

By Senator Smith

14-335-04

1                                   A bill to be entitled  
2           An act relating to establishment of a  
3           performance-based environmental permitting  
4           system; creating s. 403.0874, F.S.; providing  
5           an act name; providing legislative findings;  
6           providing purposes; providing definitions;  
7           providing compliance incentives for certain  
8           environmental permitting activities; providing  
9           requirements and limitations; requiring the  
10          Department of Environmental Protection to adopt  
11          certain rules; providing for consequences for  
12          certain noncompliance with certain permitting  
13          decisions; providing for agency consideration  
14          of an applicant's compliance history for  
15          certain purposes; providing limitations;  
16          providing for consideration of civil or  
17          criminal violations; providing for permit  
18          application denials under certain  
19          circumstances; providing for limited  
20          application approval under certain  
21          circumstances; providing for limited permit  
22          approvals; providing for reporting forms;  
23          providing form information and structure  
24          requirements; providing rulemaking authority  
25          for the department; requiring agency  
26          notification of formal enforcement actions;  
27          providing notice requirements; providing  
28          construction relating to existing agency  
29          authority; specifying nonapplication to certain  
30          general permits; amending ss. 403.087,  
31          403.0872, 403.088, and 403.707, F.S.; revising

1 criteria for department permit issuance to  
2 conform; amending s. 403.703, F.S.; correcting  
3 a cross-reference; amending ss. 373.413 and  
4 161.041, F.S.; specifying application of the  
5 Performance-based Permitting Program; providing  
6 an effective date.

7  
8 Be It Enacted by the Legislature of the State of Florida:

9  
10 Section 1. Section 403.0874, Florida Statutes, is  
11 created to read:

12 403.0874 Performance-based Permitting Program.--

13 (1) SECTION NAME.--This section may be cited as the  
14 "Performance-based Permitting Act."

15 (2) LEGISLATIVE FINDINGS; PUBLIC PURPOSE.--

16 (a) The Legislature finds and declares that a permit  
17 applicant's history of compliance or noncompliance with  
18 environmental laws and permit conditions is a factor that  
19 should be considered by the department when the department  
20 determines whether to issue or reissue a permit to an  
21 applicant.

22 (b) Permit applicants with a history of compliance  
23 with the environmental laws and permit conditions should be  
24 eligible for longer permits, expedited permit reviews,  
25 short-form permit renewals, and other incentives to reward and  
26 encourage such applicants.

27 (c) Permit applicants with a history of noncompliance  
28 with the environmental laws and permit conditions should be  
29 subject to more stringent requirements and, in some cases,  
30 such applicants should be denied permits for a period of time  
31 until their good standing can be reestablished.

1           (d) It is therefore declared to be the purpose of this  
2 act to provide the department with clear and specific  
3 authority to consider the compliance history of permit  
4 applicants, and in some cases those who control the  
5 applicants, when evaluating whether the applicant has provided  
6 reasonable assurance that the applicant can and will comply  
7 with applicable laws, rules, and permit conditions applicable  
8 to the regulated activity.

9           (3) DEFINITIONS.--As used in this section, the term:

10           (a) "Applicant" means the proposed permittee or  
11 transferee, owner, or operator of a regulated activity seeking  
12 an agency permit. If an applicant has not held an agency  
13 permit during at least 4 of the 5 years preceding submittal of  
14 the permit application, the term also includes any person who  
15 has the legal or actual authority to control the proposed  
16 permittee, transferee, owner, or operator.

17           (b) "Agency" or "department" means the Department of  
18 Environmental Protection.

19           (c) "Agency laws" means chapter 161, part IV of  
20 chapter 373, and this chapter.

21           (d) "Environmental laws" means any state or federal  
22 law that regulates activities for the purpose of protecting  
23 the environment or for the purpose of protecting the public  
24 health from pollution or contaminants, but does not include  
25 any law that regulates activities only for the purpose of  
26 zoning, growth management, or land use.

