317 (e) In the event the producer price index for phosphate
318 rock primary products is discontinued, then a comparable index
319 shall be selected by the department and adopted by rule.

320 (7) The excise tax levied on the severance of phosphate
321 rock shall be in addition to any ad valorem taxes levied upon
322 the separately assessed mineral interest in the real property
323 upon which the site of severance is located, or any other tax,
324 permit, or license fee imposed by the state or its political
325 subdivisions.

326 (8) The tax levied by this section shall be collected in
327 the manner prescribed in s. 211.33.

328 (9) The provisions of subsection (2) shall be reviewed by
329 the legislature prior to July 1, 2006. Should no change to the
330 provisions in subsection (2) be made prior to July 1, 2006, the
331 provisions in subsection (2) shall remain in effect.



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332 Section 2. Subsections (6) and (8) of section 373.414,
333 Florida Statutes, are amended to read:

334 373.414 Additional criteria for activities in surface
335 waters and wetlands.--

336 (6)(a) The Legislature recognizes that some mining
337 activities that may occur in waters of the state must leave a
338 deep pit as part of the reclamation. Such deep pits may not meet
339 the established water quality standard for dissolved oxygen
340 below the surficial layers. Where such mining activities
341 otherwise meet the permitting criteria contained in this
342 section, such activities may be eligible for a variance from the
343 established water quality standard for dissolved oxygen within
344 the lower layers of the reclaimed pit.

345 (b) Wetlands reclamation activities for phosphate and
346 heavy minerals mining undertaken pursuant to chapter 378 shall
347 be considered appropriate mitigation for this part if they
348 maintain or improve the water quality and the function of the
349 biological systems present at the site prior to the commencement
350 of mining activities and the requirements of subsection (8) are
351 met.

352 (c) Wetlands reclamation activities for fuller's earth
353 mining undertaken pursuant to chapter 378 shall be considered
354 appropriate mitigation for this part if they maintain or improve
355 the water quality and the function of the biological systems
356 present at the site prior to the commencement of mining
357 activities, unless the site features make such reclamation
358 impracticable, in which case the reclamation must offset the



359 regulated activities' adverse impacts on surface waters and
360 wetlands.

361 (d) Onsite reclamation of the mine pit for limerock and
362 sand mining shall be conducted in accordance with the
363 requirements of chapter 378.

364 1. Mitigation activities for limerock and sand mining must
365 offset the regulated activities' adverse impacts on surface
366 waters and wetlands. Mitigation activities shall be located on
367 site, unless onsite mitigation activities are not feasible, in
368 which case, offsite mitigation as close to the activities as
369 possible shall be required. However, mitigation banking may be
370 an acceptable form of mitigation, whether on or off site, as
371 judged on a case-by-case basis.

372 2. The ratio of mitigation-to-wetlands loss shall be
373 determined on a case-by-case basis and shall be based on the
374 quality of the wetland to be impacted and the type of mitigation
375 proposed.

376 (8)(a) The governing board or the department, in deciding
377 whether to grant or deny a permit for an activity regulated
378 under this part shall consider the cumulative impacts upon
379 surface water and wetlands, as delineated in s. 373.421(1),
380 within the same drainage basin as defined in s. 373.403(9), of:

381 1. The activity for which the permit is sought.

382 2. Projects which are existing or activities regulated
383 under this part which are under construction or projects for
384 which permits or determinations pursuant to s. 373.421 or s.
385 403.914 have been sought.



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386 3. Activities which are under review, approved, or vested
 387 pursuant to s. 380.06, or other activities regulated under this
 388 part which may reasonably be expected to be located within
 389 surface waters or wetlands, as delineated in s. 373.421(1), in
 390 the same drainage basin as defined in s. 373.403(9), based upon
 391 the comprehensive plans, adopted pursuant to chapter 163, of the
 392 local governments having jurisdiction over the activities, or
 393 applicable land use restrictions and regulations.

394 (b) If an applicant proposes mitigation within the same
 395 drainage basin as the adverse impacts to be mitigated, and if
 396 the mitigation offsets these adverse impacts, the governing
 397 board and department shall consider the regulated activity to
 398 meet the cumulative impact requirements of paragraph (a).

399 However:—

400 1. The department, in consultation with the Southwest
 401 Florida Water Management District, shall study cumulative
 402 impacts of changes in landform and hydrology in the Peace River
 403 Basin. The study shall evaluate cumulative impacts of activities
 404 conducted in the Peace River Basin prior to state regulation, or
 405 pursuant to an exemption, a permit, or a reclamation plan on
 406 water resources of the basin, including surface waters,
 407 groundwaters, fisheries, aquatic and estuarine habitat, and
 408 water supplies. The study shall also include an evaluation of
 409 the effectiveness of existing regulatory programs in avoiding,
 410 minimizing, mitigating, or compensating for cumulative impacts
 411 on water resources of the basin.

