



1 A bill to be entitled

2 An act relating to phosphate mining; amending s. 211.3103,
3 F.S.; revising the distribution of the excise tax on the
4 severance of phosphate rock; setting the tax rate for
5 specified periods; revising provisions with respect to
6 application of the tax to the total production of the
7 producer; revising dates with respect to calculation of
8 the base rate adjustment for phosphate rock; setting a
9 minimum base-rate limit; providing for review of the
10 distribution of the tax by a specified date; amending s.
11 373.414, F.S.; revising conditions under which wetlands
12 reclamation activities for phosphate and heavy minerals
13 mining are considered appropriate mitigation under pt. IV
14 of ch. 373, F.S.; requiring the Department of
15 Environmental Protection to study cumulative impacts of
16 changes in landform and hydrology in the Peace River
17 Basin; providing study requirements; requiring the
18 department to prepare and adopt a resource management plan
19 for the Peace River Basin; providing plan requirements;
20 providing for submission of the plan by a specified date;
21 authorizing the department to use specified funds from the
22 Nonmandatory Land Reclamation Trust Fund to prepare the
23 study and plan; authorizing the department to establish a
24 technical advisory committee for specified purposes;
25 amending s. 378.021, F.S.; requiring the Department of
26 Environmental Protection to amend the master reclamation
27 plan that provides guidelines for the reclamation of
28 specified lands mined or disturbed by the severance of



29 phosphate rock and not subject to mandatory reclamation;
30 providing additional criteria to be included in the
31 amended master reclamation plan; amending s. 378.031,
32 F.S.; clarifying provisions with respect to legislative
33 intent to provide economic incentives for reclamation or
34 acquisition of nonmandatory lands; amending s. 378.035,
35 F.S.; revising provisions relating to the use of funds in
36 the Nonmandatory Land Reclamation Trust Fund; deleting
37 obsolete provisions; deleting provisions relating to the
38 deposit and use of funds derived from registration fees
39 under the phosphogypsum management program; revising the
40 date after which the Department of Environmental
41 Protection may not accept applications for nonmandatory
42 land reclamation programs; eliminating requirements with
43 respect to a specified report of the Bureau of Mine
44 Reclamation; authorizing the department to petition the
45 State Board of Administration for the issuance of bonds;
46 setting a limit on the total amount of such bonds;
47 providing for use of revenues derived from such bonds;
48 amending s. 378.036, F.S.; authorizing specified entities
49 to form a nonprofit corporation the purpose of which
50 includes creating plans for and assisting in the
51 development of recreational opportunities on lands mined
52 for phosphate; providing composition, organization, and
53 responsibilities of the corporation; requiring a report;
54 providing for dissolution of the corporation; providing
55 for reversion of funds and tangible assets of the
56 corporation; amending s. 378.101, F.S.; requiring the



57 Florida Institute of Phosphate Research to conduct a
58 specified bench and pilot scale study; providing an
59 appropriation to fund the study; amending s. 378.212,
60 F.S.; providing an additional reason for the granting of a
61 variance from pt. III of ch. 378, F.S., relating to
62 phosphate land reclamation; creating s. 403.0613, F.S.,
63 the "Environmental Good Samaritan Act"; providing immunity
64 from civil liability for specified persons and entities in
65 the event of a declared actual or impending environmental
66 emergency; providing applicability; creating s. 403.162,
67 F.S.; providing civil remedy to the Department of
68 Environmental Protection in the event that an owner or
69 operator fails to abate a release or threatened release of
70 any hazardous substance, pollutant, or contaminant, or
71 abate an imminent danger to the environment or to public
72 health, and the department expends a specified amount on
73 such abatement; providing procedure and requirements with
74 respect thereto; amending s. 403.4154, F.S.; providing a
75 third degree felony penalty for willfully, knowingly, or
76 with reckless indifference or gross carelessness making
77 specified distributions prior to correction of
78 noncompliance with departmental rules requiring
79 demonstration of financial responsibility with respect to
80 closure of a phosphogypsum stack or stack system;
81 providing a specified fine and term of imprisonment;
82 providing that the failure of an owner or operator of a
83 phosphogypsum stack system to comply with department rules
84 requiring demonstration of financial responsibility with



85 | respect to closure may be considered by the department as
86 | evidence that a phosphogypsum stack poses an imminent
87 | hazard for purposes of initiating actions to abate or
88 | reduce the hazard; deleting provisions that provide for
89 | the refund of specified fee payments to the owner of a
90 | closed phosphogypsum stack; requiring the Department of
91 | Environmental Protection, by a specified date, to initiate
92 | rulemaking to require that phosphogypsum stack system
93 | operation plans be amended to add an interim stack system
94 | management plan; providing plan requirements; requiring
95 | the department, by a specified date, to initiate
96 | rulemaking to require that general plans and schedules for
97 | the closure of phosphogypsum stack systems include
98 | specified components; requiring the department to revise
99 | specified administrative rules to require the owner or
100 | operator of a phosphogypsum stack system to demonstrate
101 | financial responsibility for the costs of terminal closure
102 | in a manner that protects the environment and the public
103 | health and safety; amending s. 403.4155, F.S.; requiring
104 | the Department of Environmental Protection to revise
105 | specified administrative rules to require the owner or
106 | operator of a phosphogypsum stack system to demonstrate
107 | financial responsibility for the costs of terminal closure
108 | of the phosphogypsum stack system in a manner that
109 | protects the environment and the public health and safety;
110 | providing minimum requirements for such rules; providing
111 | severability; providing effective dates.

