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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2009	.	
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The Committee on Environmental Preservation and Conservation
(Sobel) recommended the following:

Senate Amendment

Delete lines 435 - 679
and insert:

major source of air pollution, as defined in s. 403.0872,
within the 90-day ~~time~~ period may ~~shall~~ not result in the
automatic approval or denial of the permit and may ~~shall~~ not
prevent the inclusion of specific permit conditions that ~~which~~
are necessary to ensure compliance with applicable statutes and
rules. If the department fails to approve or deny such ~~an~~
~~operation permit for a major source of air pollution~~ within the



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12 90-day period specified in this section or in s. 403.0872, as
13 applicable, the applicant or a party who participated in the
14 public comment process may petition for a writ of mandamus to
15 compel the department to act.

16 Section 9. Paragraphs (b) and (f) of subsection (2), and
17 subsections (3), (4), (5), and (9) of section 403.121, Florida
18 Statutes, are amended to read:

19 403.121 Enforcement; procedure; remedies.—The department
20 shall have the following judicial and administrative remedies
21 available to it for violations of this chapter, as specified in
22 s. 403.161(1).

23 (2) Administrative remedies:

24 (b) If the department has reason to believe a violation has
25 occurred, it may institute an administrative proceeding to order
26 the prevention, abatement, or control of the conditions creating
27 the violation or other appropriate corrective action. Except for
28 violations involving hazardous wastes, asbestos, major sources
29 of air pollution, or underground injection, the department shall
30 proceed administratively in all cases in which the department
31 seeks administrative penalties that do not exceed \$10,000 per
32 assessment as calculated in accordance with subsections (3),
33 (4), (5), (6), ~~and (7),~~ and (9). Pursuant to 42 U.S.C. s. 300g-
34 2, the administrative penalty assessed pursuant to subsection
35 (3), subsection (4), or subsection (5) against a public water
36 system serving a population of more than 10,000 may ~~shall be~~ not
37 be less than \$1,000 per day per violation. The department may
38 ~~shall~~ not impose administrative penalties greater than ~~in excess~~
39 ~~of~~ \$10,000 in a notice of violation. The department may ~~shall~~
40 not have more than one notice of violation seeking



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41 administrative penalties pending against the same party at the
42 same time unless the violations occurred at a different site or
43 the violations were discovered by the department after
44 ~~subsequent to~~ the filing of a previous notice of violation.

45 (f) In any administrative proceeding brought by the
46 department, the prevailing party shall recover all costs as
47 provided in ss. 57.041 and 57.071. The costs must be included in
48 the final order. The respondent is the prevailing party when a
49 final ~~an~~ order is entered which does not require the respondent
50 to perform any corrective actions or award any damages or
51 ~~awarding no~~ penalties to the department and such order has not
52 been reversed on appeal or the time for seeking judicial review
53 has expired. The respondent is ~~shall be~~ entitled to an award of
54 attorney's fees if the administrative law judge determines that
55 the notice of violation issued by the department seeking the
56 imposition of administrative penalties was not substantially
57 justified as defined in s. 57.111(3) ~~s. 57.111(3)(e)~~. An ~~No~~
58 award of attorney's fees as provided by this subsection may not
59 ~~shall~~ exceed \$15,000.

60 (3) Except for violations involving hazardous wastes,
61 asbestos, major sources of air pollution, or underground
62 injection, administrative penalties must be in accordance with
63 ~~calculated according to~~ the following schedule:

64 (a) For ~~a~~ drinking water contamination violations, the
65 department shall assess:

66 1. A penalty of \$2,000 for a maximum containment level
67 ~~(MCL)~~ violations; plus \$1,000 if the violation is for a primary
68 inorganic, organic, or radiological maximum contaminant level or
69 ~~it is~~ a fecal coliform bacteria violation; plus \$1,000 if the



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70 violation occurs at a community water system; and plus \$1,000 if
71 any maximum contaminant level is exceeded by more than 100
72 percent.

73 2. A penalty of \$4,000 for failure to maintain the required
74 minimum gauge pressure throughout the drinking water
75 distribution system.

76 3. A penalty of \$3,000 for failure to obtain a clearance
77 letter before ~~prior to~~ placing a drinking water system into
78 service if ~~when~~ the system would not have been eligible for
79 clearance, the department shall assess a penalty of \$3,000. All
80 other failures to obtain a clearance letter before placing a
81 drinking water system into service shall result in a penalty of
82 \$1,500.

