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1 A bill to be entitled

2 An act relating to the environment; 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



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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



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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



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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 for construction of the act in
 112 pari materia with laws enacted during the Regular Session
 113 of the Legislature; providing an effective date.

114

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

116

117 Section 1. Section 211.3103, Florida Statutes, is amended
 118 to read:

119 211.3103 Levy of tax on severance of phosphate rock; rate,
 120 basis, and distribution of tax.--



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

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

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

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

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

149 (d) The remaining revenue collected from the tax during
150 the fiscal year, after the required payment under paragraphs (a)



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151 and (b), shall be paid into the State Treasury as follows:

152 1. To the credit of the Nonmandatory Land Reclamation
 153 Trust Fund, 51 percent.

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

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

163 4. To the credit of the Minerals Trust Fund, 10 percent or
 164 \$3.5 million, whichever is greater.

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

167 1. Planning, preparing, and financing of infrastructure
 168 projects for job creation and capital investment, especially
 169 those infrastructure projects related to industrial and
 170 commercial sites. Infrastructure investments may include the
 171 following public or public-private partnership facilities:

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

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



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

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

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

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

194 ~~1. To the credit of the General Revenue Fund of the state,~~
 195 ~~60 percent. However, from this amount the amounts of \$7.4~~
 196 ~~million, \$8.2 million, and \$8.1 million, respectively, shall be~~
 197 ~~transferred to the Nonmandatory Land Reclamation Trust Fund on~~
 198 ~~January 1, 1993, January 1, 1994, and January 1, 1995.~~

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

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

206 ~~4. For payment to counties in proportion to the number of~~
 207 ~~tons of phosphate rock produced from a phosphate rock matrix~~
 208 ~~located within such political boundary, 10 percent. The~~
 209 ~~department shall distribute this portion of the proceeds~~
 210 ~~annually based on production information reported by producers~~



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211 ~~on the annual returns for the taxable year. Any such proceeds~~
 212 ~~received by a county shall be used only for phosphate-related~~
 213 ~~expenses.~~

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

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

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

223 ~~1. To the credit of the General Revenue Fund of the state,~~
 224 ~~58 percent.~~

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

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

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

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



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

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

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

250 ~~1. To the credit of the General Revenue Fund of the state,~~
 251 ~~55.15 percent.~~

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

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

263 ~~4. To the credit of the Minerals Trust Fund, 14.35~~
 264 ~~percent.~~

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

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



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

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

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

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

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

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

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



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301 (d) If the producer price index for phosphate rock primary
 302 products is substantially revised, the department shall make
 303 appropriate adjustment in the method used to compute the base
 304 rate adjustment under this subsection which will produce results
 305 reasonably consistent with the result which would have been
 306 obtained if the producer price index for phosphate rock primary
 307 products had not been revised. However, the base rate shall not
 308 be less than \$1.56 per ton severed.

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

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

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

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

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

326 373.414 Additional criteria for activities in surface
 327 waters and wetlands.--

328 (6)(a) The Legislature recognizes that some mining
 329 activities that may occur in waters of the state must leave a
 330 deep pit as part of the reclamation. Such deep pits may not meet



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331 the established water quality standard for dissolved oxygen
332 below the surficial layers. Where such mining activities
333 otherwise meet the permitting criteria contained in this
334 section, such activities may be eligible for a variance from the
335 established water quality standard for dissolved oxygen within
336 the lower layers of the reclaimed pit.

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

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

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

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



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361 possible shall be required. However, mitigation banking may be
362 an acceptable form of mitigation, whether on or off site, as
363 judged on a case-by-case basis.

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

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

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

374 2. Projects which are existing or activities regulated
375 under this part which are under construction or projects for
376 which permits or determinations pursuant to s. 373.421 or s.
377 403.914 have been sought.

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

386 (b) If an applicant proposes mitigation within the same
387 drainage basin as the adverse impacts to be mitigated, and if
388 the mitigation offsets these adverse impacts, the governing
389 board and department shall consider the regulated activity to
390 meet the cumulative impact requirements of paragraph (a).