412 2. Upon completion of the study, the department shall
 413 prepare and adopt a resource management plan for the Peace River



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414 Basin to minimize existing and future adverse cumulative impacts
415 to water resources of the basin, including surface waters,
416 groundwaters, wetlands, fisheries, aquatic and estuarine
417 habitat, and water supplies. The plan shall identify regulatory
418 and nonregulatory actions to minimize existing and future
419 adverse cumulative impacts identified in the study and, where
420 appropriate, shall also recommend statutory changes to improve
421 regulatory programs to minimize cumulative impacts to water
422 resources of the basin.

423 3. The resource management plan shall be submitted to the
424 Governor, the Speaker of the House of Representatives, and the
425 President of the Senate no later than January 1, 2005.

426 4. The department may use up to \$750,000 from the
427 Nonmandatory Land Reclamation Trust Fund to prepare the study
428 and plan required in this section.

429 5. The department may establish a technical advisory
430 committee to assist the department in developing a plan of
431 study, reviewing interim findings, and reviewing final
432 recommendations. The technical advisory committee may include
433 representatives from the following interests in the Peace River
434 Basin: industrial, mining, agriculture, development,
435 environmental, fishing, regional water supply and local
436 government.

437
438 This paragraph may not be construed to prohibit mitigation
439 outside the drainage basin which offsets the adverse impacts
440 within the drainage basin.



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441 Section 3. Section 378.021, Florida Statutes, is amended
442 to read:

443 378.021 Master reclamation plan.--

444 (1) The Department of Environmental Protection ~~Natural~~
445 ~~Resources~~ shall amend the ~~adopt by rule, as expeditiously as~~
446 ~~possible upon receipt of the report of the Land Use Advisory~~
447 ~~Committee,~~ a master reclamation plan that provides ~~to provide~~
448 guidelines for the reclamation of lands mined or disturbed by
449 the severance of phosphate rock prior to July 1, 1975, which
450 lands are not subject to mandatory reclamation under part II of
451 chapter 211. In amending the ~~developing said~~ master reclamation
452 plan, the Department of Environmental Protection ~~Natural~~
453 ~~Resources~~ shall continue to conduct an onsite evaluation of all
454 lands mined or disturbed by the severance of phosphate rock
455 prior to July 1, 1975, which lands are not subject to mandatory
456 reclamation under part II of chapter 211, and shall consider the
457 report and plan prepared by the Land Use Advisory Committee
458 under s. 378.011 and submitted to the former Department of
459 Natural Resources for adoption by rule on or before July 1,
460 1979. The master reclamation plan, when amended ~~adopted~~ by the
461 Department of Environmental Protection, ~~Natural Resources~~ shall
462 be consistent with local government plans prepared pursuant to
463 the Local Government Comprehensive Planning and Land Development
464 Regulation Act.

465 (2) The amended master reclamation plan shall identify
466 which of the lands mined or disturbed by the severance of
467 phosphate rock prior to July 1, 1975, meet the following
468 criteria:



469 (a) The quality of surface waters leaving the land does
 470 not meet applicable water quality standards, if any; or, health
 471 and safety hazards exist on the land; or, the soil has not
 472 stabilized and revegetated; or, the remaining natural resources
 473 associated with the land are not being conserved;

474 (b) The environmental or economic utility or aesthetic
 475 value of the land would not naturally return within a reasonable
 476 time, and reclamation would substantially promote the
 477 environmental or economic utility or the aesthetic value of the
 478 land; ~~and~~

479 (c) The reclamation of the land is in the public interest
 480 because the reclamation, when combined with other reclamation
 481 under the master plan, would provide a substantial regional
 482 benefit; and

483 (d) The reclamation of the land is in the public interest
 484 because the reclamation, when combined with other reclamation
 485 under the master plan, will provide significant benefits to
 486 surface water bodies supplying water for environmental and
 487 public purposes in those areas of the state where phosphate
 488 mining has been permitted.

489 (3) Lands evaluated by the department under subsection (1)
 490 which meet the criteria set forth in subsection (2) shall be
 491 identified with specificity in the master reclamation plan.
 492 Lands evaluated by the department under subsection (1) which do
 493 not meet the criteria set forth in subsection (2) shall also be
 494 identified with specificity in the master reclamation plan as
 495 lands which are acceptable in their present form.



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496 (4) Upon adoption of the amendments to the master
497 reclamation plan as a rule, such plan shall provide the
498 guidelines for approval of reclamation programs for lands
499 covered in the plan, recognizing that reclamation of such lands
500 is not mandatory, but that any payment of costs expended for
501 reclamation paid under s. 378.031 shall be contingent upon
502 conformity with the guidelines set forth in the master
503 reclamation plan.

