

1 A bill to be entitled
 2 An act relating to the Gold Star Permitting Program;
 3 creating s. 403.0874, F.S.; providing a short title;
 4 providing legislative findings and purpose; providing
 5 definitions; providing compliance incentives for
 6 applicants for renewal of certain environmental permits;
 7 providing eligibility requirements for incentives;
 8 providing criteria for the Department of Environmental
 9 Protection to consider when considering permit
 10 applications and issuing new permits; authorizing the
 11 department to create reporting forms; requiring the
 12 department to adopt rules; providing for alternative
 13 action by the department to encourage compliance by
 14 permittees and applicants; providing an exception for
 15 certain permits; amending ss. 161.041 and 373.413, F.S.;
 16 specifying application of the Gold Star Permitting Program
 17 to certain permits; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

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 21 Section 1. Section 403.0874, Florida Statutes, is created
 22 to read:

23 403.0874 Gold Star Permitting Program.--

24 (1) SHORT TITLE.--This section may be cited as the
 25 "Florida Gold Star Permitting Act."

26 (2) LEGISLATIVE FINDINGS AND PURPOSE.--The Legislature
 27 finds and declares that a permit applicant's history of
 28 compliance or noncompliance with environmental laws, rules, and

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29 permit conditions is a factor that should be considered by the
30 department when it determines whether to issue a new permit to
31 the applicant. Permit applicants with a history of compliance
32 with the environmental laws, rules, and permit conditions should
33 be eligible for longer-term permits, short-form permit renewals,
34 and other incentives to reward and encourage such applicants
35 when those permits are renewed. Permit applicants with a history
36 of noncompliance with environmental laws, rules, and permit
37 conditions should be subject to more stringent requirements,
38 and, in some cases, such applicants should be denied permits for
39 an appropriate period of time. It is therefore declared to be
40 the purpose of this section to provide the department with clear
41 and specific authority to consider the compliance history of
42 permit applicants when evaluating whether the applicant should
43 be issued a new permit, in determining what conditions should be
44 imposed on the permit, and in evaluating whether an applicant
45 for renewal of a permit should be awarded incentives to
46 encourage continued compliance with the applicant's permit and
47 applicable environmental laws.

48 (3) DEFINITIONS.--For purposes of this section, the
49 following terms have the following meanings:

50 (a) "Applicant" means the proposed permittee or
51 transferee, the owner, or the operator of a regulated activity
52 seeking an agency permit. If the applicant has not held an
53 agency permit during at least 4 of the 5 years preceding
54 submittal of the permit application, the term also includes any
55 person who has the legal or actual authority to control the
56 proposed permittee, transferee, owner, or operator.

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57 (b) "Department" means the Department of Environmental
58 Protection and local governments acting under a delegation or
59 specific operating agreement with the department.

60 (c) "Environmental statutes" means any state or federal
61 statute that regulates activities for the purpose of protecting
62 the environment or for the purpose of protecting the public
63 health from pollution or contaminants, but does not include any
64 statute that regulates activities only for the purpose of
65 zoning, growth management, or land use.

66 (d) "Formal enforcement action" means that:

67 1. The department has issued or obtained an administrative
68 or judicial final order that finds that an applicant has
69 committed a violation of an environmental statute, department
70 rule, or department permit;

71 2. The applicant has executed a consent order with the
72 department; or

73 3. The applicant has been convicted of, pled guilty or
74 nolo contendere to, or entered into a deferred prosecution
75 agreement with respect to the charged offense, regardless of
76 whether adjudication has been withheld, for an environmental
77 offense that is or would be a criminal offense if committed in
78 Florida.

79 (e) "Regulated activity" means any activity, including the
80 construction or operation of a facility, installation, system,
81 or project, for which a permit is required under chapter 161 or
82 chapter 403 or for which any individual, standard general, or
83 conceptual permit is required under part IV of chapter 373.

84 (4) COMPLIANCE INCENTIVES.--Unless otherwise prohibited by
85 state or federal statute, agency rule, or federal regulation and
86 provided that the applicant meets all other applicable criteria
87 for the renewal of the permit, any applicant who meets the
88 criteria set forth in this subsection is eligible for the
89 following incentives:

90 (a) Level 1 incentives.--An applicant for renewal of a
91 permit shall be eligible for incentives pursuant to this
92 paragraph if the applicant has conducted the regulated activity
93 at the site for at least 3 years preceding submittal of the
94 application for renewal of the permit and has had no formal
95 enforcement actions against the applicant since issuance of the
96 permit being renewed. Level 1 incentives shall include:

97 1. Short-form renewal.--Renewal of operation or closure
98 permits not involving substantial construction or expansion may
99 be made upon a shortened application form specifying only the
100 changes in the regulated activity or a certification by the
101 applicant that no changes in the regulated activity are proposed
102 if that is the case. Applicants for short-form renewals shall
103 complete and submit the prescribed compliance form with the
104 application. All other procedural requirements for renewal
105 applications shall remain in effect.

106 2. Expedited permit review.--Applicants using short-form
107 renewals for renewal of operation or closure permits not
108 involving substantial construction or expansion shall be
109 eligible for an expedited permit review by the department.

110 (b) Level 2 incentives.--An applicant shall be eligible
111 for incentives pursuant to this paragraph if the applicant meets

112 the requirements for Level 1 incentives described in paragraph
 113 (a) and is a member of the National Environmental Performance
 114 Track established by the United States Environmental Protection
 115 Agency. Level 2 incentives shall include:

116 1. Extended permits.--If the applicant has conducted the
 117 permitted activity at the site for at least 4 years, the
 118 department may issue the applicant a 10-year permit.