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391 However:—

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

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

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

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



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

429

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

433 Section 3. Section 378.021, Florida Statutes, is amended
 434 to read:

435 378.021 Master reclamation plan.--

436 (1) The Department of Environmental Protection ~~Natural~~
 437 ~~Resources~~ shall amend the ~~adopt by rule, as expeditiously as~~
 438 ~~possible upon receipt of the report of the Land Use Advisory~~
 439 ~~Committee,~~ a master reclamation plan that provides ~~to provide~~
 440 guidelines for the reclamation of lands mined or disturbed by
 441 the severance of phosphate rock prior to July 1, 1975, which
 442 lands are not subject to mandatory reclamation under part II of
 443 chapter 211. In amending the ~~developing said~~ master reclamation
 444 plan, the Department of Environmental Protection ~~Natural~~
 445 ~~Resources~~ shall continue to conduct an onsite evaluation of all
 446 lands mined or disturbed by the severance of phosphate rock
 447 prior to July 1, 1975, which lands are not subject to mandatory
 448 reclamation under part II of chapter 211, and shall consider the
 449 report and plan prepared by the Land Use Advisory Committee
 450 under s. 378.011 and submitted to the former Department of



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451 Natural Resources for adoption by rule on or before July 1,
452 1979. The master reclamation plan, when amended ~~adopted~~ by the
453 Department of Environmental Protection, ~~Natural Resources~~ shall
454 be consistent with local government plans prepared pursuant to
455 the Local Government Comprehensive Planning and Land Development
456 Regulation Act.

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

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

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

471 (c) The reclamation of the land is in the public interest
472 because the reclamation, when combined with other reclamation
473 under the master plan, would provide a substantial regional
474 benefit; and

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



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

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

496 Section 4. Section 378.031, Florida Statutes, is amended
497 to read:

498 378.031 Reclamation or acquisition of nonmandatory lands;
499 legislative intent.--It is the intent of the Legislature to
500 provide an economic incentive to encourage the reclamation of
501 the maximum number of acres of eligible nonmandatory lands in
502 the most timely and efficient manner or the donation or purchase
503 of nonmandatory lands, especially those lands for which
504 reclamation activities will result in significant improvements
505 to surface water bodies of regional importance in those areas of
506 the state where phosphate mining has been permitted. The
507 Legislature recognizes that certain lands mined or disturbed
508 prior to July 1, 1975, have been naturally reclaimed.

509 Section 5. Section 378.035, Florida Statutes, is amended
510 to read:



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511 378.035 Department responsibilities and duties with
512 respect to Nonmandatory Land Reclamation Trust Fund.--

513 (1) The department shall administer the Nonmandatory Land
514 Reclamation Trust Fund.

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

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

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

527 (3) If an applicant who has signed a reclamation contract
528 abandons the reclamation program prior to substantial completion
529 of the program, the department may spend the remaining balance
530 of funds not expended under the contract to complete the
531 program.

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

538 (b) If the land acquired pursuant to the lien foreclosure
539 has recreational or wildlife value, the department may retain
540 ownership as with other property acquired pursuant to s.



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541 378.036. If the department sells the property, the department
 542 shall deposit the proceeds of the sale into the trust fund.

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

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

549 (a) ~~These reserved moneys are to be used~~ To reclaim lands
 550 disturbed by the severance of phosphate rock on or after July 1,
 551 1975, in the event that a mining company ceases mining and the
 552 associated reclamation prior to all lands disturbed by the
 553 operation being reclaimed. Moneys expended by the department to
 554 accomplish reclamation pursuant to this subsection shall become
 555 a lien upon the property enforceable pursuant to chapter 85. The
 556 moneys received as a result of a lien foreclosure or as
 557 repayment shall be deposited into the trust fund. In the event
 558 the money received as a result of lien foreclosure or repayment
 559 is less than the amount expended for reclamation, the department
 560 shall use all means available to recover, for the use of the
 561 fund, the difference from the affected parties. Paragraph (3)(b)
 562 shall apply to lands acquired as a result of a lien foreclosure.

