



HB 1365

2003

1 A bill to be entitled

2 An act relating to phosphogypsum management; amending s.  
3 403.4154, F.S.; providing a third-degree felony penalty  
4 for willfully, knowingly, or with reckless indifference or  
5 gross carelessness, misstating or misrepresenting the  
6 financial condition or closure costs of an entity engaged  
7 in managing, owning, or operating a phosphogypsum stack or  
8 stack system; providing a fine of not more than \$50,000  
9 and imprisonment for 5 years for each offense; prohibiting  
10 corporate officers, owners, and operators of a  
11 phosphogypsum stack or stack system from issuing dividends  
12 or making other distributions from retained earnings in  
13 the event of a failure of the owner or operator to meet  
14 financial responsibility tests or regulatory requirements  
15 for phosphogypsum stack operations; providing a third-  
16 degree felony penalty for violation; providing a fine of  
17 not more than \$50,000 and imprisonment for 5 years for  
18 each offense; providing grounds for appointment by the  
19 court of a receiver or custodian for the owner of a  
20 phosphogypsum stack or stack system; providing  
21 responsibility of the court-appointed receiver or  
22 custodian; authorizing the Department of Environmental  
23 Protection to impose a lien on the real, personal, and  
24 intangible property of the owner or operator of a  
25 phosphogypsum stack system in a specified amount as a  
26 result of actions by the department to abate or  
27 substantially reduce an imminent hazard or to close a  
28 phosphogypsum stack system and carry out postclosure care;  
29 providing severability; providing an effective date.

30



HB 1365

2003

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

32  
 33 Section 1. Section 403.4154, Florida Statutes, is amended  
 34 to read:

35 403.4154 Phosphogypsum management program.--

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

37 (a) "Department" means the Department of Environmental  
 38 Protection.

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

- 41 1. In existence in this state on May 12, 1993; or
- 42 2. Constructed in this state after May 12, 1993, and for
- 43 which the department has received a certification of completion
- 44 of construction submitted by the owner of the newly constructed
- 45 phosphogypsum stack.

46  
 47 The term "existing stack" does not include a phosphogypsum stack  
 48 that has been closed pursuant to a department permit or order.

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

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

56 (e) "Phosphogypsum stack system" means the phosphogypsum  
 57 stack, pile, or landfill, together with all pumps, piping,  
 58 ditches, drainage conveyances, water-control structures,  
 59 collection pools, cooling ponds, surge ponds, and any other  
 60 collection or conveyance system associated with the transport of



HB 1365

2003

61 phosphogypsum from the plant to the phosphogypsum stack, its  
62 management at the stack, and the process-wastewater return to  
63 the phosphoric acid production or other process. This definition  
64 specifically includes toe drain systems and ditches and other  
65 leachate collection systems but does not include conveyances  
66 within the confines of the fertilizer production plant or  
67 existing areas used in emergency circumstances caused by  
68 rainfall events of high volume or duration for the temporary  
69 storage of process wastewater to avoid discharges to surface  
70 waters of the state, which process wastewater must be removed  
71 from the temporary storage area as expeditiously as possible,  
72 but not to exceed 120 days after each emergency.

73 (f) "Process wastewater" means any water that, during  
74 manufacturing or processing, comes into direct contact with or  
75 results from the production or use of any raw material,  
76 intermediate product, finished product, byproduct, or waste  
77 product, along with any leachate or runoff from the  
78 phosphogypsum stack system. This term does not include  
79 contaminated nonprocess wastewater as that term is defined in 40  
80 C.F.R. part 418.11(c).

81 (2) REGULATORY PROGRAM.--

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

85 (b) The department shall adopt rules that prescribe  
86 acceptable construction designs for new or expanded  
87 phosphogypsum stack systems and that prescribe permitting  
88 criteria for operation, closure criteria, long-term-care  
89 requirements, and ~~closure~~ financial responsibility requirements  
90 for phosphogypsum stack systems.



HB 1365

2003

91 (c) Whoever willfully, knowingly, or with reckless  
92 indifference or gross carelessness misstates or misrepresents  
93 the financial condition or closure costs of an entity engaged in  
94 managing, owning or operating a phosphogypsum stack or stack  
95 system commits a felony of the third degree punishable as  
96 provided in s. 775.082 or s. 775.083 by a fine of not more than  
97 \$50,000 and by imprisonment for 5 years for each offense. Each  
98 day during any portion of which such violation occurs  
99 constitutes a separate offense.