27           (e) "Formal enforcement action" means full and final  
28 adjudication of a civil action by the agency. The term also  
29 applies with respect to a criminal charge filed against the  
30 applicant, including those officers, directors, trustees,  
31 partners, or employees of the applicant who have legal or

1 actual operational control over a department-regulated  
2 activity for an environmental offense that the applicant has  
3 been convicted of or pled guilty or nolo contendere to,  
4 regardless of whether adjudication is withheld.

5 (f) "Knowing" means awareness of the nature of a  
6 person's acts, not awareness that such acts violate the law.  
7 The term does not include conduct that is the result of an act  
8 of God, mechanical failure, events beyond the control of the  
9 applicant, an accident, or a mistake of fact. Knowing  
10 violations by an applicant include, but are not limited to,  
11 violations knowingly committed by those officers, directors,  
12 trustees, partners, or employees of the applicant who have  
13 legal or actual operational control over department-regulated  
14 activity.

15 (g) "Reasonable assurance" means the existence of a  
16 substantial likelihood, although not an absolute guarantee,  
17 that the proposed activity and applicant will comply with  
18 agency rules, laws, orders, and permit conditions.

19 (h) "Regulated activity" means any activity,  
20 including, but not limited to, the construction or operation  
21 of a facility, installation, system, or project for which a  
22 permit or certification is required under an agency law.

23 (i) "Site" means a single parcel, or multiple  
24 contiguous or adjacent parcels, of land on which the applicant  
25 proposes to conduct, or has conducted, a regulated activity. A  
26 site is a new site if the applicant has not held an agency  
27 permit for a regulated activity at that location for at least  
28 4 of the 5 years preceding submission of an application.

29 (4) COMPLIANCE INCENTIVES.--In order to obtain a  
30 compliance incentive, the applicant must affirmatively request  
31 it as part of the permit application. Unless otherwise

1 prohibited by state or federal law, agency rule, or federal  
2 regulation, and if the applicant meets all other applicable  
3 criteria for the issuance of a permit, any applicant who meets  
4 the criteria set forth in this subsection is entitled to the  
5 following incentives:

6 (a) Tier 1.--

7 1. An applicant is entitled to incentives pursuant to  
8 this paragraph at a site if the applicant conducted the  
9 regulated activity for at least 4 of the 5 years preceding  
10 submittal of the permit application or, if the activity is a  
11 new regulated activity, the applicant conducted a similar  
12 regulated activity under an agency permit for at least 4 of  
13 the 5 years at a different site in this state preceding  
14 submittal of the permit application. However, an applicant is  
15 not entitled to incentives under this paragraph if the  
16 applicant has a relevant compliance history at the subject  
17 site which includes any of the following violations that  
18 resulted in formal enforcement action:

19 a. A knowing violation of any agency law, rule,  
20 consent order, final order, or final judgment;

21 b. An environmental crime; or

22 c. Two or more knowing violations of the permit  
23 occurring on two or more separate occasions, and resulting in  
24 two or more formal enforcement actions, in which the violation  
25 resulted in significant harm to human health or the  
26 environment.

27 2. Tier 1 incentives may include:

28 a. Automatic renewal of permit. A renewal of an  
29 operation or closure permit shall be issued for a period of 5  
30 years and shall, after notice and an opportunity for public  
31 comment, be automatically renewed for one additional 5-year

1 term without agency action unless the agency determines, based  
2 on information submitted by the applicant or resulting from  
3 the public comments or its own records, that the applicant has  
4 committed violations or crimes during the relevant review  
5 period which disqualify the applicant from receiving the  
6 requested extension.

7 b. Expedited permit review. The processing time  
8 following receipt of a completed application shall be 45 days  
9 for the issuance of the agency action.

10 c. Short-form renewals. Renewals of operation or  
11 closure permits not involving substantial construction or  
12 expansion may be made upon a shortened application form  
13 specifying only the changes in the regulated activity or a  
14 certification by the applicant that no changes in the  
15 regulated activity are proposed if that is the case.  
16 Applicants for short-form renewals must complete and submit  
17 the prescribed compliance form with the application and must  
18 remain subject to the compliance history review of this  
19 section. All other procedural requirements for renewal  
20 applications remain unchanged. This provision supplements any  
21 expedited review processes found in agency rules.

