

By the Committee on Communication and Public Utilities; and
Senator Peaden

319-2370-03

1 A bill to be entitled
2 An act relating to environmental protection;
3 creating s. 403.7047, F.S.; exempting
4 beneficial use of fossil fuel combustion
5 products from specified regulations; requiring
6 certain handling, processing, and storage
7 criteria; defining the terms "fossil fuel
8 combustion products," "beneficial use," and
9 "fossil fuel-fired electric and steam
10 generating facility"; authorizing rulemaking;
11 amending s. 403.087, F.S.; adding hazardous
12 waste, corrective action permits to a list of
13 approvals; amending s. 403.703, F.S.; expanding
14 the materials defined as construction and
15 demolition debris; providing additional
16 definitions; amending s. 403.722, F.S.; adding
17 a "corrective action permit" to a list of
18 approvals; providing an effective date.

19
20 WHEREAS, fossil fuel combustion products are currently
21 used in a variety of beneficial applications, and

22 WHEREAS, beneficial use of fossil fuel combustion
23 products reduces the volume of materials placed in disposal
24 facilities, and

25 WHEREAS, beneficial use of fossil fuel combustion
26 products allows certain industries and end-users to avoid the
27 mining and processing of virgin materials through substitution
28 of fossil fuel combustion products, which preserves natural
29 resources and minimizes environmental emissions, and

30 WHEREAS, beneficial use of fossil fuel combustion
31 products ultimately lowers overall energy consumption required

1 for processing and disposing of fossil fuel combustion
2 products, and

3 WHEREAS, beneficial use of fossil fuel combustion
4 products promotes economic activity while replacing limited
5 natural resources, and

6 WHEREAS, beneficial use of fossil fuel combustion
7 products is consistent with and furthers the purpose of
8 Florida's Resource Recovery and Management Act by encouraging
9 the development of waste reduction and recycling as a means of
10 managing solid waste and conserving resources, and

11 WHEREAS, the Legislature has determined that it is in
12 the state's best interest to conserve natural resources,
13 reduce overall energy consumption, reduce or eliminate the
14 need to dispose of fossil fuel combustion products in disposal
15 facilities, and facilitate the development of readily
16 available markets for fossil fuel combustion products, and

17 WHEREAS, the Legislature is taking this action after
18 balancing all the competing needs of the state, NOW,
19 THEREFORE,

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 403.7047, Florida Statutes, is
24 created to read:

25 403.7047 Regulation of fossil fuel combustion
26 products.--

27 (1) The beneficial use of fossil fuel combustion
28 products as provided in this section is exempt from regulation
29 pursuant to part IV of this chapter and rules adopted
30 thereunder. Nothing in this section shall limit the
31 department's ability to take appropriate action where a

1 beneficial use can be demonstrated to be causing violations of
2 applicable air or water quality standards or criteria in
3 department rules, or where such beneficial use poses a
4 significant risk to public health. This section shall not be
5 construed to limit any other requirements that are applicable
6 to the beneficial use of fossil fuel combustion products that
7 are established under chapters 376 or this chapter, or under
8 local or federal laws, including, without limitation,
9 requirements governing air pollution control permits, national
10 pollutant discharge elimination system permits, and water
11 quality certifications pursuant to Section 401 of the Clean
12 Water Act.

13 (2) The handling, processing, and storage of fossil
14 fuel combustion products destined for beneficial use shall be
15 in accordance with applicable department rules, and shall be
16 conducted in a manner that does not cause violations of
17 applicable air or water quality standards or criteria in
18 department rules, or pose a significant risk to human health.

19 (3) As used in this section:

20 (a) "Fossil fuel combustion products" means fly ash,
21 bottom ash, slag, flue gas desulfurization system products,
22 gasified products, fluidized bed combustion system products,
23 and other similar combustion products from the operation of a
24 fossil fuel-fired electric or steam generation facility, from
25 a clean coal or other innovative technology process at a
26 fossil fuel-fired electric or steam generation facility, or
27 any combination thereof.