504 Section 4. Section 378.031, Florida Statutes, is amended
505 to read:

506 378.031 Reclamation or acquisition of nonmandatory lands;
507 legislative intent.--It is the intent of the Legislature to
508 provide an economic incentive to encourage the reclamation of
509 the maximum number of acres of eligible nonmandatory lands in
510 the most timely and efficient manner or the donation or purchase
511 of nonmandatory lands, especially those lands for which
512 reclamation activities will result in significant improvements
513 to surface water bodies of regional importance in those areas of
514 the state where phosphate mining has been permitted. The
515 Legislature recognizes that certain lands mined or disturbed
516 prior to July 1, 1975, have been naturally reclaimed.

517 Section 5. Section 378.035, Florida Statutes, is amended
518 to read:

519 378.035 Department responsibilities and duties with
520 respect to Nonmandatory Land Reclamation Trust Fund.--

521 (1) The department shall administer the Nonmandatory Land
522 Reclamation Trust Fund.



523 (2)(a) The department shall verify that reclamation
524 activities or portions thereof have been accomplished in
525 accordance with the reclamation contract and shall certify the
526 cost of such reclamation activities to the Comptroller for
527 reimbursement.

528 (b) Beginning in 1985, the department shall determine the
529 maximum dollar amount a landowner may be reimbursed per
530 reclaimed acre under an approved reclamation program.

531 (c) Nothing in this act precludes a landowner from
532 performing the reclamation pursuant to the approved reclamation
533 program, provided the landowner complies with the provisions of
534 this act.

535 (3) If an applicant who has signed a reclamation contract
536 abandons the reclamation program prior to substantial completion
537 of the program, the department may spend the remaining balance
538 of funds not expended under the contract to complete the
539 program.

540 (a) The contract amount and any amounts spent by the
541 department in excess of the remaining balance of the funds under
542 the contract become a lien upon the property, enforceable
543 pursuant to chapter 85. The moneys received as a result of a
544 lien foreclosure or as repayment shall be deposited into the
545 trust fund.

546 (b) If the land acquired pursuant to the lien foreclosure
547 has recreational or wildlife value, the department may retain
548 ownership as with other property acquired pursuant to s.
549 378.036. If the department sells the property, the department
550 shall deposit the proceeds of the sale into the trust fund.



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551 (4) Interest on moneys deposited in the Nonmandatory Land
552 Reclamation Trust Fund shall accrue to that fund.

553 (5) ~~On July 1, 2001, \$50 million of the unencumbered funds~~
554 within the Nonmandatory Land Reclamation Trust Fund are also
555 authorized ~~reserved~~ for use by the department for the following
556 purposes:-

557 (a) ~~These reserved moneys are to be used~~ To reclaim lands
558 disturbed by the severance of phosphate rock on or after July 1,
559 1975, in the event that a mining company ceases mining and the
560 associated reclamation prior to all lands disturbed by the
561 operation being reclaimed. Moneys expended by the department to
562 accomplish reclamation pursuant to this subsection shall become
563 a lien upon the property enforceable pursuant to chapter 85. The
564 moneys received as a result of a lien foreclosure or as
565 repayment shall be deposited into the trust fund. In the event
566 the money received as a result of lien foreclosure or repayment
567 is less than the amount expended for reclamation, the department
568 shall use all means available to recover, for the use of the
569 fund, the difference from the affected parties. Paragraph (3)(b)
570 shall apply to lands acquired as a result of a lien foreclosure.

571 (b) ~~The department may also expend funds from the \$50~~
572 ~~million reserve fund~~ For the abatement of an imminent hazard as
573 provided by s. 403.4154(3) and for the purpose of closing an
574 abandoned phosphogypsum stack system and carrying out
575 postclosure care as provided by s. 403.4154(5). ~~Fees deposited~~
576 ~~in the Nonmandatory Land Reclamation Trust Fund pursuant to s.~~
577 ~~403.4154(4) may be used for the purposes authorized in this~~
578 ~~paragraph. However, such fees may only be used at a stack system~~



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579 | ~~if closure or imminent hazard abatement activities initially~~
580 | ~~commence on or after July 1, 2002.~~

581 | ~~(c)(6)(a) Up to one half of the interest income accruing~~
582 | ~~to the funds reserved by subsection (5) shall be available to~~
583 | ~~the department annually~~ For the purpose of funding basic
584 | management or protection of reclaimed, restored, or preserved
585 | phosphate lands:

586 | 1. Which have wildlife habitat value as determined by the
587 | Bureau of Mine Reclamation;

588 | 2. Which have been transferred by the landowner to a
589 | public agency or a private, nonprofit land conservation and
590 | management entity in fee simple, or which have been made subject
591 | to a conservation easement pursuant to s. 704.06; and

592 | 3. For which other management funding options are not
593 | available.

594 |
595 | These funds may, after the basic management or protection has
596 | been assured for all such lands, be combined with other
597 | available funds to provide a higher level of management for such
598 | lands.

