The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL:	CS/CS/SB 716
INTRODUCER:	Environmental Preservation and Conservation Committee; Community Affairs Committee; and Senators Bennett and Evers
SUBJECT:	Environmental Regulation
DATE:	February 8, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	CA	**Fav/CS**
2.	Uchino	Yeatman	EP	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The Committee Substitute (CS) creates, amends and redefines provisions relating to environmental regulation. It relates to permit administration, requirements and application for various types of permits. It also addresses contaminated site cleanup and other petroleum-related issues.. Specifically the CS:

- Prohibits a county or a municipality from conditioning the processing for a development permit on an applicant obtaining a permit or approval from any other state or federal agency;
- Authorizes the DEP to issue a coastal construction permit before an applicant receives an incidental take authorization;
- Expands eligibility for those entities entitled to reduced or waived permit processing fees;
- Exempts a municipal applicant from having to show extreme hardship when proposing a public waterfront promenade in the Biscayne Bay Aquatic Preserve;
- Expands the use of Internet-based self-certification services and general permits;
- Exempts previously authorized underground injection wells from ch. 373, part III, F.S., relating to the regulation of wells, except for Class V, Group 1 wells;
- Shortens the time frame that permits must be noticed for proposed agency action from 90 days to 60;

- Provides for an expanded state programmatic general permit;
- Raises the qualifying low-scored site initiative priority ranking score from 10 to 29, and exempts certain expenditures from counting against the low-scored site initiative cleanup program;
- Revises qualifications for fiscal assistance for innocent victim petroleum storage system restoration;
- Provides expedited permitting for intermodal logistic centers receiving or sending cargo to or from Florida ports;
- Authorizes zones of discharges to groundwater for existing installations, with certain limitations;
- Revises requirements for permit revocation;
- Revises the definition for "financially disadvantaged small community";
- Revises the definition of industrial sludge;
- Specifies recycling credits available for counties that operate waste-to-energy facilities;
- Revises provisions related to solid waste disposal and management;
- Provides for a general permit for small surface water management systems;
- Expands the definition for "transient noncommunity water systems" to include religious institutions;
- Clarifies creation of regional permit action teams for expedited permitting for certain businesses;
- Allows for sale of unblended fuels for specified applications, and specifies that alternative fuels other than ethanol may be used as blending fuels for blending gasoline; and
- Prohibits the collection of permit renewal fees for those permits that were automatically extended by ch. 2011-139, ss. 73 and 79 of the Laws of Florida.

This CS substantially amends ss. 125.022, 161.041, 166.033, 218.075, 258.397, 373.026, 373.326, 373.4141, 373.4144, 376.3071, 376.30715, 380.0657, 403.061, 403.087, 403.1838, 403.7045, 403.706, 403.707, 403.7125, 403.814, 403.853, 403.973, and 526.203 of the Florida Statutes and creates an unnumbered section of law.

II. Present Situation:

The affected permitting and other areas addressed by this CS are diverse. Each programmatic area will be addressed in the "effect of proposed changes" of the CS to allow for greater clarity of how it is affected by the particular proposed change.

III. Effect of Proposed Changes:

Sections 1 and 3 amend ss. 125.022 and 166.033, F.S., respectively, relating to county and municipality development permit requirements.

Stakeholders in the business and regulated communities have expressed some frustration at the local permitting process. There is anecdotal evidence that local governments may condition approval of development permits on the applicant's first securing state and federal permits. For complicated permits requiring local, state and federal permits, this process can cause delays and drive up costs.

For development permit applications filed after July 1, 2012, the CS prohibits a county or municipality from requiring that an applicant first obtain state or federal permits or approvals before processing or issuing a development permit; however, this prohibition does not apply if a state or federal agency issues a notice of intent to deny the permit before a county's or municipality's action. The CS specifies that issuance of a county or municipal development permit does not create any right for the applicant to obtain permits from other agencies. It also clarifies that a county or municipality is not liable if an applicant fails to fulfill its legal obligations or undertakes actions in violation of state or federal law. A county or municipality may attach a disclaimer in the permit that states as much. The CS allows a county or municipality to require an applicant obtain all state and federal permits before commencing development. The CS does not prohibit a county or municipality from providing information to an applicant as to what other permits may apply.