112



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

114

115 Section 1. Section 211.3103, Florida Statutes, is amended
116 to read:

117 211.3103 Levy of tax on severance of phosphate rock; rate,
118 basis, and distribution of tax.--

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

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

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

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

131 (c) \$2.7 million of the revenue collected from the tax
132 during each fiscal year shall be applied to the purchase of a
133 surety bond or a policy of insurance, the proceeds of which
134 would pay the cost of restoration, reclamation, and cleanup of
135 any phosphogypsum stack system and phosphate mining activities
136 in the event that an operator or permittee thereof has been
137 subject to a final order of bankruptcy and all funds available
138 therefrom are determined to be inadequate to accomplish such
139 restoration, reclamation, and cleanup. Nothing in this section
140 shall be construed to imply that such operator or permittee is



141 thereby relieved of its obligations or relieved of any
142 liabilities pursuant to any other remedies at law,
143 administrative remedies, statutory remedies, or remedies
144 pursuant to bankruptcy law. The department shall adopt rules to
145 implement the provisions of this paragraph, including the
146 purchase and oversight of the bond or policy.

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

150 1. To the credit of the Nonmandatory Land Reclamation
151 Trust Fund, 51 percent.

152 2. For payment to counties in proportion to the number of
153 tons of phosphate rock produced from a phosphate rock matrix
154 located within such political boundary, 25 percent. The
155 department shall distribute this portion of the proceeds
156 annually based on production information reported by the
157 producers on the annual returns for the taxable year.

158 3. To the credit of the Phosphate Research Trust Fund in
159 the Department of Education, Division of Universities, 14
160 percent.

161 4. To the credit of the Minerals Trust Fund, 10 percent or
162 \$3.5 million, whichever is greater.

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

165 1. Planning, preparing, and financing of infrastructure
166 projects for job creation and capital investment, especially
167 those infrastructure projects related to industrial and



168 commercial sites. Infrastructure investments may include the
169 following public or public-private partnership facilities:

- 170 a. Stormwater systems;
171 b. Telecommunications facilities;
172 c. Roads or other remedies to transportation impediments;
173 d. Nature-based tourism facilities; or
174 e. Other physical requirements necessary to facilitate
175 trade and economic development activities.

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

179 3. Projects that improve inadequate infrastructure that
180 has resulted in regulatory action that prohibits economic or
181 community growth, provided such projects are related to specific
182 job creation or job retention opportunities.

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

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

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

192 ~~1. To the credit of the General Revenue Fund of the state,~~
193 ~~60 percent. However, from this amount the amounts of \$7.4~~
194 ~~million, \$8.2 million, and \$8.1 million, respectively, shall be~~



195 ~~transferred to the Nonmandatory Land Reclamation Trust Fund on~~
196 ~~January 1, 1993, January 1, 1994, and January 1, 1995.~~

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

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

204 ~~4. For payment to counties in proportion to the number of~~
205 ~~tons of phosphate rock produced from a phosphate rock matrix~~
206 ~~located within such political boundary, 10 percent. The~~
207 ~~department shall distribute this portion of the proceeds~~
208 ~~annually based on production information reported by producers~~
209 ~~on the annual returns for the taxable year. Any such proceeds~~
210 ~~received by a county shall be used only for phosphate-related~~
211 ~~expenses.~~

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

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

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

221 ~~1. To the credit of the General Revenue Fund of the state,~~
222 ~~58 percent.~~



223 ~~2. To the credit of the Nonmandatory Land Reclamation~~
 224 ~~Trust Fund for reclamation and acquisition of unreclaimed lands~~
 225 ~~disturbed by phosphate mining and not subject to mandatory~~
 226 ~~reclamation, 14.5 percent.~~

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

230 ~~4. For payment to counties in proportion to the number of~~
 231 ~~tons of phosphate rock produced from a phosphate rock matrix~~
 232 ~~located within such political boundary, 10 percent. The~~
 233 ~~department shall distribute this portion of the proceeds~~
 234 ~~annually based on production information reported by producers~~
 235 ~~on the annual returns for the taxable year. Any such proceeds~~
 236 ~~received by a county shall be used only for phosphate-related~~
 237 ~~expenses.~~

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

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

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

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

248 ~~1. To the credit of the General Revenue Fund of the state,~~
 249 ~~55.15 percent.~~



250 ~~2. To the credit of the Phosphate Research Trust Fund in~~
 251 ~~the Department of Education, Division of Universities, 12.5~~
 252 ~~percent.~~

253 ~~3. For payment to counties in proportion to the number of~~
 254 ~~tons of phosphate rock produced from a phosphate rock matrix~~
 255 ~~located within such political boundary, 18 percent. The~~
 256 ~~department shall distribute this portion of the proceeds~~
 257 ~~annually based on production information reported by producers~~
 258 ~~on the annual returns for the taxable year. Any such proceeds~~
 259 ~~received by a county shall be used only for phosphate-related~~
 260 ~~expenses.~~

261 ~~4. To the credit of the Minerals Trust Fund, 14.35~~
 262 ~~percent.~~

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

265 (4) Beginning July 1, 2004, and annually thereafter, the
 266 tax rate shall be the base rate times the base rate adjustment
 267 of the tax years as calculated by the department in accordance
 268 with subsection (6).

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

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

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



277 ~~(c) For 1989 and subsequent years, the tax rate shall be~~
278 ~~the base rate times the base rate adjustment for the tax year as~~
279 ~~calculated by the department in accordance with subsection (6).~~
280 ~~However, for 2000 and subsequent taxable years, the base rate~~
281 ~~shall be reduced by 20 percent, unless additional funding of the~~
282 ~~Nonmandatory Land Reclamation Trust Fund is approved by law.~~

283 (6)(a) On or before March 30, 2004 ~~1989~~, and annually
284 thereafter, the department shall calculate the base rate
285 adjustment, if any, for phosphate rock based on the change in
286 the unadjusted annual producer price index for the prior
287 calendar year in relation to the unadjusted annual producer
288 price index for calendar year 1999 ~~1987~~.