599 | ~~(d)(b) Up to one half of the interest income accruing to~~
600 | ~~the funds reserved by subsection (5) shall be available to the~~
601 | ~~department annually~~ For the sole purpose of funding the
602 | department's implementation of:

603 | 1. The NPDES permitting program authorized by s. 403.0885,
604 | as it applies to phosphate mining and beneficiation facilities,
605 | phosphate fertilizer production facilities, and phosphate
606 | loading and handling facilities;



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607 2. The regulation of dams in accordance with department
608 rule 62-672, Florida Administrative Code; and

609 3. The phosphogypsum management program pursuant to s.
610 403.4154 and department rule 62-673, Florida Administrative
611 Code.

612
613 ~~On or before August 1 of each fiscal year, the department shall~~
614 ~~prepare a report presenting the expenditures using the interest~~
615 ~~income allocated by this section made by the department during~~
616 ~~the immediately preceding fiscal year, which report shall be~~
617 ~~available to the public upon request.~~

618 (6)~~(7)~~ Should the nonmandatory land reclamation program
619 encumber all the funds in the Nonmandatory Land Reclamation
620 Trust Fund except those reserved by subsection (5) prior to
621 funding all the reclamation applications for eligible parcels,
622 the funds reserved by subsection (5) shall be available to the
623 program to the extent required to complete the reclamation of
624 all eligible parcels for which the department has received
625 applications.

626 (7)~~(8)~~ The department may not accept any applications for
627 nonmandatory land reclamation programs after July 1, 2004
628 ~~November 1, 2008.~~

629 (8)~~(9)~~ The Bureau of Mine Reclamation shall review the
630 sufficiency of the Nonmandatory Land Reclamation Trust Fund to
631 support the stated objectives and report to the secretary
632 annually with recommendations as appropriate. ~~The report~~
633 ~~submittal for calendar year 2008 shall specifically address the~~
634 ~~effect of providing a future refund of fees paid pursuant to s.~~



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635 ~~403.4154(4) following certification of stack closure pursuant to~~
636 ~~department rules, and the report shall be submitted to the~~
637 ~~Governor, the President of the Senate, and the Speaker of the~~
638 ~~House of Representatives on or before March 1, 2009.~~

639 (9) The department may, upon its determination, petition
640 the State Board of Administration for the issuance of bonds to
641 carry out its responsibilities pursuant to paragraph (5)(b).
642 The total amount of bonds issued pursuant to this subsection may
643 not exceed \$25 million. Revenues credited to the Nonmandatory
644 Land Reclamation Trust Fund shall be used to fund any issuance
645 or debt obligations.

646 Section 6. Subsection (6) is added to section 378.036,
647 Florida Statutes, to read:

648 378.036 Land acquisitions financed by Nonmandatory Land
649 Reclamation Trust Fund moneys.--

650 (6)(a) By January 1, 2004, or within 6 months after the
651 date on which funds become available from the Legislature,
652 whichever is later, the Florida Wildlife Federation, Audubon
653 Florida, and Rails-to-Trails Conservancy, in partnership with
654 the Florida Phosphate Council, are authorized to form a
655 nonprofit corporation pursuant to chapter 617 for the purpose of
656 implementing the provisions of this section by creating plans
657 and assisting in the development of recreational opportunities
658 on lands mined for phosphate in the state. The first plans
659 created by the corporation shall concentrate on recreational
660 activities in Hardee and Hamilton Counties that will assist
661 those counties in rural economic development.



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662 (b) The board of directors of the corporation shall be
663 composed of three members. One member shall be designated by the
664 Florida Phosphate Council, one member shall be designated
665 jointly by the Florida Wildlife Federation, Audubon Florida, and
666 Rails-to-Trails Conservancy, and one member shall be chosen by
667 the other two designees.

668 (c) The business of the corporation shall be conducted by
669 the board of directors or a chief executive officer as the board
670 sees fit in accordance with the provisions of its articles of
671 incorporation and applicable law. The activities of the
672 corporation shall be coordinated with all landowners who have
673 voluntarily agreed to participate in the process as well as any
674 local government where relevant lands are recorded.

675 (d) An annual report of the activities of the corporation,
676 including a certified audit, shall be presented to the secretary
677 of the Department of Environmental Protection or the secretary's
678 designee by October 31 of each year following its incorporation.

679 (e) The corporation shall dissolve on January 1, 2009,
680 unless dissolved previously by action of its board of directors
681 or extended by the Legislature. Upon dissolution, any moneys
682 remaining in the accounts of the corporation that are
683 unobligated shall be returned to the funds from which they were
684 appropriated in proportion to the amount contributed. All
685 tangible assets of the corporation at dissolution that were
686 acquired using state funding shall become the property of the
687 Department of Environmental Protection.