Section 2 amends s. 161.041, relating to permits for beach and shore preservation projects.

Prior to development of coastal projects, an applicant must apply to the Department of Environmental Protection (DEP) for a coastal construction permit. The federal Endangered Species Act (ESA) governs activities that impact listed species. Section 10a(1)B of the ESA regulates incidental takings of listed species. The ESA defines a "take" as, "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The ESA prohibits takings of listed species through direct harm or habitat destruction. The U.S. Fish and Wildlife Service issues authorizations for incidental takings, which allows permit holders to engage in legal activity that results in incidental takings of listed species.[1] Currently, the DEP will not issue a coastal construction permit before an incidental take authorization is issued.

The CS authorizes the DEP to issue a coastal construction permit before an applicant secures an incidental take authorization issued pursuant to the ESA; however, the permit must contain conditions that prohibit the authorized activity from occurring until the incidental take authorization is issued. This will allow applicants to better prepare for the permitted activity and would be considered a final agency action if any party desired to initiate a ch. 120, F.S., challenge.

Section 4 amends s. 218.075, F.S., relating to reduction or waiver of permit fees.

Section 218.075, F.S., provides that the DEP or a Water Management District (WMD) may reduce or waive permit processing fees for counties with a population of 50,000 or less until that county exceeds a population of 75,000, and for municipalities with a population of 25,000 or less. Fee reductions or waivers are approved on the basis of fiscal hardship or environmental need for a particular project or activity. The governing body must certify that the cost of the permit processing fee is a fiscal hardship.

[1] U.S. Fish and Wildlife Service, *Endangered Species Permits*, http://www.fws.gov/midwest/endangered/permits/hcp/index.html (last visited Jan. 10, 2012).

The CS expands eligibility for reductions or waivers of permit processing fees for entities created by special act, local ordinance or interlocal agreement of those local governments that would qualify under existing law.

Section 5 amends s. 258.397, F.S., relating to the Biscayne Bay Aquatic Preserve.

Florida has 41 aquatic preserves, encompassing approximately 2 million acres. Biscayne Bay Aquatic preserve is located in Southeast Florida in Miami-Dade and Monroe Counties. Its boundaries, management authorities, and rules are established in Rule 18-18, F.A.C.[2] The Board of Trustees of the Internal Improvement Trust Fund (Board) may not convey sovereignty submerged lands within the preserve except upon a showing of extreme hardship by the applicant and that the conveyance is in the public interest. There are no exceptions for municipal projects.

The CS exempts a municipal applicant from having to show extreme hardship for a proposed public waterfront promenade in the Biscayne Bay Aquatic Preserve.

Section 6 amends s. 373.026, F.S., relating to DEP powers and duties and Internet-based self-certification.

Self-certification of permit requirements is the process of the permitting agency allowing "applicants" to manage their own compliance for a given regulated activity. The regulating agency sets up the specific requirements of the permit, and if followed, "applicants" do not apply for permits in the traditional sense. They simply undertake the regulated activity and "self certify" that they have complied with all conditions of the permit. The DEP currently accepts certain types of permit applications online and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands. Through this electronic process, one may immediately determine whether a dock can be constructed without further notice or review by the DEP. The DEP is working on expanding its online self-certification into other permitting areas, but it is currently limited to constructing and repairing single-family docks, adding boatlifts to private docks and adding rip rap to the toe of existing seawalls.[3]

In addition, the WMDs allow users to access nearly all permitting documents and forms online. Their websites also allow interested third parties access to permitting applications and supplementary materials. According to the Legislative Committee on Intergovernmental Relations report,[4] interviews with stakeholder groups indicated some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's website. Some local governments require a "signature" from DEP permit review staff to verify the exempt status of a project submitted under self-certification, notwithstanding the fact