83 4. A penalty of \$4,000 for failure to properly complete a
84 required public notice of violations, exceedances, or failures
85 that may pose an acute risk to human health. All other failures
86 to properly complete a required public notice relating to
87 maximum containment level violations shall result in a penalty
88 of \$2,000.

89 5. A penalty of \$1,000 for failure to submit a consumer
90 confidence report to the department.

91 6. A penalty of \$2,000 for failure to provide or meet
92 licensed operator or staffing requirements at a drinking water
93 facility.

94 (b) For wastewater violations, the department shall assess:

95 1. A penalty of \$5,000 for failure to obtain a required
96 wastewater permit before construction or modification, other
97 than a permit required for surface water discharge.

98 2. A penalty of \$4,000 for failure to obtain a permit to



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99 construct a domestic wastewater collection or transmission
100 system.

101 3. A penalty of \$1,000 for failure to renew ~~obtain~~ a
102 required wastewater permit, other than a permit required for
103 surface water discharge, ~~the department shall assess a penalty~~
104 ~~of \$1,000.~~

105 4. For a domestic or industrial wastewater violation not
106 involving a surface water or groundwater quality violation, ~~the~~
107 ~~department shall assess~~ a penalty of \$2,000 for an unpermitted
108 or unauthorized discharge or effluent-limitation exceedance.

109 5. A penalty of \$5,000 for an unpermitted or unauthorized
110 discharge or effluent-limitation exceedance that resulted in a
111 surface water or groundwater quality violation, ~~the department~~
112 ~~shall assess a penalty of \$5,000.~~

113 6. A penalty of \$2,000 for failure to properly notify the
114 department of an unauthorized spill, discharge, or abnormal
115 event that may impact public health or the environment.

116 7. A penalty of \$2,000 for failure to provide or meet
117 requirements for licensed operators or staffing at a wastewater
118 facility.

119 (c) For ~~a~~ dredge, and fill, or stormwater violations, the
120 department shall assess:

121 1. A penalty of \$1,000 for unpermitted or unauthorized
122 dredging, ~~or~~ filling, or unauthorized construction of a
123 stormwater management system against the person or persons
124 responsible; ~~for the illegal dredging or filling, or~~
125 ~~unauthorized construction of a stormwater management system~~ plus
126 \$2,000 if the dredging or filling occurs in an aquatic preserve,
127 Outstanding Florida Water, ~~conservation easement,~~ or Class I or



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128 Class II surface water;~~;~~ plus \$1,000 if the area dredged or
129 filled is greater than one-quarter acre but less than or equal
130 to one-half acre;~~;~~ and plus \$1,000 if the area dredged or filled
131 is greater than one-half acre but less than or equal to one
132 acre; and plus \$3,000 if the person or persons responsible
133 previously applied for or obtained authorization from the
134 department to dredge or fill within wetlands or surface waters.

135 2. A penalty of \$10,000 for dredge, fill, or stormwater
136 management system violations occurring in a conservation
137 easement.

138 3. The administrative penalty schedule does ~~shall~~ not apply
139 to a dredge or ~~and~~ fill violation if the area dredged or filled
140 exceeds one acre. The department retains the authority to seek
141 the judicial imposition of civil penalties for all dredge and
142 fill violations involving more than one acre. ~~The department~~
143 ~~shall assess~~

144 4. A penalty of \$3,000 for the failure to complete required
145 mitigation, failure to record a required conservation easement,
146 or for a water quality violation resulting from dredging or
147 filling activities, stormwater construction activities, or
148 failure of a stormwater treatment facility.

149 5. For stormwater management systems serving less than 5
150 acres, ~~the department shall assess~~ a penalty of \$2,000 for the
151 failure to properly or timely construct a stormwater management
152 system.

153 6. In addition to the penalties authorized in this
154 subsection, ~~the department shall assess~~ a penalty of \$5,000 per
155 violation against the contractor or agent of the owner or tenant
156 that conducts unpermitted or unauthorized dredging or filling.



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157 For purposes of this paragraph, the preparation or signing of a
158 permit application by a person currently licensed under chapter
159 471 to practice as a professional engineer does ~~shall~~ not make
160 that person an agent of the owner or tenant.