688 Section 7. Subsection (5) is added to section 378.101,
689 Florida Statutes, to read:



690 378.101 Florida Institute of Phosphate Research.--
 691 (5) The Florida Institute of Phosphate Research shall
 692 conduct a bench and pilot scale study of the institute's
 693 dewatering instantaneously with pulp recycle process for the
 694 purpose of determining its technical and economic feasibility.
 695 The study shall evaluate the availability, technical
 696 feasibility, and cost of using various types of fiber,
 697 including, but not limited to, paper and sewage sludge. The
 698 study shall evaluate the technical feasibility and practicality
 699 of various methods of using and disposing of the clay/fiber
 700 product produced, including admixing the product with soil.

701 Section 8. For fiscal year 2003-2004, the sum of \$200,000
 702 is appropriated to the Phosphate Research Trust Fund from the
 703 proceeds of the phosphate severance tax prior to distribution of
 704 funds as specified by s. 211.3103, Florida Statutes, to fund the
 705 study required under s. 378.101(5), Florida Statutes.

706 Section 9. Paragraph (g) is added to subsection (1) of
 707 section 378.212, Florida Statutes, to read:

708 378.212 Variances.--

709 (1) Upon application, the secretary may grant a variance
 710 from the provisions of this part or the rules adopted pursuant
 711 thereto. Variances and renewals thereof may be granted for any
 712 one of the following reasons:

713 (g) To accommodate reclamation that provides for water
 714 supply development or water resource development, consistent
 715 with the applicable regional water supply plan approved pursuant
 716 to s. 373.0361, appropriate stormwater management, wildlife



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717 habitat, or recreation, provided regional water resources are
718 not adversely affected.

719 Section 10. Section 403.0613, Florida Statutes, is created
720 to read:

721 403.0613 Environmental Good Samaritan Act.--

722 (1) Upon declaration by the Governor of an actual or
723 impending environmental emergency, any person or entity acting
724 under the direction of the Department of Environmental
725 Protection shall be immune from civil liability for any act or
726 omission not constituting gross negligence in the course of
727 rendering such assistance.

728 (2) Persons or entities under contract with the Department
729 of Environmental Protection who provide expeditious professional
730 assistance to prevent, take action regarding, or clean up a
731 declared environmental emergency shall also be immune from civil
732 liability.

733 (3) The immunity provided by this section does not apply
734 to damages as a result of any act or omission unrelated to the
735 original emergency.

736 Section 11. Section 403.162, Florida Statutes, is created
737 to read:

738 403.162 Civil remedy of department; abatement of imminent
739 danger; lien; notice; procedure.--In the event that an owner or
740 operator fails to abate a release or threatened release of any
741 hazardous substance, pollutant, or other contaminant, or abate
742 an imminent danger to the environment or to public health, and
743 the department expends in excess of \$1 million on such
744 abatement, the following remedy is provided to the department:



745 (1) All expenditures made by the department to abate such
746 release, threatened release, or imminent danger shall
747 constitute, in each instance, a debt of the responsible party or
748 parties to the department.

749 (2) The debt shall constitute a lien on all property of
750 the responsible party or parties, including real, personal,
751 tangible, and intangible property interests. The department may
752 file a notice of lien incorporating a description of the
753 property of the responsible party or parties subject to the
754 abatement action and an identification of the amount of costs
755 expended by the department in performing the abatement action in
756 the public records of the county where the abatement action
757 occurred. To the extent the department intends to create a lien
758 on other assets of the responsible party or parties, such notice
759 may be filed in the same manner and place that is required of
760 federal liens pursuant to s. 713.901. The department may amend
761 and supplement the notice of lien to include amounts comprising
762 the debt expended by the department subsequent to the initial
763 filing of the notice of lien. Upon filing of the notice, the
764 lien, in the amount expended by the department for abatement of
765 the release, threatened release, or other imminent danger, shall
766 attach to all of the revenues and real and personal property of
767 the responsible party or parties, regardless of whether the
768 responsible party or parties are insolvent or are rendered
769 insolvent thereby. A notice of lien filed pursuant to this
770 section that affects the property of a responsible party or
771 parties subject to the abatement action shall create a lien with
772 priority over all other claims or liens that are or have been



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773 filed against the property. A notice of lien filed pursuant to
774 this section that affects any property of a responsible party or
775 parties other than the property subject to the abatement action
776 shall have priority from the day of the filing of the notice of
777 the lien over all other claims and liens filed against the
778 property but shall not affect any valid lien, right, or interest
779 in the property filed in accordance with established procedure
780 prior to the filing of a notice of lien pursuant to this
781 subsection.

782 Section 12. Subsections (2), (3), and (4) of section
783 403.4154, Florida Statutes, are amended, and subsections (6) and
784 (7) are added to said section, to read:

785 403.4154 Phosphogypsum management program.--

786 (2) REGULATORY PROGRAM.--

787 (a) It is the intent of the Legislature that the
788 department develop a program for the sound and effective
789 regulation of phosphogypsum stack systems in the state.