100 (d) Corporate officers, owners, and operators of a  
101 phosphogypsum stack or stack system are prohibited from issuing  
102 dividends or making other distributions from retained earnings  
103 in the event of a failure of the owner or operator to meet the  
104 financial responsibility tests or regulatory requirements for  
105 phosphogypsum stack operations. Whoever willfully, knowingly,  
106 or with reckless indifference or gross carelessness, violates  
107 this prohibition commits a felony of the third degree punishable  
108 as provided in s. 775.082 or s. 775.083 by a fine of not more  
109 than \$50,000 and by imprisonment for 5 years for each offense.  
110 Each day during any portion of which such violation occurs  
111 constitutes a separate offense.

112 (e) It shall be grounds for appointment of a receiver or  
113 custodian for the owner or operator of a phosphogypsum stack or  
114 stack system by the circuit court in which such stack or stack  
115 system is located, if such owner or operator fails to meet the  
116 financial responsibility requirements imposed by rule or law and  
117 continues to remain out of compliance for 120 days. The primary  
118 responsibility and function of the court-appointed receiver or  
119 custodian shall be to bring the phosphogypsum stack or stack  
120 system into compliance with the rules of the department.



HB 1365

2003

121 (3) ABATEMENT OF IMMINENT HAZARD.--

122 (a) The department may take action to abate or  
 123 substantially reduce any imminent hazard caused by the physical  
 124 condition, maintenance, operation, or closure of a phosphogypsum  
 125 stack system.

126 (b) An imminent hazard exists if the physical condition,  
 127 maintenance, operation, or closure of a phosphogypsum stack  
 128 system creates an immediate and substantial danger to human  
 129 health, safety, or welfare or to the environment. A  
 130 phosphogypsum stack system is presumed not to cause an imminent  
 131 hazard if the physical condition and operation of the system are  
 132 in compliance with all applicable department rules.

133 (c) If the department determines that the physical  
 134 condition, maintenance, operation, or closure of a phosphogypsum  
 135 stack system poses an imminent hazard, the department shall  
 136 request access to the property on which such stack system is  
 137 located from the owner or operator of the stack system for the  
 138 purposes of taking action to abate or substantially reduce the  
 139 imminent hazard. If the department, after reasonable effort, is  
 140 unable to timely obtain the necessary access to abate or  
 141 substantially reduce the imminent hazard, the department may  
 142 institute action in its own name, using the procedures and  
 143 remedies of s. 403.121 or s. 403.131, to abate or substantially  
 144 reduce an imminent hazard. Whenever serious harm to human  
 145 health, safety, or welfare, to the environment, or to private or  
 146 public property may occur prior to completion of an  
 147 administrative hearing or other formal proceeding that might be  
 148 initiated to abate the risk of serious harm, the department may  
 149 obtain from the court, ex parte, an injunction without paying



HB 1365

2003

150 filing and service fees prior to the filing and service of  
 151 process.

152 (d) To abate or substantially reduce an imminent hazard,  
 153 the department may take any appropriate action, including, but  
 154 not limited to, using employees of the department or contracting  
 155 with other state or federal agencies, with private third-party  
 156 contractors, or with the owner or operator of the stack system,  
 157 or financing, compensating, or funding a receiver, trustee, or  
 158 owner of the stack system, to perform all or part of the work.

159 (e) The department shall recover from the owner or  
 160 operator of the phosphogypsum stack system to the use of the  
 161 Nonmandatory Land Reclamation Trust Fund all moneys expended  
 162 from the fund, including funds expended prior to the effective  
 163 date of this section, to abate an imminent hazard posed by the  
 164 phosphogypsum stack system plus a penalty equal to an amount  
 165 calculated at 30 percent of such funds expended. This penalty  
 166 shall be imposed annually, and prorated from the date of payment  
 167 from the fund until the expended funds and the penalty are  
 168 repaid. If the department prevails in any action to recover  
 169 funds pursuant to this subsection, it may recover reasonable  
 170 attorney's fees and costs incurred. Phosphogypsum may not be  
 171 deposited on a stack until all moneys expended from the fund in  
 172 connection with the stack have been repaid, unless the  
 173 department determines that such placement is necessary to abate  
 174 or avoid an imminent hazard or unless otherwise authorized by  
 175 the department.