[2] Florida Dep't of Environmental Protection, *About the Biscayne Bay Aquatic Preserve*, http://www.dep.state.fl.us/coastal/sites/biscayne/info.htm (last visited Jan. 9, 2012).
[3] Florida Dep't of Environmental Protection, *FDEP's Self-Certification Process for Single-Family Docks*, http://appprod.dep.state.fl.us/erppa/ (last visited Jan. 9, 2012).
[4] Florida Legislative Committee on Intergovernmental Relations, *Improving Consistency and Predictability in Dock and Marina Permitting* (Mar. 2007), available at http://www.myfmca.org/wp-content/uploads/2009/12/007_Improving_Consistency_Predictability_Dock_Marina_Permitting_2-19-07.pdf (last visited Jan. 9, 2012).

that current law neither requires nor provides for a "signature" from the DEP as an alternative or as supplemental to self-certification.

The CS requires the DEP to expand the use of Internet-based self-certification services for appropriate exemptions and general permits issued by the DEP and the WMDs. The expansion of services is only required if economically feasible. In addition to expanding the use of such online services, the DEP and WMDs must identify and develop general permits for appropriate activities currently requiring individual review that could be expedited through the use of professional certifications.

Section 7 amends s. 373.326, F.S., relating to the regulation of underground injection wells.

The DEP's Underground Injection Control (UIC) Program protects the state's underground sources of drinking water (USDW) while disposing of appropriately treated fluids in underground injection wells.[5] A USDW is defined as an aquifer that contains a total dissolved solids concentration of less than 10,000 milligrams per liter of water.[6] The UIC program is charged with preventing degradation of the quality of other aquifers adjacent to the injection zone. Subsurface injection, the practice of emplacing fluids through an injection well, is one of many wastewater disposal methods used in Florida.[7]

The injection wells are required to be constructed, maintained, and operated so that the injected fluid remains in the injection zone, and the unapproved interchange of water between aquifers is prohibited. There are five classes of injection wells. Four of the well classes address the injection of hazardous and nonhazardous waste and fluids associated with the production of oil and natural gas. Class V injection wells generally inject nonhazardous fluid into or above a USDW.

Class V, Group 1 wells are closed-loop air conditioning return flow wells and qualify for a general permit from the DEP. Therefore, construction of this type of well does not have to be pre-permitted by the DEP. However, the Northwest Florida WMD does issue pre-construction permits for these types of wells.

The CS exempts all underground injection wells, except Class V, Group1, from ch. 373, part III, F.S. It specifies that all wells must be constructed by licensed persons pursuant to s. 373.323, F.S. This will prevent any unnecessary duplication between the DEP and the WMDs for regulating underground injection wells.

Section 8 amends s. 373.4141, F.S., relating to the DEP's permit processing procedures.

Upon receipt of an application for a license or an environmental resource permit (ERP) under ch. 373, part IV, F.S., the DEP or a WMD is required to examine the application and notify the applicant within 30 days of any apparent errors or omissions and requests for additional information (RAIs). The application is not deemed complete until the agency determines that it has all of the information it needs to approve or deny the application. An applicant may request

[5] *See* Rule 62-528, F.A.C.
[6] Rule 62-528.200, F.A.C.
[7] Florida Dep't of Environmental Protection, *Underground Injection Control*, www.dep.state.fl.us/water/uic/ (last visited Jan. 13, 2012).

the agency process the application if he or she believes that an RAI is not authorized by law or rule. The DEP or a WMD is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to an RAI, or limit to the number of RAIs the DEP or WMD may issue.

The CS reduces the time frame for the DEP or a WMD to approve, deny or issue a notice of proposed agency action from 90 to 60 days. Additionally, the CS prohibits a state agency or an agency of the state from requiring a permit from any other local, state or federal agency as a condition to approve or submit a completed application unless statutorily authorized to do so.