790 (b) The department shall adopt rules that prescribe
791 acceptable construction designs for new or expanded
792 phosphogypsum stack systems and that prescribe permitting
793 criteria for operation, closure criteria, long-term-care
794 requirements, and closure financial responsibility requirements
795 for phosphogypsum stack systems.

796 (c) In the event that an owner or operator of a
797 phosphogypsum stack or stack system fails to comply with
798 department rules requiring demonstration of closure financial
799 responsibility, no distribution may be made that would be
800 prohibited under s. 607.06401(3) until the noncompliance is



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801 corrected. Whoever willfully, knowingly, or with reckless
802 indifference or gross carelessness violates this prohibition
803 commits a felony of the third degree, punishable as provided in
804 s. 775.082 by a fine of not more than \$50,000 or by imprisonment
805 for 5 years for each offense.

806 (3) ABATEMENT OF IMMINENT HAZARD.--

807 (a) The department may take action to abate or
808 substantially reduce any imminent hazard caused by the physical
809 condition, maintenance, operation, or closure of a phosphogypsum
810 stack system.

811 (b) An imminent hazard exists if the physical condition,
812 maintenance, operation, or closure of a phosphogypsum stack
813 system creates an immediate and substantial danger to human
814 health, safety, or welfare or to the environment. A
815 phosphogypsum stack system is presumed not to cause an imminent
816 hazard if the physical condition and operation of the system are
817 in compliance with all applicable department rules.

818 (c) The failure of an owner or operator of a phosphogypsum
819 stack system to comply with department rules requiring
820 demonstration of financial responsibility with respect to
821 closure may be considered by the department as evidence that a
822 phosphogypsum stack poses an imminent hazard for purposes of
823 initiating actions authorized by paragraph (d).

824 (d)(e) If the department determines that the failure of an
825 owner or operator to comply with department rules requiring
826 demonstration of financial responsibility or the physical
827 condition, maintenance, operation, or closure of a phosphogypsum
828 stack system poses an imminent hazard, the department shall



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829 request access to the property on which such stack system is
830 located from the owner or operator of the stack system for the
831 purposes of taking action to abate or substantially reduce the
832 imminent hazard. If the department, after reasonable effort, is
833 unable to timely obtain the necessary access to abate or
834 substantially reduce the imminent hazard, the department may
835 institute action in its own name, using the procedures and
836 remedies of s. 403.121 or s. 403.131, to abate or substantially
837 reduce an imminent hazard. Whenever serious harm to human
838 health, safety, or welfare, to the environment, or to private or
839 public property may occur prior to completion of an
840 administrative hearing or other formal proceeding that might be
841 initiated to abate the risk of serious harm, the department may
842 obtain from the court, ex parte, an injunction without paying
843 filing and service fees prior to the filing and service of
844 process.

845 (e)~~(d)~~ To abate or substantially reduce an imminent
846 hazard, the department may take any appropriate action,
847 including, but not limited to, using employees of the department
848 or contracting with other state or federal agencies, with
849 private third-party contractors, or with the owner or operator
850 of the stack system, or financing, compensating, or funding a
851 receiver, trustee, or owner of the stack system, to perform all
852 or part of the work.

853 (f)~~(e)~~ The department shall recover from the owner or
854 operator of the phosphogypsum stack system to the use of the
855 Nonmandatory Land Reclamation Trust Fund all moneys expended
856 from the fund, including funds expended prior to the effective



857 date of this section, to abate an imminent hazard posed by the
 858 phosphogypsum stack system plus a penalty equal to an amount
 859 calculated at 30 percent of such funds expended. This penalty
 860 shall be imposed annually, and prorated from the date of payment
 861 from the fund until the expended funds and the penalty are
 862 repaid. If the department prevails in any action to recover
 863 funds pursuant to this subsection, it may recover reasonable
 864 attorney's fees and costs incurred. Phosphogypsum may not be
 865 deposited on a stack until all moneys expended from the fund in
 866 connection with the stack have been repaid, unless the
 867 department determines that such placement is necessary to abate
 868 or avoid an imminent hazard or unless otherwise authorized by
 869 the department.

870 (g)~~(f)~~ The department may impose a lien on the real
 871 property on which the phosphogypsum stack system that poses an
 872 imminent hazard is located and on the real property underlying
 873 and other assets located at associated phosphate fertilizer
 874 production facilities equal in amount to the moneys expended
 875 from the Nonmandatory Land Reclamation Trust Fund pursuant to
 876 paragraph (e)~~(d)~~, including attorney's fees and court costs. The
 877 owner of any property on which such a lien is imposed is
 878 entitled to a release of the lien upon payment to the department
 879 of the lien amount. The lien imposed by this section does not
 880 take priority over any other prior perfected lien on the real
 881 property, personal property, or other assets referenced in this
 882 paragraph, including, but not limited to, the associated
 883 phosphate rock mine and reserves.

