

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2338

SPONSOR: Senator Peaden

SUBJECT: Resource Recovery and Management

DATE: April 2, 2003

REVISED: 04/07/03 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav/2 amendments</u>
2.	_____	_____	<u>CU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill exempts the beneficial use of fossil fuel combustion products from regulation under part IV of ch. 403, F.S.

This bill creates s. 403.7047, F.S.

II. Present Situation:

Most of the electric power plants in the United States use some sort of fossil fuel to generate electricity. Burning fossil fuels, notably coal, produces post-combustion material known as fossil fuel combustions products. These products include fly ash, bottom ash, slag, and fluidized gas desulfurization system products and fluidized bed combustion system products. Many of these byproducts are used in a number of beneficial applications. Fly ash, a light gray or tan powder, is the largest product of coal combustion and accounts for over 20 million tons of total usage nationally. Fly ash is a vital component in concrete and is handled and transported much like cement in pneumatic tanker trucks. Concrete containing fly ash is used in the decks and piers for bridges, culverts, spillways, and pavement. Other uses for fly ash include, but are not limited to:

- Material for structural fill;
- Raw material for metal reclamation;
- Filler material in plastics, paints and metals;
- Sanitary landfill cover or liner;
- Soil amendment;
- Ingredient in the manufacture of roofing felt;
- Absorbent for dewatering sewage sludge; and
- Material for plant growth media.

Common uses for bottom ash include:

- Raw material in Portland cement manufacture;
- Aggregate in cold mixed asphalt;
- Ingredient in bituminous stabilized bases for highways;
- Abrasive grit for snow and ice-covered roads;
- Filter material; and
- Structural fill.

Common uses for boiler slag include:

- Sand blasting grit;
- Filter medium for water treatment;
- Raw material for mineral wool insulation;
- Roofing granules in asphalt shingles;
- Grit for ice-covered roads; and
- Structural fill and road bases.

Common uses of flue gas desulfurization material include:

- Flowable fill;
- Structural fill;
- Mining applications;
- Wallboard manufacture; and
- Soil amendment.¹

Part IV of ch. 403, F.S., regulates the disposal and management of solid and hazardous wastes. Permits from the Department of Environmental Protection are required for solid waste management facilities and hazardous waste treatment, storage, and disposal facilities.

Pursuant to s. 403.7045, F.S., certain wastes or activities are not regulated pursuant to part IV of ch. 403, F.S. Among those listed wastes or activities in s. 403.7045(1)(f), F.S., are industrial byproducts if:

- A majority of the industrial byproducts are demonstrated to be sold, used, or reused within 1 year.
- The industrial byproducts are not discharged, deposited, injected, dumped, spilled, leaked, or placed upon any land or water so that such industrial byproducts, or any constituent thereof, may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria is caused.
- The industrial byproducts are not hazardous wastes as defined under s. 403.703(15), F.S.

¹ *Coal Ash — Innovative Applications of Coal Combustion Products*, Americal Coal Ash Association, 1998.

In addition, subsection (2) of s. 403.7045, F.S., provides that except as provided in s. 403.704(15), F.S., the following wastes are not regulated as a hazardous waste except when determined by the U.S. Environmental Protection Agency to be a hazardous waste:

- Ashes and scrubber sludges generated from the burning of boiler fuel for generation of electricity or steam.
- Agricultural and silvicultural byproduct material and agricultural and silvicultural process waste from normal farming or processing.
- Discarded material generated by the mining and beneficiation and chemical or thermal processing of phosphate rock, and precipitates resulting from neutralization of phosphate chemical plant process and nonprocess waters.

Subsection (5) of s. 403.7045, F.S., provides that ash residue generated by a solid waste management facility from the burning of solid waste must be disposed of in a properly designed solid waste disposal area that complies with standards developed by the Department of Environmental Protection for the disposal of such ash residue.

III. Effect of Proposed Changes:

This bill creates s. 403.7047, F.S., to provide for the regulation of fossil fuel combustion products. The beneficial use of fossil fuel combustion products would be exempt from part IV of ch. 403, F.S. However, this section does not limit any other requirements under ch. 376, F.S., or other parts of ch. 403, F.S., or local or federal laws, including without limitation, requirements governing air pollution control permits, National Pollutant Discharge Elimination System (NPDES) permits, and water quality certifications pursuant to section 401 of the federal Clean Water Act.

The following terms are defined: “fossil fuel combustion products,” “beneficial use,” “structural fill,” “pavement aggregate,” “pipe bedding aggregate,” and “follies fuel-fired electric or steam generation facility.”

The bill provides that discrete, controlled land application uses for agronomic value, land reclamation, and pilot demonstration projects are considered beneficial uses of fossil fuel combustion products if:

- A minimum of 60 days before using fossil fuel combustion products for such land application, the user submits written notice to the Department of Environmental Protection (DEP). The notice must contain certain specified information.
- Such products are not stored or speculatively accumulated at the immediate area where they will be used longer than is necessary to complete the project. They are speculative accumulated when a minimum of 51 percent of such products at the project site are beneficially used annually.

In addition to the notification requirements, at least 30 days before using fossil fuel combustion products for land reclamation or pilot demonstration projects in volumes of more than 10,000 cubic yards, the person proposing the use must submit a written notice to the DEP containing construction plans for the facility, including a stability analysis when necessary, prepared,

signed, and sealed by a registered professional engineer. The Department of Transportation is not required to submit construction plans with the written notice, but must maintain a complete set of construction plans and notify the DEP where the plans are located.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will reduce regulatory storage and disposal costs of facilities producing fossil fuel combustion products by allowing certain land applications of such products.

By exempting fossil fuel combustion products from regulation as a solid or hazardous waste, it removes the stigma that may be attached to such products when marketing such products for other uses.

The Department of Environmental Protection has indicated that the definition of “fossil fuel combustion products” in the bill is overly broad. In addition, the possible uses identified as a “beneficial use” may pose a threat to the environment. Such uses of concern include land application, fertilizer products, and land reclamation.

Another concern to the DEP is that the notice provisions in the bill are insufficient to provide notice to third parties that may be adversely impacted.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Natural Resources:

This amendment allows the DEP to issue a hazardous waste corrective action permit. This is to conform to the delegation authority DEP received from the EPA to administer the HSWA Program. (Federal Hazardous and Solid Waste Amendments.) (WITH TITLE AMENDMENT)

#2 by Natural Resources:

Provides that nonhazardous fiber reinforced cement scrap is construction and demolition debris. Currently, if such material is on a structure that is torn down, it may be placed in a C&D landfill; but the same material that is manufacturing scrap may not. It would allow this material to be placed in a C&D landfill, regardless of the source of the material. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