22 (b) Tier 2.--An applicant is entitled to incentives  
23 pursuant to this paragraph if the applicant meets the  
24 requirements for Tier 1 and the applicant takes other actions  
25 not otherwise required by law which significantly reduce  
26 threats or impacts to the environment or public health. Such  
27 actions may include reductions in actual or permitted  
28 discharges or emissions, reductions in the impacts of  
29 regulated activities on public lands or natural resources,  
30 waste reduction or reuse, implementation of a voluntary  
31 environmental management system, or other similar actions as

1 determined by department rule. Tier 2 incentives may include  
2 all Tier 1 incentives and may also include:

3 1. Ten-year permits, if the applicant has conducted a  
4 regulated activity at the site for at least 5 years.

5 2. Fewer routine inspections than other regulated  
6 activities similarly situated.

7 3. Expedited review of requests for permit  
8 modifications.

9 4. Agency recognition, program-specific incentives, or  
10 certifications in lieu of renewal permits.

11 5. Not more than two requests for additional  
12 information.

13 (c) Within 6 months after January 1, 2005, the  
14 department shall initiate rulemaking to implement Tier 2  
15 incentives. The rule must specify what incentives will be made  
16 available, how applicants may qualify for incentives, how  
17 extended permits may be transferred and the limitations on  
18 transfer, and how incentives may be removed or revoked if the  
19 applicant's compliance history changes. Until an implementing  
20 rule is adopted, Tier 2 incentives shall not be made available  
21 to permit applicants under this act.

22 (5) CONSEQUENCES OF NONCOMPLIANCE ON AGENCY PERMITTING  
23 DECISIONS.--The agency shall consider the applicant's relevant  
24 compliance history, as described in this subsection, when  
25 determining whether a permit applicant has provided reasonable  
26 assurance of future compliance with applicable agency laws,  
27 rules, and conditions of the requested permit. This subsection  
28 is not intended to conflict with any requirement of any  
29 federally delegated or approved program.

30 (a) The applicant's relevant compliance history  
31 consists of the applicant's knowing violation of civil and

1 criminal environmental laws, rules, consent orders, final  
2 orders, or final judgments, with the following limitations:

3 1. Each criminal violation must have occurred during  
4 the 5 years preceding submission of the permit application to  
5 the agency.

6 2. Each knowing civil violation must have resulted in  
7 formal enforcement action during the 3 years preceding the  
8 submission of the permit application to the agency.

9 3. If the application is for the renewal of an agency  
10 permit, except for a permit for a relocatable facility,  
11 source, or activity or a permit at any site other than a new  
12 site, the agency shall consider only the applicant's knowing  
13 violations at that site and the applicant's environmental  
14 felony offenses at any site in the country.

15 4. If the application is for a new permit at a new  
16 site or any permit for a relocatable facility or source, the  
17 agency shall consider the applicant's knowing violations at  
18 any site conducting the same activity regulated by the  
19 department in this state and the applicant's environmental  
20 felony offenses at any site in the country.

21 (b) The agency may consider any full and finally  
22 adjudicated civil violations as authorized in this subsection.

23 (c) If the applicant's relevant compliance history  
24 includes knowing civil or criminal violations as specified in  
25 paragraph (a), the agency shall consider and weigh the  
26 following factors in order to evaluate such violations in the  
27 context of the applicant's overall compliance history and to  
28 determine whether the applicant has provided, on balance,  
29 reasonable assurance of future compliance with agency laws,  
30 rules, and the proposed permit:

31



1           1. The number of knowing violations and the  
2 seriousness of such violations in relation to the industry  
3 norm and history for the activity regulated by the department.

4           2. The number of other similar facilities controlled  
5 by the applicant.

6           3. The number and complexity of any permits held by  
7 the applicant and the statistical potential for violations to  
8 occur.