289 (b) For the purposes of determining the base rate
290 adjustment for any year, the base rate adjustment shall be a
291 fraction, the numerator of which is the unadjusted annual
292 producer price index for the prior calendar year and the
293 denominator of which is the unadjusted annual producer price
294 index for calendar year 1999 ~~1987~~.

295 (c) The department shall provide the base rate, the base
296 rate adjustment, and the resulting tax rate to affected
297 producers by written notice on or before April 15 of the current
298 year.

299 (d) If the producer price index for phosphate rock primary
300 products is substantially revised, the department shall make
301 appropriate adjustment in the method used to compute the base
302 rate adjustment under this subsection which will produce results
303 reasonably consistent with the result which would have been
304 obtained if the producer price index for phosphate rock primary



305 products had not been revised. However, the base rate shall not
 306 be less than \$1.56 per ton severed.

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

310 (7) The excise tax levied on the severance of phosphate
 311 rock shall be in addition to any ad valorem taxes levied upon
 312 the separately assessed mineral interest in the real property
 313 upon which the site of severance is located, or any other tax,
 314 permit, or license fee imposed by the state or its political
 315 subdivisions.

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

318 (9) The provisions of subsection (2) shall be reviewed by
 319 the legislature prior to July 1, 2006. Should no change to the
 320 provisions in subsection (2) be made prior to July 1, 2006, the
 321 provisions in subsection (2) shall remain in effect.

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

324 373.414 Additional criteria for activities in surface
 325 waters and wetlands.--

326 (6)(a) The Legislature recognizes that some mining
 327 activities that may occur in waters of the state must leave a
 328 deep pit as part of the reclamation. Such deep pits may not meet
 329 the established water quality standard for dissolved oxygen
 330 below the surficial layers. Where such mining activities
 331 otherwise meet the permitting criteria contained in this
 332 section, such activities may be eligible for a variance from the



333 established water quality standard for dissolved oxygen within
334 the lower layers of the reclaimed pit.

335 (b) Wetlands reclamation activities for phosphate and
336 heavy minerals mining undertaken pursuant to chapter 378 shall
337 be considered appropriate mitigation for this part if they
338 maintain or improve the water quality and the function of the
339 biological systems present at the site prior to the commencement
340 of mining activities and the requirements of subsection (8) are
341 met.

342 (c) Wetlands reclamation activities for fuller's earth
343 mining undertaken pursuant to chapter 378 shall be considered
344 appropriate mitigation for this part if they maintain or improve
345 the water quality and the function of the biological systems
346 present at the site prior to the commencement of mining
347 activities, unless the site features make such reclamation
348 impracticable, in which case the reclamation must offset the
349 regulated activities' adverse impacts on surface waters and
350 wetlands.

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

354 1. Mitigation activities for limerock and sand mining must
355 offset the regulated activities' adverse impacts on surface
356 waters and wetlands. Mitigation activities shall be located on
357 site, unless onsite mitigation activities are not feasible, in
358 which case, offsite mitigation as close to the activities as
359 possible shall be required. However, mitigation banking may be



360 an acceptable form of mitigation, whether on or off site, as
361 judged on a case-by-case basis.

362 2. The ratio of mitigation-to-wetlands loss shall be
363 determined on a case-by-case basis and shall be based on the
364 quality of the wetland to be impacted and the type of mitigation
365 proposed.

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

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

372 2. Projects which are existing or activities regulated
373 under this part which are under construction or projects for
374 which permits or determinations pursuant to s. 373.421 or s.
375 403.914 have been sought.

376 3. Activities which are under review, approved, or vested
377 pursuant to s. 380.06, or other activities regulated under this
378 part which may reasonably be expected to be located within
379 surface waters or wetlands, as delineated in s. 373.421(1), in
380 the same drainage basin as defined in s. 373.403(9), based upon
381 the comprehensive plans, adopted pursuant to chapter 163, of the
382 local governments having jurisdiction over the activities, or
383 applicable land use restrictions and regulations.

384 (b) If an applicant proposes mitigation within the same
385 drainage basin as the adverse impacts to be mitigated, and if
386 the mitigation offsets these adverse impacts, the governing
387 board and department shall consider the regulated activity to



388 meet the cumulative impact requirements of paragraph (a).

389 However:—

390 1. The department, in consultation with the Southwest
391 Florida Water Management District, shall study cumulative
392 impacts of changes in landform and hydrology in the Peace River
393 Basin. The study shall evaluate cumulative impacts of activities
394 conducted in the Peace River Basin prior to state regulation, or
395 pursuant to an exemption, a permit, or a reclamation plan on
396 water resources of the basin, including surface waters,
397 groundwaters, fisheries, aquatic and estuarine habitat, and
398 water supplies. The study shall also include an evaluation of
399 the effectiveness of existing regulatory programs in avoiding,
400 minimizing, mitigating, or compensating for cumulative impacts
401 on water resources of the basin.

402 2. Upon completion of the study, the department shall
403 prepare and adopt a resource management plan for the Peace River
404 Basin to minimize existing and future adverse cumulative impacts
405 to water resources of the basin, including surface waters,
406 groundwaters, wetlands, fisheries, aquatic and estuarine
407 habitat, and water supplies. The plan shall identify regulatory
408 and nonregulatory actions to minimize existing and future
409 adverse cumulative impacts identified in the study and, where
410 appropriate, shall also recommend statutory changes to improve
411 regulatory programs to minimize cumulative impacts to water
412 resources of the basin.