28 (b) "Fossil fuel-fired electric or steam generation
29 facility" includes any electric or steam generation facility
30 that is fueled with coal, alone or in combination with
31 petroleum coke, oil, natural gas, other fossil fuels,

1 renewable energy materials, or refuse-derived fuel where the
2 refuse-derived fuel does not exceed 10 percent of the total
3 annual fuel input of a unit located at a fossil fuel-fired
4 electric or steam generation facility.

5 (c) "Beneficial use" means the use of fossil fuel
6 combustion products or materials that incorporate fossil fuel
7 combustion products as substitutes for raw materials or as
8 necessary ingredients or additives in other products according
9 to accepted industry practices. Beneficial uses include the
10 following, except that subparagraphs 1. through 7. shall apply
11 only to fossil fuel combustion products from fossil fuel-fired
12 electric or steam generation facilities that are fueled
13 primarily with coal:

14 1. Uses involving encapsulation, including pavement
15 aggregate, asphalt, concrete or cement products, flowable
16 fill, and roller compacted concrete;

17 2. Uses as a substitute for aggregate in products,
18 including roofing materials or blasting grit;

19 3. Uses in wallboard products, plastics, paint, and
20 insulation products;

21 4. Uses in metallurgical applications;

22 5. Use as filter cloth precoat for sludge dewatering;

23 6. Use for extraction or recovery of materials and
24 compounds contained within fossil fuel combustion products;

25 7. Use as initial or intermediate cover material for
26 lined Class I, II, or III landfills, provided that it meets
27 applicable department rules for landfill cover; and

28 8. Any other use authorized by the department in
29 accordance with subsection (4).

30 (4)(a) By January 1, 2004, the department shall
31 initiate rulemaking to provide criteria for the purpose of

1 approving beneficial uses of fossil fuel combustion products
2 not already established under subsection (3). Such beneficial
3 uses may include, but are not limited to, the use of fossil
4 fuel combustion products for structural fill, pipe bedding
5 aggregate, paving subbase, waste stabilization, agronomic
6 applications, land reclamation, or other application to land.
7 Nothing in this section shall be construed to limit the
8 department's authority to approve the beneficial use of
9 materials other than fossil fuel combustion products as
10 defined in this section pursuant to other provisions of this
11 chapter.

12 (b) Such rules shall also address:

13 1. Creation of a demonstration and approval process
14 for the beneficial use of fossil fuel combustion products as
15 set forth in this subsection on a site-specific or state-wide
16 basis where reasonable assurance is provided that applicable
17 department air or water quality standards or criteria in
18 department rules will not be violated and the beneficial use
19 will not pose a significant risk to human health. This process
20 shall authorize the beneficial use of fossil fuel combustion
21 products as replacements for raw materials or products where
22 it can be demonstrated that the potential impact on public
23 health and the environment will be essentially equivalent to
24 that of those replaced raw materials or products;

25 2. The on-site and off-site management of fossil fuel
26 combustion products destined for beneficial use. For off-site
27 management, the department shall develop appropriate best
28 management practices that are designed to allow flexibility in
29 the management of these products, and that take into account
30 the relative environmental impact posed by the management of
31 raw materials or products that are similar to the fossil fuel

1 combustion products being managed so as not to impede the
2 purposes of this section to promote the beneficial use of
3 fossil fuel combustion products. Fossil fuel combustion
4 products that are destined for beneficial use and that are
5 managed in accordance with department rules shall not be
6 regulated as solid waste;

7 3. Public participation in accordance with applicable
8 provisions of ch. 120;

9 4. Appropriate beneficial uses of fossil fuel
10 combustion products from fossil fuel-fired electric or steam
11 generating facilities that burn primarily petroleum coke in
12 combination with coal, which may include some or all of those
13 uses specified in subparagraphs (3)(c)1. through 7.