9           4. Whether the knowing violations involved regulatory  
10 programs that are the same as, or similar to, the regulatory  
11 program from which the permit is being requested.

12           5. Whether the knowing violations involved activities  
13 that are the same as, similar to, or related to the regulated  
14 activity for which a permit is being requested.

15           6. Whether the knowing violations resulted in harm to  
16 human health or the environment and the extent of such harm.

17           7. Whether the applicant has implemented an approach  
18 or remedial measures that are effectively designed to prevent  
19 a recurrence of the knowing violations or crimes.

20           8. Whether the facility for which a permit is being  
21 requested provides or proposes to provide utility services to  
22 the public or serves a similar public purpose.

23           9. What effect denying a permit application would have  
24 on the applicant and the public at large.

25           (d) If the applicant's relevant compliance history  
26 includes one or more of the knowing violations or offenses  
27 described in this paragraph, the agency may determine, subject  
28 to the notification requirements in subsection (8), that the  
29 applicant has not provided reasonable assurance and may deny  
30 the permit application and the applicant is not entitled to  
31 apply for a permit for that regulated activity for a period of

1 1 year from the time a final order denying the permit has been  
2 entered:  
3 1. A felony criminal violation of any environmental  
4 law in the United States;  
5 2. A knowing violation of an agency law, rule, consent  
6 order, final order, or final judgment that would constitute a  
7 felony if prosecuted as a crime;  
8 3. A knowing violation of an agency law, rule, consent  
9 order, final order, or final judgment that would constitute a  
10 misdemeanor if prosecuted as a crime;  
11 4. A violation involving the intentional circumvention  
12 of pollution control equipment required by agency rules, laws,  
13 orders, or permit conditions;  
14 5. A violation involving the knowing failure to  
15 install, maintain, or operate any monitoring device or method  
16 required to be maintained by agency rules, laws, orders, or  
17 permit conditions;  
18 6. A violation involving the knowing submittal of any  
19 false statement, representation, or certification in any  
20 application, record, report, plan, or other document filed or  
21 required to be maintained by agency rules, laws, orders, or  
22 permit conditions; or  
23 7. A violation involving falsifying, tampering with,  
24 or knowingly rendering inaccurate any monitoring device or  
25 method required to be maintained by agency rules, laws,  
26 orders, or permit conditions.  
27 (e) If the applicant's relevant compliance history  
28 demonstrates a pattern of noncompliance, the agency may issue  
29 a permit, not to exceed 1 year in duration, if the applicant  
30 satisfies all other reasonable assurance requirements. A  
31 pattern of noncompliance exists when the applicant is

1 responsible for two or more environmental crimes, knowing  
2 civil violations, or a combination thereof, occurring on two  
3 or more separate occasions and resulting in two or more formal  
4 enforcement actions in which the violation resulted in a  
5 significant harm to human health or the environment within a  
6 5-year period. Any civil violation specifically identified in  
7 the Environmental Litigation Reform Act, as set forth in s.  
8 403.121, may not be considered, unless the violation was also  
9 a knowing violation.

10 1. The agency shall include a statement in the formal  
11 enforcement action that the agency has determined that the  
12 applicant has a pattern of noncompliance and that this  
13 determination has formed the basis for issuing subsequent  
14 permits for a period not to exceed 1 year. This probationary  
15 and limited duration permit shall cease and a standard  
16 duration permit issued upon a demonstration that the applicant  
17 has implemented an approach, program, or remedial measure that  
18 is effectively designed to prevent a recurrence of the  
19 noncompliance. The agency shall also include a notification in  
20 its notice of intended agency action following a determination  
21 of a pattern of noncompliance that the permit could be revoked  
22 or an application to renew the permit could be denied if the  
23 pattern of noncompliance continues.