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



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

419 5. The department may establish a technical advisory
 420 committee to assist the department in developing a plan of
 421 study, reviewing interim findings, and reviewing final
 422 recommendations. The technical advisory committee may include
 423 representatives from the following interests in the Peace River
 424 Basin: industrial, mining, agriculture, development,
 425 environmental, fishing, regional water supply and local
 426 government.

427
 428 This paragraph may not be construed to prohibit mitigation
 429 outside the drainage basin which offsets the adverse impacts
 430 within the drainage basin.

431 Section 3. Section 378.021, Florida Statutes, is amended
 432 to read:

433 378.021 Master reclamation plan.--

434 (1) The Department of Environmental Protection ~~Natural~~
 435 ~~Resources~~ shall amend the ~~adopt by rule, as expeditiously as~~
 436 ~~possible upon receipt of the report of the Land Use Advisory~~
 437 ~~Committee,~~ a master reclamation plan that provides ~~to provide~~
 438 guidelines for the reclamation of lands mined or disturbed by
 439 the severance of phosphate rock prior to July 1, 1975, which
 440 lands are not subject to mandatory reclamation under part II of
 441 chapter 211. In amending the ~~developing said~~ master reclamation
 442 plan, the Department of Environmental Protection ~~Natural~~
 443 ~~Resources~~ shall continue to conduct an onsite evaluation of all



444 lands mined or disturbed by the severance of phosphate rock
445 prior to July 1, 1975, which lands are not subject to mandatory
446 reclamation under part II of chapter 211, and shall consider the
447 report and plan prepared by the Land Use Advisory Committee
448 under s. 378.011 and submitted to the former Department of
449 Natural Resources for adoption by rule on or before July 1,
450 1979. The master reclamation plan, when amended ~~adopted~~ by the
451 Department of Environmental Protection, ~~Natural Resources~~ shall
452 be consistent with local government plans prepared pursuant to
453 the Local Government Comprehensive Planning and Land Development
454 Regulation Act.

455 (2) The amended master reclamation plan shall identify
456 which of the lands mined or disturbed by the severance of
457 phosphate rock prior to July 1, 1975, meet the following
458 criteria:

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

464 (b) The environmental or economic utility or aesthetic
465 value of the land would not naturally return within a reasonable
466 time, and reclamation would substantially promote the
467 environmental or economic utility or the aesthetic value of the
468 land; ~~and~~

469 (c) The reclamation of the land is in the public interest
470 because the reclamation, when combined with other reclamation



471 under the master plan, would provide a substantial regional
472 benefit; and

473 (d) The reclamation of the land is in the public interest
474 because the reclamation, when combined with other reclamation
475 under the master plan, will provide significant benefits to
476 surface water bodies supplying water for environmental and
477 public purposes in those areas of the state where phosphate
478 mining has been permitted.

479 (3) Lands evaluated by the department under subsection (1)
480 which meet the criteria set forth in subsection (2) shall be
481 identified with specificity in the master reclamation plan.
482 Lands evaluated by the department under subsection (1) which do
483 not meet the criteria set forth in subsection (2) shall also be
484 identified with specificity in the master reclamation plan as
485 lands which are acceptable in their present form.

486 (4) Upon adoption of the amendments to the master
487 reclamation plan as a rule, such plan shall provide the
488 guidelines for approval of reclamation programs for lands
489 covered in the plan, recognizing that reclamation of such lands
490 is not mandatory, but that any payment of costs expended for
491 reclamation paid under s. 378.031 shall be contingent upon
492 conformity with the guidelines set forth in the master
493 reclamation plan.

494 Section 4. Section 378.031, Florida Statutes, is amended
495 to read:

496 378.031 Reclamation or acquisition of nonmandatory lands;
497 legislative intent.--It is the intent of the Legislature to
498 provide an economic incentive to encourage the reclamation of



499 the maximum number of acres of eligible nonmandatory lands in
500 the most timely and efficient manner or the donation or purchase
501 of nonmandatory lands, especially those lands for which
502 reclamation activities will result in significant improvements
503 to surface water bodies of regional importance in those areas of
504 the state where phosphate mining has been permitted. The
505 Legislature recognizes that certain lands mined or disturbed
506 prior to July 1, 1975, have been naturally reclaimed.

507 Section 5. Section 378.035, Florida Statutes, is amended
508 to read:

509 378.035 Department responsibilities and duties with
510 respect to Nonmandatory Land Reclamation Trust Fund.--

511 (1) The department shall administer the Nonmandatory Land
512 Reclamation Trust Fund.

513 (2)(a) The department shall verify that reclamation
514 activities or portions thereof have been accomplished in
515 accordance with the reclamation contract and shall certify the
516 cost of such reclamation activities to the Comptroller for
517 reimbursement.

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

521 (c) Nothing in this act precludes a landowner from
522 performing the reclamation pursuant to the approved reclamation
523 program, provided the landowner complies with the provisions of
524 this act.

525 (3) If an applicant who has signed a reclamation contract
526 abandons the reclamation program prior to substantial completion



527 of the program, the department may spend the remaining balance
 528 of funds not expended under the contract to complete the
 529 program.

530 (a) The contract amount and any amounts spent by the
 531 department in excess of the remaining balance of the funds under
 532 the contract become a lien upon the property, enforceable
 533 pursuant to chapter 85. The moneys received as a result of a
 534 lien foreclosure or as repayment shall be deposited into the
 535 trust fund.

536 (b) If the land acquired pursuant to the lien foreclosure
 537 has recreational or wildlife value, the department may retain
 538 ownership as with other property acquired pursuant to s.
 539 378.036. If the department sells the property, the department
 540 shall deposit the proceeds of the sale into the trust fund.