Section 9 amends s. 373.4144, F.S., relating to federal environmental permitting.

One of Florida's key characteristics is its vast wetlands, including the Everglades. Wetlands are defined as being neither dry nor covered by open water but continually influenced by water. At times, wetlands may be dry for months or even years, or they may be covered with water the majority of the time only drying out for short periods.[8]

For activities occurring in "waters of the United States" in Florida, including wetlands, the federal Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) require compliance with and regulate activities under the authority of Section 404 of the federal Clean Water Act (CWA).[9] Wetlands are also regulated under Section 10 of the federal Rivers and Harbors Act of 1899,[10] although the focus of that legislation is primarily maintaining navigable waters.[11] When a dredge and fill permit is required in addition to permits required by the state, it is issued independently from the DEP or the WMD permits and is reviewed by the Corps. However, the Corps' issuance of the permit is dependent on the applicant first receiving state water quality certification or a waiver through the state Environmental Resource Permit (ERP)[12] program. If the permitted activity is in a coastal county, the application must also have received a finding of consistency with the Florida Coastal Zone Management Program.[13]

In addition to permits issued under the CWA and the federal Rivers and Harbors Act, the Corps also administers the National Pollution Discharge Elimination System (NPDES) permit program. The Corps has delegated the authority to Florida to implement this program for stormwater systems, including municipal systems, certain industrial activities and construction activities. The WMDs do not have delegated authorization from the EPA to implement this program. The EPA has determined that the separate WMDs do not constitute a central state authority, and

[8] Florida Dep't of Environmental Protection, *Florida State of the Environment – Wetlands: A Guide to Living with Florida's Wetlands*, available at http://www.dep.state.fl.us/water/wetlands/docs/erp/fsewet.pdf (last visited Jan. 9, 2012).
[9] 33 U.S.C. §§ 1251-1387.
[10] 33 U.S.C. § 403.
[11] Florida Dep't of Environmental Protection, *Consolidation of State and Federal Wetland Permitting Programs, Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)* (Sep. 2005), available at http://www.dep.state.fl.us/ig/reports/files/final_report016.pdf (last visited Jan. 9, 2012).
[12] *See generally* ch. 373, part IV, F.S.
[13] Florida Dep't of Environmental Protection, *Summary of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida* (2007), available at http://www.dep.state.fl.us/water/wetlands/docs/erp/overview.pdf (last visited Jan. 9, 2012).

therefore, they do not have the state-wide consistency required for federal delegation of the NPDES permit program.

The Corps has also delegated to Florida the authority to issue federal dredge and fill permits under Section 404 of the CWA for certain activities. These are known as State Programmatic General Permits (SPGP). Under this delegated authority, the department may issue state authorizations for limited state exemptions and noticed general permits for shoreline stabilization, docks, boat ramps, and maintenance dredging that constitute federal authorization. Such authorization may be subject to additional specific federal conditions, however.[14] The DEP has expressed interest in expanding the SPGP program for activity-specific categories, subject to acreage limitations. In addition to a closer alignment of state and federal wetland delineation methods, changes to statutes or rules must be made to address federal coordination and consultation requirements for threatened and endangered species.

The CS authorizes the DEP to obtain issuance of an expanded SPGP or a series of regional general permits from the Corps for categories of activities in waters of the United States governed by the Clean Water Act and in navigable waters governed by the Rivers and Harbors Act of 1899. An activity will only be authorized if it causes only minimal adverse environmental effects when performed separately and, when taken together, cause only minimal cumulative adverse environmental effects.

The CS directs the DEP to not seek issuance of or take any action pursuant to such permits unless the conditions are at least as protective of the environment and natural resources as existing state law and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. It deletes the requirement that the DEP develop a consolidated wetland permitting mechanism by October 1, 2005. It also deletes the requirement that dredge and fill activities impacting 10 acres or less be processed as part of an ERP program.