14 Section 2. Paragraph (a) of subsection (6) of section
15 403.087, Florida Statutes, is amended to read:

16 403.087 Permits; general issuance; denial; revocation;
17 prohibition; penalty.--

18 (6)(a) The department shall require a processing fee
19 in an amount sufficient, to the greatest extent possible, to
20 cover the costs of reviewing and acting upon any application
21 for a permit or request for site-specific alternative criteria
22 or for an exemption from water quality criteria and to cover
23 the costs of surveillance and other field services and related
24 support activities associated with any permit or plan approval
25 issued pursuant to this chapter. However, when an application
26 is received without the required fee, the department shall
27 acknowledge receipt of the application and shall immediately
28 return the unprocessed application to the applicant and shall
29 take no further action until the application is received with
30 the appropriate fee. The department shall adopt a schedule of
31 fees by rule, subject to the following limitations:

- 1 1. The fee for any of the following may not exceed
2 \$32,500:
- 3 a. Hazardous waste, construction permit.
4 b. Hazardous waste, operation permit.
5 c. Hazardous waste, postclosure permit, or clean
6 closure plan approval.
7 d. Hazardous waste, corrective action permit.
- 8 2. The permit fee for a Class I injection well
9 construction permit may not exceed \$12,500.
- 10 3. The permit fee for any of the following permits may
11 not exceed \$10,000:
- 12 a. Solid waste, construction permit.
13 b. Solid waste, operation permit.
14 c. Class I injection well, operation permit.
- 15 4. The permit fee for any of the following permits may
16 not exceed \$7,500:
- 17 a. Air pollution, construction permit.
18 b. Solid waste, closure permit.
19 c. Drinking water, construction or operation permit.
20 d. Domestic waste residuals, construction or operation
21 permit.
22 e. Industrial waste, operation permit.
23 f. Industrial waste, construction permit.
- 24 5. The permit fee for any of the following permits may
25 not exceed \$5,000:
- 26 a. Domestic waste, operation permit.
27 b. Domestic waste, construction permit.
- 28 6. The permit fee for any of the following permits may
29 not exceed \$4,000:
- 30 a. Wetlands resource management--(dredge and fill),
31 standard form permit.

- 1 b. Hazardous waste, research and development permit.
- 2 c. Air pollution, operation permit, for sources not
- 3 subject to s. 403.0872.
- 4 d. Class III injection well, construction, operation,
- 5 or abandonment permits.
- 6 7. The permit fee for Class V injection wells,
- 7 construction, operation, and abandonment permits may not
- 8 exceed \$750.
- 9 8. The permit fee for any of the following permits may
- 10 not exceed \$500:
- 11 a. Domestic waste, collection system permits.
- 12 b. Wetlands resource management--(dredge and fill and
- 13 mangrove alterations), short permit form.
- 14 c. Drinking water, distribution system permit.
- 15 9. The permit fee for stormwater operation permits may
- 16 not exceed \$100.
- 17 10. The general permit fees for permits that require
- 18 certification by a registered professional engineer or
- 19 professional geologist may not exceed \$500. The general
- 20 permit fee for other permit types may not exceed \$100.
- 21 11. The fee for a permit issued pursuant to s. 403.816
- 22 is \$5,000, and the fee for any modification of such permit
- 23 requested by the applicant is \$1,000.
- 24 12. The regulatory program and surveillance fees for
- 25 facilities permitted pursuant to s. 403.088 or s. 403.0885, or
- 26 for facilities permitted pursuant to s. 402 of the Clean Water
- 27 Act, as amended, 33 U.S.C. ss. 1251 et seq., and for which the
- 28 department has been granted administrative authority, shall be
- 29 limited as follows:
- 30 a. The fees for domestic wastewater facilities shall
- 31 not exceed \$7,500 annually. The department shall establish a

1 sliding scale of fees based on the permitted capacity and
2 shall ensure smaller domestic waste dischargers do not bear an
3 inordinate share of costs of the program.