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

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

547 (a) ~~These reserved moneys are to be used~~ To reclaim lands
 548 disturbed by the severance of phosphate rock on or after July 1,
 549 1975, in the event that a mining company ceases mining and the
 550 associated reclamation prior to all lands disturbed by the
 551 operation being reclaimed. Moneys expended by the department to
 552 accomplish reclamation pursuant to this subsection shall become
 553 a lien upon the property enforceable pursuant to chapter 85. The
 554 moneys received as a result of a lien foreclosure or as



555 repayment shall be deposited into the trust fund. In the event
556 the money received as a result of lien foreclosure or repayment
557 is less than the amount expended for reclamation, the department
558 shall use all means available to recover, for the use of the
559 fund, the difference from the affected parties. Paragraph (3)(b)
560 shall apply to lands acquired as a result of a lien foreclosure.

561 ~~(b) The department may also expend funds from the \$50~~
562 ~~million reserve fund~~ For the abatement of an imminent hazard as
563 provided by s. 403.4154(3) and for the purpose of closing an
564 abandoned phosphogypsum stack system and carrying out
565 postclosure care as provided by s. 403.4154(5). ~~Fees deposited~~
566 ~~in the Nonmandatory Land Reclamation Trust Fund pursuant to s.~~
567 ~~403.4154(4) may be used for the purposes authorized in this~~
568 ~~paragraph. However, such fees may only be used at a stack system~~
569 ~~if closure or imminent hazard abatement activities initially~~
570 ~~commence on or after July 1, 2002.~~

571 ~~(c)(6)(a) Up to one half of the interest income accruing~~
572 ~~to the funds reserved by subsection (5) shall be available to~~
573 ~~the department annually~~ For the purpose of funding basic
574 management or protection of reclaimed, restored, or preserved
575 phosphate lands:

576 1. Which have wildlife habitat value as determined by the
577 Bureau of Mine Reclamation;

578 2. Which have been transferred by the landowner to a
579 public agency or a private, nonprofit land conservation and
580 management entity in fee simple, or which have been made subject
581 to a conservation easement pursuant to s. 704.06; and



582 3. For which other management funding options are not
583 available.

584
585 These funds may, after the basic management or protection has
586 been assured for all such lands, be combined with other
587 available funds to provide a higher level of management for such
588 lands.

589 ~~(d)(b) Up to one-half of the interest income accruing to~~
590 ~~the funds reserved by subsection (5) shall be available to the~~
591 ~~department annually~~ For the sole purpose of funding the
592 department's implementation of:

593 1. The NPDES permitting program authorized by s. 403.0885,
594 as it applies to phosphate mining and beneficiation facilities,
595 phosphate fertilizer production facilities, and phosphate
596 loading and handling facilities;

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

599 3. The phosphogypsum management program pursuant to s.
600 403.4154 and department rule 62-673, Florida Administrative
601 Code.

602
603 ~~On or before August 1 of each fiscal year, the department shall~~
604 ~~prepare a report presenting the expenditures using the interest~~
605 ~~income allocated by this section made by the department during~~
606 ~~the immediately preceding fiscal year, which report shall be~~
607 ~~available to the public upon request.~~

608 ~~(6)(7)~~ Should the nonmandatory land reclamation program
609 encumber all the funds in the Nonmandatory Land Reclamation



610 Trust Fund except those reserved by subsection (5) prior to
611 funding all the reclamation applications for eligible parcels,
612 the funds reserved by subsection (5) shall be available to the
613 program to the extent required to complete the reclamation of
614 all eligible parcels for which the department has received
615 applications.

616 (7)~~(8)~~ The department may not accept any applications for
617 nonmandatory land reclamation programs after July 1, 2004
618 ~~November 1, 2008~~.

619 (8)~~(9)~~ The Bureau of Mine Reclamation shall review the
620 sufficiency of the Nonmandatory Land Reclamation Trust Fund to
621 support the stated objectives and report to the secretary
622 annually with recommendations as appropriate. ~~The report~~
623 ~~submittal for calendar year 2008 shall specifically address the~~
624 ~~effect of providing a future refund of fees paid pursuant to s.~~
625 ~~403.4154(4) following certification of stack closure pursuant to~~
626 ~~department rules, and the report shall be submitted to the~~
627 ~~Governor, the President of the Senate, and the Speaker of the~~
628 ~~House of Representatives on or before March 1, 2009.~~

629 (9) The department may, upon its determination, petition
630 the State Board of Administration for the issuance of bonds to
631 carry out its responsibilities pursuant to paragraph (5)(b).
632 The total amount of bonds issued pursuant to this subsection may
633 not exceed \$25 million. Revenues credited to the Nonmandatory
634 Land Reclamation Trust Fund shall be used to fund any issuance
635 or debt obligations.

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



638 378.036 Land acquisitions financed by Nonmandatory Land
639 Reclamation Trust Fund moneys.--

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

652 (b) The board of directors of the corporation shall be
653 composed of three members. One member shall be designated by the
654 Florida Phosphate Council, one member shall be designated
655 jointly by the Florida Wildlife Federation, Audubon Florida, and
656 Rails-to-Trails Conservancy, and one member shall be chosen by
657 the other two designees.

658 (c) The business of the corporation shall be conducted by
659 the board of directors or a chief executive officer as the board
660 sees fit in accordance with the provisions of its articles of
661 incorporation and applicable law. The activities of the
662 corporation shall be coordinated with all landowners who have
663 voluntarily agreed to participate in the process as well as any
664 local government where relevant lands are recorded.