161 (d) For mangrove trimming or alteration violations, the
162 department shall assess:

163 1. A penalty of \$5,000 per violation against any person who
164 violates ss. 403.9321-403.9333 ~~the contractor or agent of the~~
165 ~~owner or tenant that conducts mangrove trimming or alteration~~
166 ~~without a permit as required by s. 403.9328.~~ For purposes of
167 this paragraph, the preparation or signing of a permit
168 application by a person currently licensed under chapter 471 to
169 practice as a professional engineer does ~~shall~~ not constitute a
170 violation ~~make that person an agent of the owner or tenant.~~

171 2. For second and subsequent violations of subparagraph 1.,
172 an additional penalty of \$100 for each mangrove illegally
173 trimmed and \$250 for each mangrove illegally altered, not to
174 exceed a total of \$10,000.

175 3. For second and subsequent violations of subparagraph 1.
176 by a professional mangrove trimmer, an additional penalty of
177 \$250 for each mangrove illegally trimmed or altered, not to
178 exceed a total of \$10,000.

179 (e) For solid waste violations, the department shall
180 assess:

181 1. A penalty of \$2,000 for the unpermitted or unauthorized
182 disposal or storage of solid waste; plus \$1,000 if the solid
183 waste is Class I or Class III ~~(excluding yard trash)~~ ~~or if the~~
184 ~~solid waste~~ is construction and demolition debris in excess of
185 20 cubic yards; plus \$1,000 if the solid waste is disposed of



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186 or stored in any natural or artificial body of water or within
187 500 feet of a potable water well; and, plus \$1,000 if the solid
188 waste contains PCB at a concentration of 50 parts per million or
189 greater; untreated biomedical waste; more than 1 cubic meter of
190 regulated friable asbestos material that greater than 1 cubic
191 meter which is not wetted, bagged, and covered; more than 25
192 gallons of used oil greater than 25 gallons; or 10 or more lead
193 acid batteries.

194 2. A penalty of \$5,000 for failure to timely implement
195 evaluation monitoring or corrective actions in response to
196 adverse impacts to water quality at permitted facilities. The
197 department shall assess

198 3. A penalty of \$3,000 for failure to properly maintain
199 leachate control; unauthorized burning; failure to have a
200 trained spotter or trained operator on duty as required by
201 department rule at the working face when accepting waste;
202 failure to apply and maintain adequate initial, intermediate, or
203 final cover; failure to control or correct erosion resulting in
204 exposed waste; failure to implement a gas management system as
205 required by department rule; processing or disposing of
206 unauthorized waste failure to provide access control for three
207 consecutive inspections. The department shall assess

208 4. A penalty of \$2,000 for failure to construct or maintain
209 a required stormwater management system; failure to compact and
210 slope waste as required by department rule; or failure to
211 maintain a small working face as required by department rule.

212 5. A penalty of \$1,000 for failure to timely submit annual
213 updates required for financial assurance.

214 (f) For ~~an~~ air emission violations, the department shall



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215 assess a penalty of \$1,000 for an unpermitted or unauthorized
216 air emission or an air-emission-permit exceedance; ~~plus \$1,000~~
217 ~~if the emission results in an air quality violation,~~ plus \$3,000
218 if the emission was from a major source and the source was major
219 for the pollutant in violation; and plus \$1,000 if the emission
220 was more than 150 percent of the allowable level.

221 (g) For storage tank system and petroleum contamination
222 violations, the department shall assess:

223 1. A penalty of \$5,000 for failure to empty a damaged
224 storage system as necessary to ensure that a release does not
225 occur until repairs to the storage system are completed; if when
226 a release has occurred from that storage tank system; for
227 failure to timely recover free product; for failure to submit a
228 complete site assessment report; or for failure to conduct
229 remediation or monitoring activities until a no-further-action
230 or site-rehabilitation completion order has been issued. ~~The~~
231 ~~department shall assess~~

232 2. A penalty of \$3,000 for failure to timely upgrade a
233 storage tank system or to timely assess or remediate petroleum
234 contamination. ~~The department shall assess~~

235 3. A penalty of \$2,000 for failure to conduct or maintain
236 required release detection; failure to timely investigate a
237 suspected release from a storage system; depositing motor fuel
238 into an unregistered storage tank system; ~~failure to timely~~
239 ~~assess or remediate petroleum contamination;~~ or failure to
240 properly install a storage tank system. ~~The department shall~~
241 ~~assess~~

242 4. A penalty of \$1,000 for failure to properly operate,
243 maintain, repair, or close a storage tank system.



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244 (h) For waste cleanup violations, the department shall
245 assess:

246 1. A penalty of \$5,000 for failure to timely assess or
247 remediate contamination; failure to provide notice of
248 contamination beyond property boundaries or complete an offsite
249 well survey; for the use or injection of substances or materials
250 to