24 2. If, at the time of permit renewal following notice  
25 of a determination of a pattern of noncompliance, the agency  
26 determines that the applicant committed one or more relevant  
27 violations enumerated in this paragraph resulting in a  
28 continuing pattern of noncompliance, the agency shall deny the  
29 permit application, and the applicant is not entitled to apply  
30 for a permit for that regulated activity for a period of 6  
31 months from the time a final order denying the permit has been

1 entered. This probationary and limited duration permit shall  
2 cease and a standard duration permit issued upon a  
3 demonstration that the applicant has implemented an approach,  
4 program, or remedial measure that is effectively designed to  
5 prevent a recurrence of the noncompliance.

6 (f) If the agency denies a permit application in  
7 accordance with this subsection for a permit that includes  
8 closure, postclosure, or corrective action requirements, the  
9 agency may deny that portion of the permit authorizing  
10 operation and may issue a permit that contains only the  
11 closure, postclosure, or corrective action requirements and  
12 conditions.

13 (6) REPORTING FORM.--The agency shall establish a  
14 form, by rule, to be used for the purpose of administering  
15 this section. Every permit application subject to this section  
16 which is submitted to the agency must be accompanied by this  
17 completed form in order to be considered complete. During the  
18 permit review process, the information on the form shall be  
19 updated by the applicant to reflect any changes until such  
20 time as the agency takes final action on the application. The  
21 form must include the following:

22 (a) A section requiring every applicant to report the  
23 relevant criminal history of the applicant, including the  
24 nature of the offense, the date of the offense, the court  
25 having jurisdiction in the case, the date of conviction or  
26 other disposition, and the disposition of the offense.

27 (b) A section requiring every applicant that is a  
28 business entity and that has not held an agency permit during  
29 4 of the 5 years preceding submittal of the permit application  
30 to identify those persons having legal or actual authority to  
31 control the owner, operator, or permittee. The form may

1 specify categories of persons having such authority and other  
2 relevant information that must be reported. The form may not  
3 require an applicant to report violations or offenses that are  
4 not part of the relevant compliance history specified in  
5 paragraph (4)(a).

6 (7) RULEMAKING.--In addition to the rulemaking  
7 necessary to adopt the form identified in subsection (6) and  
8 to implement the Tier 2 incentives of subsection (4), the  
9 agency is authorized, but not required, to adopt any other  
10 rules that are necessary to administer this section, including  
11 rules providing for appropriate public notice and comment.

12 (8) NOTIFICATION.--The agency is encouraged to work  
13 with permittees and permit applicants prior to taking any of  
14 the actions authorized under this section in order to  
15 encourage compliance and avoid overly burdensome consequences  
16 of noncompliance. In each case in which the agency initiates a  
17 formal enforcement action and prior to implementing the  
18 sanctions outlined in this section, the agency shall clearly  
19 and specifically:

20 (a) Inform the alleged violator if the provisions of  
21 this section have been triggered.

22 (b) Put the alleged violator on notice of the  
23 consequences of the violations and the potential consequences  
24 of continuing noncompliance.

25 (9) EXISTING AUTHORITY.--This section does not limit  
26 the agency's existing authority to consider factors other than  
27 an applicant's compliance history, such as the technical  
28 merits of the proposed project or the applicant's financial  
29 and human resources, when determining whether the applicant  
30 has provided the reasonable assurance necessary to receive the  
31 requested permit.

1           (10) INAPPLICABLE TO GENERAL PERMITS.--This section  
2 does not apply to general permits issued in accordance with s.  
3 403.814. However, the agency may continue to use its existing  
4 authority to consider the compliance history of those wishing  
5 to use general permits.

6           Section 2. Subsection (5) of section 403.087, Florida  
7 Statutes, is amended to read:

8           403.087 Permits; general issuance; denial; revocation;  
9 prohibition; penalty.--