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

669 (e) The corporation shall dissolve on January 1, 2009,
670 unless dissolved previously by action of its board of directors
671 or extended by the Legislature. Upon dissolution, any moneys
672 remaining in the accounts of the corporation that are
673 unobligated shall be returned to the funds from which they were
674 appropriated in proportion to the amount contributed. All
675 tangible assets of the corporation at dissolution that were
676 acquired using state funding shall become the property of the
677 Department of Environmental Protection.

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

680 378.101 Florida Institute of Phosphate Research.--

681 (5) The Florida Institute of Phosphate Research shall
682 conduct a bench and pilot scale study of the institute's
683 dewatering instantaneously with pulp recycle process for the
684 purpose of determining its technical and economic feasibility.
685 The study shall evaluate the availability, technical
686 feasibility, and cost of using various types of fiber,
687 including, but not limited to, paper and sewage sludge. The
688 study shall evaluate the technical feasibility and practicality
689 of various methods of using and disposing of the clay/fiber
690 product produced, including admixing the product with soil.

691 Section 8. For fiscal year 2003-2004, the sum of \$200,000
692 is appropriated to the Phosphate Research Trust Fund from the



693 proceeds of the phosphate severance tax prior to distribution of
694 funds as specified by s. 211.3103, Florida Statutes, to fund the
695 study required under s. 378.101(5), Florida Statutes.

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

698 378.212 Variances.--

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

703 (g) To accommodate reclamation that provides for water
704 supply development or water resource development, consistent
705 with the applicable regional water supply plan approved pursuant
706 to s. 373.0361, appropriate stormwater management, wildlife
707 habitat, or recreation, provided regional water resources are
708 not adversely affected.

709 Section 10. Section 403.0613, Florida Statutes, is created
710 to read:

711 403.0613 Environmental Good Samaritan Act.--

712 (1) Upon declaration by the Governor of an actual or
713 impending environmental emergency, any person or entity acting
714 under the direction of the Department of Environmental
715 Protection shall be immune from civil liability for any act or
716 omission not constituting gross negligence in the course of
717 rendering such assistance.

718 (2) Persons or entities under contract with the Department
719 of Environmental Protection who provide expeditious professional
720 assistance to prevent, take action regarding, or clean up a



721 declared environmental emergency shall also be immune from civil
722 liability.

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

726 Section 11. Section 403.162, Florida Statutes, is created
727 to read:

728 403.162 Civil remedy of department; abatement of imminent
729 danger; lien; notice; procedure.--In the event that an owner or
730 operator fails to abate a release or threatened release of any
731 hazardous substance, pollutant, or other contaminant, or abate
732 an imminent danger to the environment or to public health, and
733 the department expends in excess of \$1 million on such
734 abatement, the following remedy is provided to the department:

735 (1) All expenditures made by the department to abate such
736 release, threatened release, or imminent danger shall
737 constitute, in each instance, a debt of the responsible party or
738 parties to the department.

739 (2) The debt shall constitute a lien on all property of
740 the responsible party or parties, including real, personal,
741 tangible, and intangible property interests. The department may
742 file a notice of lien incorporating a description of the
743 property of the responsible party or parties subject to the
744 abatement action and an identification of the amount of costs
745 expended by the department in performing the abatement action in
746 the public records of the county where the abatement action
747 occurred. To the extent the department intends to create a lien
748 on other assets of the responsible party or parties, such notice



749 may be filed in the same manner and place that is required of
750 federal liens pursuant to s. 713.901. The department may amend
751 and supplement the notice of lien to include amounts comprising
752 the debt expended by the department subsequent to the initial
753 filing of the notice of lien. Upon filing of the notice, the
754 lien, in the amount expended by the department for abatement of
755 the release, threatened release, or other imminent danger, shall
756 attach to all of the revenues and real and personal property of
757 the responsible party or parties, regardless of whether the
758 responsible party or parties are insolvent or are rendered
759 insolvent thereby. A notice of lien filed pursuant to this
760 section that affects the property of a responsible party or
761 parties subject to the abatement action shall create a lien with
762 priority over all other claims or liens that are or have been
763 filed against the property. A notice of lien filed pursuant to
764 this section that affects any property of a responsible party or
765 parties other than the property subject to the abatement action
766 shall have priority from the day of the filing of the notice of
767 the lien over all other claims and liens filed against the
768 property but shall not affect any valid lien, right, or interest
769 in the property filed in accordance with established procedure
770 prior to the filing of a notice of lien pursuant to this
771 subsection.

772 Section 12. Subsections (2), (3), and (4) of section
773 403.4154, Florida Statutes, are amended, and subsections (6) and
774 (7) are added to said section, to read:

775 403.4154 Phosphogypsum management program.--

776 (2) REGULATORY PROGRAM.--



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

780 (b) The department shall adopt rules that prescribe
781 acceptable construction designs for new or expanded
782 phosphogypsum stack systems and that prescribe permitting
783 criteria for operation, closure criteria, long-term-care
784 requirements, and closure financial responsibility requirements
785 for phosphogypsum stack systems.

786 (c) In the event that an owner or operator of a
787 phosphogypsum stack or stack system fails to comply with
788 department rules requiring demonstration of closure financial
789 responsibility, no distribution may be made that would be
790 prohibited under s. 607.06401(3) until the noncompliance is
791 corrected. Whoever willfully, knowingly, or with reckless
792 indifference or gross carelessness violates this prohibition
793 commits a felony of the third degree, punishable as provided in
794 s. 775.082 by a fine of not more than \$50,000 or by imprisonment
795 for 5 years for each offense.

796 (3) ABATEMENT OF IMMINENT HAZARD.--

797 (a) The department may take action to abate or
798 substantially reduce any imminent hazard caused by the physical
799 condition, maintenance, operation, or closure of a phosphogypsum
800 stack system.