176 (f) The department may impose a lien on the real,  
 177 personal, and intangible property of the owner or operator of a  
 178 ~~on which the phosphogypsum stack system that poses an imminent~~  
 179 ~~hazard is located and on the real property underlying and other~~



HB 1365

2003

180 ~~assets located at associated phosphate fertilizer production~~  
181 ~~facilities~~ equal in amount to the moneys expended from the  
182 Nonmandatory Land Reclamation Trust Fund pursuant to paragraph  
183 (d), including attorney's fees, ~~and~~ court costs, and penalties.  
184 The owner of any property on which such a lien is imposed is  
185 entitled to a release of the lien upon payment to the department  
186 of the lien amount. The lien imposed by this section shall ~~does~~  
187 ~~not~~ take priority over any other prior ~~perfected~~ lien on the  
188 real property, personal property, or other assets referenced in  
189 this paragraph, including, but not limited to, the associated  
190 phosphate rock mine and reserves.

191 (4) REGISTRATION FEES.--

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

199 2. The amount of the fee for each existing stack shall be  
200 \$75,000 for each of the five 12-month periods following July 1,  
201 2001.

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



HB 1365

2003

209 4. Within 30 days after a phosphogypsum stack has been  
210 certified as closed pursuant to rule 62-673.620(2) and (3),  
211 Florida Administrative Code, the department shall refund to the  
212 owner of the closed phosphogypsum stack an amount from the  
213 Nonmandatory Land Reclamation Trust Fund equal to the total  
214 amount of fee payments made by the owner or operator to the fund  
215 in connection with the closed phosphogypsum stack, except that  
216 any refund becoming payable prior to July 1, 2009, shall be paid  
217 to the owner on or after that date.

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

223 (5) CLOSURE OF ABANDONED SYSTEMS.--

224 (a) The department may expend money from the Nonmandatory  
225 Land Reclamation Trust Fund to take all steps necessary to close  
226 a phosphogypsum stack system and to carry out postclosure care  
227 in accordance with department rules in effect as of the date of  
228 commencement of closure activities, subject to the conditions  
229 set forth in this subsection. To accomplish such closure and  
230 postclosure care, the department may take any appropriate  
231 action, including, but not limited to, using employees of the  
232 department or by contracting with other state or federal  
233 agencies, with private third-party contractors, or with the  
234 owner or operator of the stack system, to perform all or part of  
235 the work.

236 (b) The department may close a phosphogypsum stack system  
237 through agreement with the owner or by court order. In  
238 determining whether closure is appropriate, the court shall





HB 1365

2003

239 consider whether closing the stack will protect human health,  
 240 safety, or welfare or the environment; the useful life of the  
 241 stack; the effect of delaying closure on the stability of the  
 242 fund; the likelihood that the stack will be operated again; and  
 243 any other relevant factors. If the court finds that closure is  
 244 appropriate, the court may appoint a receiver to oversee the  
 245 closure or shall authorize department employees, agents, and  
 246 contractors to enter all land owned by the owner of the  
 247 phosphogypsum stack system for the performance of closure and  
 248 postclosure activities.

249 (c) The department may impose a lien on the real,  
 250 personal, and intangible property of the owner or operator of  
 251 the ~~on which a closed phosphogypsum stack system is located and~~  
 252 ~~on the real property underlying and other assets located at its~~  
 253 ~~formerly associated phosphate fertilizer production facilities~~  
 254 equal in amount to the moneys expended from the Nonmandatory  
 255 Land Reclamation Trust Fund pursuant to this subsection for  
 256 closure and postclosure care, attorney's fees, court costs, and  
 257 penalties. The owner of any property on which such a lien is  
 258 imposed is entitled to a release of the lien upon payment to the  
 259 department of the lien amount and execution of an agreement to  
 260 carry out postclosure care in accordance with applicable  
 261 department rules. The lien imposed by this section shall ~~does~~  
 262 ~~not~~ take priority over any other prior ~~perfected~~ lien on the  
 263 real property, personal property, or other assets referenced in  
 264 this paragraph, including, but not limited to, the associated  
 265 phosphate rock mine and reserves.

266 Section 2. If any provision of this act or the application  
 267 thereof to any person or circumstance is held invalid, the  
 268 invalidity shall not affect other provisions or applications of



HB 1365

2003

269 the act which can be given effect without the invalid provision  
270 or application, and to this end the provisions of this act are  
271 declared severable.

272 Section 3. This act shall take effect upon becoming a law.