119 2. Gold Star public recognition program.--The department
 120 shall establish a recognition program to ensure that the public
 121 is able to readily determine which entities permitted by the
 122 department are eligible for Level 2 incentives.

123 3. Requests for additional information.--The department
 124 may issue no more than two requests for additional information
 125 for a permit renewal under this paragraph.

126 4. Other incentives.--The department may develop
 127 additional incentives designed to encourage performance beyond
 128 that required by law, provided that no such incentive shall
 129 result in a lessening of environmental protection.

130 (5) CONSIDERATIONS FOR ISSUING NEW PERMITS.--

131 (a) The department shall issue a new permit only after the
 132 permit applicant affirmatively provides the department with
 133 reasonable assurance based on plans, test results, installation
 134 of pollution control equipment, or other information that the
 135 construction, operation, or activity of the installation will
 136 not discharge, emit, or cause pollution in violation of any of
 137 the provisions of chapter 161, part IV of chapter 373, or
 138 chapter 403, or the rules adopted thereunder.

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139 (b) The department shall also take into consideration
140 violations by the new permit applicant of any provisions of
141 chapter 161, part IV of chapter 373, or chapter 403, or the
142 rules adopted thereunder. When considering a new permit
143 applicant's history of violations, the department shall consider
144 any matter relevant to whether the applicant is willing or able
145 to comply with the permit or any applicable environmental laws
146 or rules, including:

147 1. The number of violations and the seriousness of such
148 violations in relation to the industry norm and history for the
149 department-regulated activity;

150 2. The number of other similar facilities controlled by
151 the applicant;

152 3. The number and complexity of any permits held by the
153 applicant and the statistical potential for violations to occur;

154 4. Whether the violations involved regulatory programs
155 that are the same as, or similar to, the regulatory program from
156 which the permit is being requested;

157 5. Whether the violations involved activities that are the
158 same as, similar to, or related to the regulated activity for
159 which a permit is being requested;

160 6. Whether the violations resulted in harm to human health
161 or the environment and the extent of any such harm;

162 7. Whether the applicant has implemented an approach or
163 remedial measure that is effectively designed to prevent a
164 recurrence of the violations or crimes;

165 8. Whether the facility or operation for which a permit is
 166 being requested provides or proposes to provide utility services
 167 to the public or serves a similar public purpose;

168 9. Whether the denial of the permit will have an adverse
 169 effect on the public at large;

170 10. Any relevant evidence offered in mitigation by the
 171 applicant;

172 11. Whether the applicant has acted reasonably to resolve
 173 previous violations and to prevent their recurrence; and

174 12. Whether the violations are caused by acts of the
 175 applicant or are the result of circumstances beyond the control
 176 of the applicant.

177 (c) For the purposes of this subsection, the department
 178 may only consider the applicant's compliance record during the 5
 179 years preceding the receipt of the permit application under
 180 review.

181 (d) Nothing in this section shall be construed to limit
 182 the department's existing authority to impose conditions on
 183 permits, to impose conditions on permits necessary to provide
 184 reasonable assurance, to issue shorter term permits, or to
 185 establish requirements for the issuance of permits.

186 (e) In any proceedings conducted pursuant to ss. 120.569
 187 or 120.57 contesting the issuance of a permit or the intent to
 188 issue a permit, a determination by the department that a permit
 189 applicant's history of violations does not preclude permit
 190 issuance pursuant to paragraphs (b) and (c) shall be presumed
 191 correct and shall not be overturned or recommended to be

192 overturned unless that determination is shown to be clearly
 193 erroneous based upon clear and convincing evidence.

194 (6) REPORTING FORM.--The department may establish a form,
 195 by rule, to be used for the purpose of implementing this
 196 section. The department may require a responsible official of
 197 the applicant to certify under penalty of perjury that the facts
 198 set forth on the form are true. Once such a form is adopted,
 199 every application for a new permit or for a permit that includes
 200 compliance incentives that is submitted to the agency shall be
 201 accompanied by the completed form to be considered complete.

202 (7) RULEMAKING.--The department may adopt rules pursuant
 203 to ss. 120.536(1) and 120.54 to implement this section. The
 204 rules may specify the format and procedural requirements for
 205 requesting incentives, the additional incentives that will be
 206 made available, how applicants may qualify for incentives,
 207 whether and how extended permits may be transferred and the
 208 limitations on transfer, under what circumstances extended
 209 permits may be revised based on formal enforcement actions
 210 against the permittee, and how other incentives may be removed
 211 or revoked if the applicant fails to maintain the programs
 212 entitling it to an incentive or if the applicant's compliance
 213 history changes.

214 (8) ALTERNATIVE ACTION.--The department is encouraged to
 215 work with permittees and permit applicants prior to taking any
 216 formal enforcement action authorized under this section to
 217 encourage compliance and avoid overly burdensome consequences of
 218 noncompliance.

219 (9) EXCEPTION.--This section shall not apply to general

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220 permits issued in accordance with s. 403.814. However, the
221 agency may continue to use its existing authority to consider
222 the compliance history of general permit applicants.

223 Section 2. Subsection (5) is added to section 161.041,
224 Florida Statutes, to read:

225 161.041 Permits required.--

226 (5) The provisions of the Gold Star Permitting Program
227 under s. 403.0874 shall apply to all permits issued under this
228 chapter.

229 Section 3. Subsection (6) is added to section 373.413,
230 Florida Statutes, to read:

231 373.413 Permits for construction or alteration.--

232 (6) The provisions of the Gold Star Permitting Program
233 under s. 403.0874 shall apply to individual, standard general,
234 and conceptual permits issued under this part.

235 Section 4. This act shall take effect October 1, 2007.