801 (b) An imminent hazard exists if the physical condition,
802 maintenance, operation, or closure of a phosphogypsum stack
803 system creates an immediate and substantial danger to human
804 health, safety, or welfare or to the environment. A



805 phosphogypsum stack system is presumed not to cause an imminent
806 hazard if the physical condition and operation of the system are
807 in compliance with all applicable department rules.

808 (c) The failure of an owner or operator of a phosphogypsum
809 stack system to comply with department rules requiring
810 demonstration of financial responsibility with respect to
811 closure may be considered by the department as evidence that a
812 phosphogypsum stack poses an imminent hazard for purposes of
813 initiating actions authorized by paragraph (d).

814 (d)(e) If the department determines that the failure of an
815 owner or operator to comply with department rules requiring
816 demonstration of financial responsibility or the physical
817 condition, maintenance, operation, or closure of a phosphogypsum
818 stack system poses an imminent hazard, the department shall
819 request access to the property on which such stack system is
820 located from the owner or operator of the stack system for the
821 purposes of taking action to abate or substantially reduce the
822 imminent hazard. If the department, after reasonable effort, is
823 unable to timely obtain the necessary access to abate or
824 substantially reduce the imminent hazard, the department may
825 institute action in its own name, using the procedures and
826 remedies of s. 403.121 or s. 403.131, to abate or substantially
827 reduce an imminent hazard. Whenever serious harm to human
828 health, safety, or welfare, to the environment, or to private or
829 public property may occur prior to completion of an
830 administrative hearing or other formal proceeding that might be
831 initiated to abate the risk of serious harm, the department may
832 obtain from the court, ex parte, an injunction without paying



833 filing and service fees prior to the filing and service of
834 process.

835 (e)~~(d)~~ To abate or substantially reduce an imminent
836 hazard, the department may take any appropriate action,
837 including, but not limited to, using employees of the department
838 or contracting with other state or federal agencies, with
839 private third-party contractors, or with the owner or operator
840 of the stack system, or financing, compensating, or funding a
841 receiver, trustee, or owner of the stack system, to perform all
842 or part of the work.

843 (f)~~(e)~~ The department shall recover from the owner or
844 operator of the phosphogypsum stack system to the use of the
845 Nonmandatory Land Reclamation Trust Fund all moneys expended
846 from the fund, including funds expended prior to the effective
847 date of this section, to abate an imminent hazard posed by the
848 phosphogypsum stack system plus a penalty equal to an amount
849 calculated at 30 percent of such funds expended. This penalty
850 shall be imposed annually, and prorated from the date of payment
851 from the fund until the expended funds and the penalty are
852 repaid. If the department prevails in any action to recover
853 funds pursuant to this subsection, it may recover reasonable
854 attorney's fees and costs incurred. Phosphogypsum may not be
855 deposited on a stack until all moneys expended from the fund in
856 connection with the stack have been repaid, unless the
857 department determines that such placement is necessary to abate
858 or avoid an imminent hazard or unless otherwise authorized by
859 the department.



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

874 (4) REGISTRATION FEES.--

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

882 2. The amount of the fee for each existing stack shall be
883 \$75,000 for each of the five 12-month periods following July 1,
884 2001.

885 3. The amount of the fee for any new stack for which the
886 owner or operator has not provided a performance bond, letter of
887 credit, trust fund agreement, or closure insurance to



888 demonstrate financial responsibility for closure and long-term
889 care shall be \$75,000 for each of the five 12-month periods
890 following the issuance by the department of a construction
891 permit for that stack.

892 ~~4. Within 30 days after a phosphogypsum stack has been~~
893 ~~certified as closed pursuant to rule 62-673.620(2) and (3),~~
894 ~~Florida Administrative Code, the department shall refund to the~~
895 ~~owner of the closed phosphogypsum stack an amount from the~~
896 ~~Nonmandatory Land Reclamation Trust Fund equal to the total~~
897 ~~amount of fee payments made by the owner or operator to the fund~~
898 ~~in connection with the closed phosphogypsum stack, except that~~
899 ~~any refund becoming payable prior to July 1, 2009, shall be paid~~
900 ~~to the owner on or after that date.~~

901 (b) On or before August 1 of each year, the department
902 shall provide written notice to each owner of an existing stack
903 of any fee payable for the 12-month period commencing on the
904 immediately preceding July 1. Each owner shall remit the fee to
905 the department on or before August 31 of each year.

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

907 (a) By October 1, 2003, the department shall initiate
908 rulemaking to require that phosphogypsum stack system operation
909 plans required by department rule be amended by adding an
910 interim stack system management (ISSM) plan that provides
911 written instructions for the operation of the system assuming
912 that no phosphoric acid would be produced at the facility for a
913 2-year period. The initial ISSM plan shall be completed as of
914 the first July 1 following the adoption of the rule required by
915 this section. The ISSM plan shall include:



916 1. A detailed description of process water management
917 procedures that will be implemented to ensure that the stack
918 system operates in accordance with all applicable department
919 permit conditions and rules. The procedures shall address the
920 actual process water levels present at the facility 30 days
921 prior to the completion of the plan and shall assume that the
922 facility will receive annual average rainfall during the 2-year
923 planning period.

924 2. A detailed description of the procedures to be followed
925 for the daily operation and routine maintenance of the stack
926 system, including required environmental sampling and analyses,
927 as well as for any maintenance or repairs recommended following
928 annual inspections of the system.

929 3. Identification of all machinery, equipment, and
930 materials necessary to implement the plan.

931 4. Identification of the sources of power or fuel
932 necessary to implement the plan.

933 5. Identification of the personnel necessary to implement
934 the plan.