10           (5) The department shall issue permits to construct,  
11 operate, maintain, expand, or modify an installation which may  
12 reasonably be expected to be a source of pollution only if the  
13 applicant affirmatively provides the department with  
14 reasonable assurance that the proposed activity and applicant  
15 will comply with department rules, laws, orders, and permit  
16 conditions ~~when it determines that the installation is~~  
17 ~~provided or equipped with pollution control facilities that~~  
18 ~~will abate or prevent pollution to the degree that will comply~~  
19 ~~with the standards or rules adopted by the department, except~~  
20 ~~as provided in s. 403.088 or s. 403.0872. The compliance~~  
21 history of the applicant is one factor that the department  
22 shall consider in determining whether the applicant has  
23 provided such reasonable assurance.However, separate  
24 construction permits shall not be required for installations  
25 permitted under s. 403.0885, except that the department may  
26 require an owner or operator proposing to construct, expand,  
27 or modify such an installation to submit for department  
28 review, as part of application for permit or permit  
29 modification, engineering plans, preliminary design reports,  
30 or other information 90 days prior to commencing construction.  
31 The department may also require the engineer of record or

1 another registered professional engineer, within 30 days after  
2 construction is complete, to certify that the construction was  
3 completed in accordance with the plans submitted to the  
4 department, noting minor deviations which were necessary  
5 because of site-specific conditions.

6 Section 3. Subsection (2) of section 403.0872, Florida  
7 Statutes, is amended to read:

8 403.0872 Operation permits for major sources of air  
9 pollution; annual operation license fee.--Provided that  
10 program approval pursuant to 42 U.S.C. s. 7661a has been  
11 received from the United States Environmental Protection  
12 Agency, beginning January 2, 1995, each major source of air  
13 pollution, including electrical power plants certified under  
14 s. 403.511, must obtain from the department an operation  
15 permit for a major source of air pollution under this section.  
16 This operation permit is the only department operation permit  
17 for a major source of air pollution required for such source;  
18 provided, at the applicant's request, the department shall  
19 issue a separate acid rain permit for a major source of air  
20 pollution that is an affected source within the meaning of 42  
21 U.S.C. s. 7651a(1). Operation permits for major sources of air  
22 pollution, except general permits issued pursuant to s.  
23 403.814, must be issued in accordance with the procedures  
24 contained in this section and in accordance with chapter 120;  
25 however, to the extent that chapter 120 is inconsistent with  
26 the provisions of this section, the procedures contained in  
27 this section prevail.

28 (2) An application for an operation permit for a major  
29 source of air pollution must be submitted in accordance with  
30 rules of the department governing permit applications. The  
31 department shall adopt rules defining the timing, content, and

1 distribution of an application for a permit under this  
2 section. A permit application processing fee is not required.  
3 The department may issue an operation permit for a major  
4 source of air pollution only if the applicant affirmatively  
5 provides the department with reasonable assurance that the  
6 proposed activity and applicant are in compliance with and  
7 will continue to comply with department rules, laws, orders,  
8 and permit conditions ~~when it has reasonable assurance that~~  
9 ~~the source applies pollution control technology, including~~  
10 ~~fuel or raw material selection, necessary to enable it to~~  
11 ~~comply with the standards or rules adopted by the department~~  
12 or the permit contains an approved compliance plan that  
13 provides such reasonable assurance for that source. The  
14 compliance history of the applicant is one factor that the  
15 department shall consider in determining whether the applicant  
16 has provided such reasonable assurance. If two or more major  
17 air pollution sources that belong to the same Major Group as  
18 described in the Standard Industrial Classification Manual,  
19 1987, are operated at a single site, the owner may elect to  
20 receive a single operation permit covering all such sources at  
21 the site.

22 (a) An application for a permit under this section is  
23 timely and complete if it is submitted in accordance with  
24 department rules governing the timing of applications and  
25 substantially addresses the information specified in  
26 completeness criteria determined by department rule in  
27 accordance with applicable regulations of the United States  
28 Environmental Protection Agency governing the contents of  
29 applications for permits under 42 U.S.C. s. 7661b(d). Unless  
30 the department requests additional information or otherwise  
31



1 notifies the applicant of incompleteness within 60 days after  
2 receipt of an application, the application is complete.