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



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571 ~~if closure or imminent hazard abatement activities initially~~
572 ~~commence on or after July 1, 2002.~~

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

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

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

584 3. For which other management funding options are not
585 available.

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

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

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

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



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601 3. The phosphogypsum management program pursuant to s.
602 403.4154 and department rule 62-673, Florida Administrative
603 Code.

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

609 (6)~~(7)~~ Should the nonmandatory land reclamation program
610 encumber all the funds in the Nonmandatory Land Reclamation
611 Trust Fund except those reserved by subsection (5) prior to
612 funding all the reclamation applications for eligible parcels,
613 the funds reserved by subsection (5) shall be available to the
614 program to the extent required to complete the reclamation of
615 all eligible parcels for which the department has received
616 applications.

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

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

630 (9) The department may, upon its determination, petition



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

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

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

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

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

659 (c) The business of the corporation shall be conducted by
660 the board of directors or a chief executive officer as the board



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661 sees fit in accordance with the provisions of its articles of
662 incorporation and applicable law. The activities of the
663 corporation shall be coordinated with all landowners who have
664 voluntarily agreed to participate in the process as well as any
665 local government where relevant lands are recorded.

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

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

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

681 378.101 Florida Institute of Phosphate Research.--

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



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691 product produced, including admixing the product with soil.

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

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

699 378.212 Variances.--

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

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

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

712 403.0613 Environmental Good Samaritan Act.--

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

719 (2) Persons or entities under contract with the Department
720 of Environmental Protection who provide expeditious professional



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721 assistance to prevent, take action regarding, or clean up a
722 declared environmental emergency shall also be immune from civil
723 liability.

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

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

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

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

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



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

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

776 403.4154 Phosphogypsum management program.--

777 (2) REGULATORY PROGRAM.--

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



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

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

797 (3) ABATEMENT OF IMMINENT HAZARD.--

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

802 (b) An imminent hazard exists if the physical condition,
803 maintenance, operation, or closure of a phosphogypsum stack
804 system creates an immediate and substantial danger to human
805 health, safety, or welfare or to the environment. A
806 phosphogypsum stack system is presumed not to cause an imminent
807 hazard if the physical condition and operation of the system are
808 in compliance with all applicable department rules.

809 (c) The failure of an owner or operator of a phosphogypsum
810 stack system to comply with department rules requiring



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811 demonstration of financial responsibility with respect to
812 closure may be considered by the department as evidence that a
813 phosphogypsum stack poses an imminent hazard for purposes of
814 initiating actions authorized by paragraph (d).

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

836 (e)(d) To abate or substantially reduce an imminent
837 hazard, the department may take any appropriate action,
838 including, but not limited to, using employees of the department
839 or contracting with other state or federal agencies, with
840 private third-party contractors, or with the owner or operator



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841 of the stack system, or financing, compensating, or funding a
842 receiver, trustee, or owner of the stack system, to perform all
843 or part of the work.

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

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



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871 take priority over any other prior perfected lien on the real
 872 property, personal property, or other assets referenced in this
 873 paragraph, including, but not limited to, the associated
 874 phosphate rock mine and reserves.

875 (4) REGISTRATION FEES.--

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

883 2. The amount of the fee for each existing stack shall be
 884 \$75,000 for each of the five 12-month periods following July 1,
 885 2001.

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

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



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901 ~~to the owner on or after that date.~~

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

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

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

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

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

930 3. Identification of all machinery, equipment, and



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931 materials necessary to implement the plan.

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

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

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

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

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

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

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

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

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

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

960 5. An estimate of all costs associated with long-term care



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961 of the closed system, including maintenance and monitoring, in
962 accordance with department rules.