884 (4) REGISTRATION FEES.--



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885 (a)1. The owner or operator of each existing phosphogypsum
886 stack who has not provided a performance bond, letter of credit,
887 trust fund agreement, or closure insurance to demonstrate
888 financial responsibility for closure and long-term care shall
889 pay to the department a fee as set forth in this paragraph. All
890 fees shall be deposited in the Nonmandatory Land Reclamation
891 Trust Fund.

892 2. The amount of the fee for each existing stack shall be
893 \$75,000 for each of the five 12-month periods following July 1,
894 2001.

895 3. The amount of the fee for any new stack for which the
896 owner or operator has not provided a performance bond, letter of
897 credit, trust fund agreement, or closure insurance to
898 demonstrate financial responsibility for closure and long-term
899 care shall be \$75,000 for each of the five 12-month periods
900 following the issuance by the department of a construction
901 permit for that stack.

902 ~~4. Within 30 days after a phosphogypsum stack has been~~
903 ~~certified as closed pursuant to rule 62-673.620(2) and (3),~~
904 ~~Florida Administrative Code, the department shall refund to the~~
905 ~~owner of the closed phosphogypsum stack an amount from the~~
906 ~~Nonmandatory Land Reclamation Trust Fund equal to the total~~
907 ~~amount of fee payments made by the owner or operator to the fund~~
908 ~~in connection with the closed phosphogypsum stack, except that~~
909 ~~any refund becoming payable prior to July 1, 2009, shall be paid~~
910 ~~to the owner on or after that date.~~

911 (b) On or before August 1 of each year, the department
912 shall provide written notice to each owner of an existing stack



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913 of any fee payable for the 12-month period commencing on the
914 immediately preceding July 1. Each owner shall remit the fee to
915 the department on or before August 31 of each year.

916 (6) INTERIM STACK SYSTEM MANAGEMENT PLAN.--

917 (a) By October 1, 2003, the department shall initiate
918 rulemaking to require that phosphogypsum stack system operation
919 plans required by department rule be amended by adding an
920 interim stack system management (ISSM) plan that provides
921 written instructions for the operation of the system assuming
922 that no phosphoric acid would be produced at the facility for a
923 2-year period. The initial ISSM plan shall be completed as of
924 the first July 1 following the adoption of the rule required by
925 this section. The ISSM plan shall include:

926 1. A detailed description of process water management
927 procedures that will be implemented to ensure that the stack
928 system operates in accordance with all applicable department
929 permit conditions and rules. The procedures shall address the
930 actual process water levels present at the facility 30 days
931 prior to the completion of the plan and shall assume that the
932 facility will receive annual average rainfall during the 2-year
933 planning period.

934 2. A detailed description of the procedures to be followed
935 for the daily operation and routine maintenance of the stack
936 system, including required environmental sampling and analyses,
937 as well as for any maintenance or repairs recommended following
938 annual inspections of the system.

939 3. Identification of all machinery, equipment, and
940 materials necessary to implement the plan.



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941 4. Identification of the sources of power or fuel
942 necessary to implement the plan.

943 5. Identification of the personnel necessary to implement
944 the plan.

945 (b) The ISSM plan shall be updated annually, taking into
946 account process water levels as of June 1 of each year and the
947 existing stack system configuration.

948 (c) The requirements listed in paragraphs (a) and (b) are
949 applicable to all phosphogypsum stack systems except those which
950 have been closed, which are undergoing closure, or for which an
951 application for a closure permit has been submitted pursuant to
952 department rule.

953 (7) PHOSPHOGYPSUM STACK SYSTEM GENERAL CLOSURE PLAN.--

954 (a) By October 1, 2003, the department shall initiate
955 rulemaking to require that general plans and schedules for the
956 closure of phosphogypsum stack systems include:

957 1. A description of the physical configuration of the
958 phosphogypsum stack system anticipated at the time of closure at
959 the end of useful life of the system.

960 2. A site-specific water management plan describing the
961 procedures to be employed at the end of the useful life of the
962 system to manage the anticipated volume of process water in an
963 environmentally sound manner.

964 3. An estimate of the cost of management of the
965 anticipated volume of process water in accordance with the site-
966 specific water management plan.

967 4. A description of all construction work necessary to
968 properly close the system in accordance with department rules.



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969 5. An estimate of all costs associated with long-term care
970 of the closed system, including maintenance and monitoring, in
971 accordance with department rules.

972 (b) The department shall revise chapter 62-673, Florida
973 Administrative Code, to require the owner or operator of a
974 phosphogypsum stack management system to demonstrate financial
975 responsibility for the costs of terminal closure of the
976 phosphogypsum stack system in a manner that protects the public
977 health and safety.