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

938 (c) The requirements listed in paragraphs (a) and (b) are
939 applicable to all phosphogypsum stack systems except those which
940 have been closed, which are undergoing closure, or for which an
941 application for a closure permit has been submitted pursuant to
942 department rule.

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



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

947 1. A description of the physical configuration of the
948 phosphogypsum stack system anticipated at the time of closure at
949 the end of useful life of the system.

950 2. A site-specific water management plan describing the
951 procedures to be employed at the end of the useful life of the
952 system to manage the anticipated volume of process water in an
953 environmentally sound manner.

954 3. An estimate of the cost of management of the
955 anticipated volume of process water in accordance with the site-
956 specific water management plan.

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

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

962 (b) The department shall revise chapter 62-673, Florida
963 Administrative Code, to require the owner or operator of a
964 phosphogypsum stack management system to demonstrate financial
965 responsibility for the costs of terminal closure of the
966 phosphogypsum stack system in a manner that protects the public
967 health and safety.

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



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

- 973 a. Bond.
974 b. Letter of credit.
975 c. Cash deposit arrangement.
976 d. Closure insurance.
977 e. Financial tests.
978 f. Corporate guarantee.

979
980 For the purposes of this section, a "cash deposit arrangement"
981 refers to a trust fund, business or statutory trust, escrow
982 account, or similar cash deposit entity whereby a fiduciary
983 holds and invests funds deposited by the owner or operator,
984 which funds shall be expended only for the purpose of directly
985 implementing all or some portion of phosphogypsum stack system
986 closure requirements of that particular owner or operator.

987 3. A trustee, escrow agent, or other fiduciary of a cash
988 deposit arrangement authorized by this section shall have no
989 liability for any damage or loss of any kind arising out of or
990 caused by performance of duties imposed by the terms of the
991 applicable agreement except where such damage or loss is
992 directly caused by the gross negligence or criminal act of the
993 trustee, escrow agent, or other fiduciary. In performing its
994 duties pursuant to the applicable agreement, a trustee, escrow
995 agent, or other fiduciary shall be entitled to rely upon
996 information and direction received from the grantor or the
997 department without independent verification unless such
998 information and direction are manifestly in error:



999 4. To the extent that a cash deposit arrangement is used
 1000 to provide proof of financial responsibility for all or a
 1001 portion of closure costs, the trust, escrow, or cash arrangement
 1002 deposit entity shall be deemed to have assumed all liability for
 1003 such closure costs up to the amount of the cash deposit, less
 1004 any fees or costs of the trustee, escrow agent, or other
 1005 fiduciary.

1006 5. Any funds maintained in a cash deposit arrangement
 1007 authorized by this section shall not be subject to claims of
 1008 creditors of the owner or operator and shall otherwise be exempt
 1009 from setoff, execution, levy, garnishment, and similar writs and
 1010 proceedings.

1011 6. Any funds remaining in a trust, escrow account, or
 1012 other cash deposit arrangement after the purpose of such cash
 1013 deposit arrangement under this section has been accomplished
 1014 shall be returned to the grantor.

1015 Section 13. Subsection (2) of section 403.4155, Florida
 1016 Statutes, is amended to read:

1017 403.4155 Phosphogypsum management; rulemaking authority.--

1018 (2) The department shall revise chapter 62-673, Florida
 1019 Administrative Code, to require the owner or operator of a
 1020 phosphogypsum stack system to demonstrate financial
 1021 responsibility for the costs of terminal closure of the
 1022 phosphogypsum stack system in a manner that protects the
 1023 environment and the public health and safety. At a minimum, such
 1024 rules shall include or address the following requirements:



1025 (a) That the cost of closure and long-term care be re-
 1026 estimated by a professional engineer and adjusted for inflation
 1027 on an annual basis. At a minimum, such cost data shall include:
 1028 1. The cost of treatment and appropriate disposal of all
 1029 process wastewater, both ponded and pore, in the system.
 1030 2. All construction work necessary to properly close the
 1031 system in accordance with department rules.
 1032 3. All costs associated with long-term care of the closed
 1033 system, including maintenance and monitoring, in accordance with
 1034 department rules.
 1035 (b) That financial statements and financial data be
 1036 prepared according to generally accepted accounting principles
 1037 within the United States and submitted quarterly.
 1038 (c) That audited financial statements be provided annually
 1039 along with the statement of financial assurance.
 1040 (d) That any owner or operator in default on any of its
 1041 obligations report such default immediately.
 1042 (e) That an owner or operator shall have the option to
 1043 satisfy the financial tests with a corporate guarantee for an
 1044 amount that would ensure adequate coverage of closure and
 1045 postclosure costs.
 1046 (f) A requirement for a 5-year interim stack system
 1047 management plan that provides details on the operation of the
 1048 specific phosphogypsum stack system, including water management,
 1049 should a temporary deactivation of the system occur. ~~By January~~
 1050 ~~31, 2002, the department shall review chapter 62-673, Florida~~
 1051 ~~Administrative Code, to determine the adequacy of the financial~~
 1052 ~~responsibility provisions contained in the rules and shall take~~



1053 ~~any measures necessary to ensure that the rules provide sound~~
1054 ~~and effective provisions to minimize risk to the environment and~~
1055 ~~to public health and safety from the business failure of a~~
1056 ~~phosphogypsum stack system.~~

1057 Section 14. If any provision of this act or the
1058 application thereof to any person or circumstance is held
1059 invalid, the invalidity shall not affect other provisions or
1060 applications of the act which can be given effect without the
1061 invalid provision or application, and to this end the provisions
1062 of this act are declared severable.

1063 Section 15. Except as otherwise provided herein, this act
1064 shall take effect upon becoming a law.

1065