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

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

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

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

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

988 3. A trustee, escrow agent, or other fiduciary of a cash
989 deposit arrangement authorized by this section shall have no
990 liability for any damage or loss of any kind arising out of or



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991 caused by performance of duties imposed by the terms of the
 992 applicable agreement except where such damage or loss is
 993 directly caused by the gross negligence or criminal act of the
 994 trustee, escrow agent, or other fiduciary. In performing its
 995 duties pursuant to the applicable agreement, a trustee, escrow
 996 agent, or other fiduciary shall be entitled to rely upon
 997 information and direction received from the grantor or the
 998 department without independent verification unless such
 999 information and direction are manifestly in error:

1000 4. To the extent that a cash deposit arrangement is used
 1001 to provide proof of financial responsibility for all or a
 1002 portion of closure costs, the trust, escrow, or cash arrangement
 1003 deposit entity shall be deemed to have assumed all liability for
 1004 such closure costs up to the amount of the cash deposit, less
 1005 any fees or costs of the trustee, escrow agent, or other
 1006 fiduciary.

1007 5. Any funds maintained in a cash deposit arrangement
 1008 authorized by this section shall not be subject to claims of
 1009 creditors of the owner or operator and shall otherwise be exempt
 1010 from setoff, execution, levy, garnishment, and similar writs and
 1011 proceedings.

1012 6. Any funds remaining in a trust, escrow account, or
 1013 other cash deposit arrangement after the purpose of such cash
 1014 deposit arrangement under this section has been accomplished
 1015 shall be returned to the grantor.

1016 Section 13. Subsection (2) of section 403.4155, Florida
 1017 Statutes, is amended to read:

1018 403.4155 Phosphogypsum management; rulemaking authority.--

1019 (2) The department shall revise chapter 62-673, Florida
 1020 Administrative Code, to require the owner or operator of a



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1021 phosphogypsum stack system to demonstrate financial
 1022 responsibility for the costs of terminal closure of the
 1023 phosphogypsum stack system in a manner that protects the
 1024 environment and the public health and safety. At a minimum, such
 1025 rules shall include or address the following requirements:
 1026 (a) That the cost of closure and long-term care be re-
 1027 estimated by a professional engineer and adjusted for inflation
 1028 on an annual basis. At a minimum, such cost data shall include:
 1029 1. The cost of treatment and appropriate disposal of all
 1030 process wastewater, both ponded and pore, in the system.
 1031 2. All construction work necessary to properly close the
 1032 system in accordance with department rules.
 1033 3. All costs associated with long-term care of the closed
 1034 system, including maintenance and monitoring, in accordance with
 1035 department rules.
 1036 (b) That financial statements and financial data be
 1037 prepared according to generally accepted accounting principles
 1038 within the United States and submitted quarterly.
 1039 (c) That audited financial statements be provided annually
 1040 along with the statement of financial assurance.
 1041 (d) That any owner or operator in default on any of its
 1042 obligations report such default immediately.
 1043 (e) That an owner or operator shall have the option to
 1044 satisfy the financial tests with a corporate guarantee for an
 1045 amount that would ensure adequate coverage of closure and
 1046 postclosure costs.
 1047 (f) A requirement for a 5-year interim stack system
 1048 management plan that provides details on the operation of the
 1049 specific phosphogypsum stack system, including water management,
 1050 should a temporary deactivation of the system occur. By January



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1051 ~~31, 2002, the department shall review chapter 62-673, Florida~~
 1052 ~~Administrative Code, to determine the adequacy of the financial~~
 1053 ~~responsibility provisions contained in the rules and shall take~~
 1054 ~~any measures necessary to ensure that the rules provide sound~~
 1055 ~~and effective provisions to minimize risk to the environment and~~
 1056 ~~to public health and safety from the business failure of a~~
 1057 ~~phosphogypsum stack system.~~

1058 Section 14. If any provision of this act or the
 1059 application thereof to any person or circumstance is held
 1060 invalid, the invalidity shall not affect other provisions or
 1061 applications of the act which can be given effect without the
 1062 invalid provision or application, and to this end the provisions
 1063 of this act are declared severable.

1064 Section 15. If any law amended by this act was also
 1065 amended by a law enacted at the 2003 Regular Session of the
 1066 Legislature, such laws shall be construed as if they had been
 1067 enacted at the same session of the Legislature, and full effect
 1068 shall be given to each if possible.

1069 Section 16. This act shall take effect upon becoming a
 1070 law.