978 1. The costs of terminal closure shall be estimated based
979 on the stack system configuration as of the end of its useful
980 life as determined by the owner or operator.

981 2. The owner or operator may demonstrate financial
982 responsibility by use of one or more of the following methods:

- 983 a. Bond.
984 b. Letter of credit.
985 c. Cash deposit arrangement.
986 d. Closure insurance.
987 e. Financial tests.
988 f. Corporate guarantee.

989
990 For the purposes of this section, a "cash deposit arrangement"
991 refers to a trust fund, business or statutory trust, escrow
992 account, or similar cash deposit entity whereby a fiduciary
993 holds and invests funds deposited by the owner or operator,
994 which funds shall be expended only for the purpose of directly
995 implementing all or some portion of phosphogypsum stack system
996 closure requirements of that particular owner or operator.



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997 3. A trustee, escrow agent, or other fiduciary of a cash
998 deposit arrangement authorized by this section shall have no
999 liability for any damage or loss of any kind arising out of or
1000 caused by performance of duties imposed by the terms of the
1001 applicable agreement except where such damage or loss is
1002 directly caused by the gross negligence or criminal act of the
1003 trustee, escrow agent, or other fiduciary. In performing its
1004 duties pursuant to the applicable agreement, a trustee, escrow
1005 agent, or other fiduciary shall be entitled to rely upon
1006 information and direction received from the grantor or the
1007 department without independent verification unless such
1008 information and direction are manifestly in error:

1009 4. To the extent that a cash deposit arrangement is used
1010 to provide proof of financial responsibility for all or a
1011 portion of closure costs, the trust, escrow, or cash arrangement
1012 deposit entity shall be deemed to have assumed all liability for
1013 such closure costs up to the amount of the cash deposit, less
1014 any fees or costs of the trustee, escrow agent, or other
1015 fiduciary.

1016 5. Any funds maintained in a cash deposit arrangement
1017 authorized by this section shall not be subject to claims of
1018 creditors of the owner or operator and shall otherwise be exempt
1019 from setoff, execution, levy, garnishment, and similar writs and
1020 proceedings.

1021 6. Any funds remaining in a trust, escrow account, or
1022 other cash deposit arrangement after the purpose of such cash
1023 deposit arrangement under this section has been accomplished
1024 shall be returned to the grantor.



1025 Section 13. Subsection (2) of section 403.4155, Florida
1026 Statutes, is amended to read:

1027 403.4155 Phosphogypsum management; rulemaking authority.--

1028 (2) The department shall revise chapter 62-673, Florida
1029 Administrative Code, to require the owner or operator of a
1030 phosphogypsum stack system to demonstrate financial
1031 responsibility for the costs of terminal closure of the
1032 phosphogypsum stack system in a manner that protects the
1033 environment and the public health and safety. At a minimum, such
1034 rules shall include or address the following requirements:

1035 (a) That the cost of closure and long-term care be re-
1036 estimated by a professional engineer and adjusted for inflation
1037 on an annual basis. At a minimum, such cost data shall include:

1038 1. The cost of treatment and appropriate disposal of all
1039 process wastewater, both ponded and pore, in the system.

1040 2. All construction work necessary to properly close the
1041 system in accordance with department rules.

1042 3. All costs associated with long-term care of the closed
1043 system, including maintenance and monitoring, in accordance with
1044 department rules.

1045 (b) That financial statements and financial data be
1046 prepared according to generally accepted accounting principles
1047 within the United States and submitted quarterly.

1048 (c) That audited financial statements be provided annually
1049 along with the statement of financial assurance.

1050 (d) That any owner or operator in default on any of its
1051 obligations report such default immediately.



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1052 (e) That an owner or operator shall have the option to
 1053 satisfy the financial tests with a corporate guarantee for an
 1054 amount that would ensure adequate coverage of closure and
 1055 postclosure costs.

1056 (f) A requirement for a 5-year interim stack system
 1057 management plan that provides details on the operation of the
 1058 specific phosphogypsum stack system, including water management,
 1059 should a temporary deactivation of the system occur. ~~By January~~
 1060 31, 2002, the department shall review chapter 62-673, Florida
 1061 Administrative Code, to determine the adequacy of the financial
 1062 responsibility provisions contained in the rules and shall take
 1063 any measures necessary to ensure that the rules provide sound
 1064 and effective provisions to minimize risk to the environment and
 1065 to public health and safety from the business failure of a
 1066 phosphogypsum stack system.

1067 Section 14. If any provision of this act or the
 1068 application thereof to any person or circumstance is held
 1069 invalid, the invalidity shall not affect other provisions or
 1070 applications of the act which can be given effect without the
 1071 invalid provision or application, and to this end the provisions
 1072 of this act are declared severable.

1073 Section 15. Except as otherwise provided herein, this act
 1074 shall take effect upon becoming a law.
 1075