4 b. The annual fees for industrial waste facilities
5 shall not exceed \$11,500. The department shall establish a
6 sliding scale of fees based upon the volume, concentration, or
7 nature of the industrial waste discharge and shall ensure
8 smaller industrial waste dischargers do not bear an inordinate
9 share of costs of the program.

10 c. The department may establish a fee, not to exceed
11 the amounts in subparagraphs 4. and 5., to cover additional
12 costs of review required for permit modification or
13 construction engineering plans.

14 Section 3. Subsection (1) of section 403.722, Florida
15 Statutes, is amended to read:

16 403.722 Permits; hazardous waste disposal, storage,
17 and treatment facilities.--

18 (1) Each person who intends to construct, modify,
19 operate, or close a hazardous waste disposal, storage, or
20 treatment facility must ~~shall~~ obtain a construction permit,
21 operation permit, postclosure permit, ~~or~~ clean closure plan
22 approval, or corrective action permit from the department
23 prior to constructing, modifying, operating, or closing the
24 facility. By rule, the department may provide for the
25 issuance of a single permit instead of any two or more
26 hazardous waste facility permits.

27 Section 4. Subsection (17) of section 403.703, Florida
28 Statutes, is amended, and subsections (45), (46), and (47) are
29 added to that section, to read:

30 403.703 Definitions.--As used in this act, unless the
31 context clearly indicates otherwise, the term:

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

17 (a) Clean cardboard, paper, plastic, wood, and metal
18 scraps from a construction project;

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

28 (c) Nonhazardous fiber-reinforced cement scrap waste
29 from facilities manufacturing fiber-reinforced cement products
30 for the construction industry, if the waste is separated from
31 other solid waste where generated and the generator of such

1 waste implements reasonable practices of the generating
2 industry to minimize commingling of the fiber-reinforced
3 cement scrap waste with other solid waste; and

4 (d)~~(c)~~ De minimis amounts of other nonhazardous wastes
5 that are generated at construction or destruction projects,
6 provided such amounts are consistent with best management
7 practices of the industry.

8 (45) "Biomass" means a power source that is comprised
9 of, but not limited to, combustible residues or gasses from
10 forest products manufacturing, agricultural and orchard crops,
11 waste products from livestock and poultry operations and food
12 processing, urban wood waste, municipal solid waste, municipal
13 liquid waste treatment operations, and landfill.

14 (46) "Green energy" means renewable energy.

15 (47) "Renewable energy" means electricity generated
16 from any method or process that uses one or more of the
17 following sources of energy: biomass, municipal solid waste,
18 geothermal energy, solar energy, wind energy, wood waste,
19 ocean thermal gradient power, hydroelectric power, landfill
20 gas, and agricultural products and by-products.

21 Section 5. This act shall take effect July 1, 2003.
22
23
24
25
26
27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 2338
4 The Committee Substitute for SB 2338:
5 -changes allowed beneficial uses of fossil fuel combustion
6 products;
7 -requires the Department of Environmental Protection to adopt
8 rules for approval of additional allowable uses of the
9 products;
10 -authorizes additional rules;
11 -provides that nothing in the section limits DEP's ability to
12 take appropriate action where a beneficial use is causing
13 violations of air or water quality standards;
14 -requires that handling, processing, and storage of fossil
15 fuel combustion products be in accordance with DEP rules and
16 not cause a violation of air or water quality standards, or
17 pose a significant risk to human health;
18 -creates a definition of fossil fuel-fired electric or steam
19 generation facility;
20 -allows DEP to issue a hazardous waste corrective action
21 permit;
22 -provides that nonhazardous fiber reinforced cement scrap is
23 construction and demolition debris; and
24 -defines the terms biomass, green energy, and renewable
25 energy.
26
27
28
29
30
31