3 (b) Any permitted air pollution source that submits a  
4 timely and complete application for a permit under this  
5 section is entitled to operate in compliance with its existing  
6 air permit pending the conclusion of proceedings associated  
7 with its application. Notwithstanding the timing requirements  
8 of paragraph (c) and subsection (3), the department may  
9 process applications received during the first year of permit  
10 processing under this section, in a manner consistent with 42  
11 U.S.C. s. 7661b(c).

12 (c) The department may request additional information  
13 necessary to process a permit application subsequent to a  
14 determination of completeness in accordance with s.  
15 403.0876(1).

16 Section 4. Paragraph (b) of subsection (2) of section  
17 403.088, Florida Statutes, is amended to read:

18 403.088 Water pollution operation permits;  
19 conditions.--

20 (2)

21 (b) The department may issue a permit only if the  
22 applicant affirmatively provides the department with  
23 reasonable assurance that the proposed activity and applicant  
24 will comply with department rules, laws, orders, and permit  
25 conditions. The compliance history of the applicant is one  
26 factor that the department shall consider in determining  
27 whether the applicant has provided such reasonable assurance.

28 If the department finds that the proposed discharge will  
29 reduce the quality of the receiving waters below the  
30 classification established for them, it shall deny the  
31 application and refuse to issue a permit. If the department

1 finds that the proposed discharge will not reduce the quality  
2 of the receiving waters below the classification established  
3 for them, it may issue an operation permit if it finds that  
4 such degradation is necessary or desirable under federal  
5 standards and under circumstances which are clearly in the  
6 public interest.

7 Section 5. Paragraph (b) of subsection (17) of section  
8 403.703, Florida Statutes, is amended to read:

9 403.703 Definitions.--As used in this act, unless the  
10 context clearly indicates otherwise, the term:

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

27 (b) Except as provided in s. 403.707(11)(j)~~s.~~  
28 ~~403.707(12)(j)~~, unpainted, nontreated wood scraps from  
29 facilities manufacturing materials used for construction of  
30 structures or their components and unpainted, nontreated wood  
31 pallets provided the wood scraps and pallets are separated

1 from other solid waste where generated and the generator of  
2 such wood scraps or pallets implements reasonable practices of  
3 the generating industry to minimize the commingling of wood  
4 scraps or pallets with other solid waste; and

5 Section 6. Subsection (8) of section 403.707, Florida  
6 Statutes, is amended, and subsections (9)-(16) are renumbered  
7 as subsections (8)-(15), respectively, to read:

8 403.707 Permits.--

9 ~~(8) The department may refuse to issue a permit to an~~  
10 ~~applicant who by past conduct in this state has repeatedly~~  
11 ~~violated pertinent statutes, rules, or orders or permit terms~~  
12 ~~or conditions relating to any solid waste management facility~~  
13 ~~and who is deemed to be irresponsible as defined by department~~  
14 ~~rule. For the purposes of this subsection, an applicant~~  
15 ~~includes the owner or operator of the facility, or if the~~  
16 ~~owner or operator is a business entity, a parent of a~~  
17 ~~subsidiary corporation, a partner, a corporate officer or~~  
18 ~~director, or a stockholder holding more than 50 percent of the~~  
19 ~~stock of the corporation.~~

20 Section 7. Subsection (6) is added to section 373.413,  
21 Florida Statutes, to read:

22 373.413 Permits for construction or alteration.--

23 (6) Section 403.0874, the Performance-based Permitting  
24 Program, applies to individual and conceptual permits issued  
25 under this part.

26 Section 8. Subsection (5) is added to section 161.041,  
27 Florida Statutes, to read:

28 161.041 Permits required.--

29 (5) Section 403.0874, the Performance-based Permitting  
30 Program, applies to all permits issued under this chapter.

31 Section 9. This act shall take effect January 1, 2005.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

\*\*\*\*\*

SENATE SUMMARY

Provides compliance incentives for certain environmental permitting activities. Requires the Department of Environmental Protection to adopt certain rules. Provides for consequences for certain noncompliance with certain permitting decisions. Provides for agency consideration of applicant's compliance history for certain purposes. Provides for permit application denials under certain circumstances.