The CS authorizes the DEP and WMDs to implement a voluntary SPGP for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps if the general permit is at least as protective of the environment and natural resources as existing state law and federal law under the Clean Water Act and Rivers and Harbors Act of 1899. It deletes an obsolete reporting requirement. The CS would not preclude the DEP from pursuing a series of regional general permits for construction activities in wetlands or surface waters.

Section 10 amends s. 376.3071, F.S., related to the low-scored site initiative for contaminated sites.

The Legislature created the Inland Protection Trust Fund (fund) with the intent that it serve as a repository for funds which will enable the DEP to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products in order to protect public health, safety and welfare, and to minimize environmental damage.[15] Section 376.3071(4), F.S., directs the DEP to obligate moneys available in the fund whenever incidents of inland

[14] *Id. at* 20.
[15] Section 376.3071, F.S.

contamination related to the storage of petroleum or petroleum products may pose a threat to the environment or public health, safety or welfare. The current law provides for:

- Prompt investigation and assessment of contaminated sites;
- Expeditious restoration or replacement of potable water supplies;
- Rehabilitation of contaminated sites;
- Maintenance and monitoring of contaminated sites;
- Payment of expenses incurred by the DEP in its efforts to obtain the payment or recovery of reasonable costs resulting from the activities described in this subsection from responsible parties;
- Payment of any other reasonable costs of administration, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment and other assistance to the DEP in the investigation of drinking water contamination complaints, and costs associated with public information and education activities;
- Establishment and implementation of a compliance verification program;
- Activities related to removal and replacement of petroleum storage systems;
- Reasonable costs of restoring property as nearly as practicable to the conditions which existed prior to activities associated with contamination assessment or remedial action;
- Repayment of loans to the fund; and
- Expenditures from the fund to cover ineligible sites or costs if the DEP deems it necessary to do so.

Section 376.3071(5), F.S., provides for the site selection and cleanup criteria that the DEP uses in determining the priority ranking for sites seeking state-funded rehabilitation. The priority ranking is based upon a scoring system for state-conducted cleanup at petroleum contamination sites based upon factors that include, but are not limited to:

- The degree to which human health, safety or welfare may be affected by exposure to the contamination;
- The size of the population or area affected by the contamination;
- The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water; and
- The effect of the contamination on the environment.

Section 376.3071(11), F.S., provides for a low-scored site initiative for sites with a priority ranking score of 10 points or less and provides conditions for voluntary participation, including:

- Upon reassessment pursuant to DEP rule, the site retains a priority ranking score of 10 points or less;
- No excessively contaminated soil, as defined by DEP rule, exists onsite as a result of a release of petroleum products;
- A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable;
- The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment;

- The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated; and
- Soils onsite that are subject to human exposure found between land surface and two feet below land surface meet the soil cleanup target levels established by DEP rule, or human exposure is limited by appropriate institutional or engineering controls.

If these conditions are met, the DEP must issue a "No Further Action" determination, which means minimal contamination exists onsite and that contamination is not a threat to human health or the environment. If no contamination is detected, the DEP may issue a site rehabilitation completion order (SRCO). Sites that are eligible must be voluntarily initiated by the source property owner or responsible party for the contamination. For sites eligible for state restoration funding, the DEP may pre-approve the costs of the site assessment, including six months of groundwater monitoring, not to exceed $30,000 for each site. The DEP may not pay the costs associated with the establishment of institutional or engineering controls. Assessment work must be completed no later than six months after the DEP issues its approval.

There are 4,865 sites with a priority ranking score of 29 or under. A site with a score of 29 or lower indicates that there are no wells threatened by the contamination. Industry experts estimate that as many as 40 percent of these sites are eligible for either a no further action or site rehabilitation completion order.

The CS raises the priority ranking score for voluntary participation in the low-scored site initiative from 10 to 29. It also clarifies that program deductibles, copayments, and contamination assessment report requirements do not count towards expenditures under the low-scored site initiative. These changes will allow more sites to participate and be taken off the contaminated site list.

Section 11 amends s. 376.30715, F.S., relating to innocent victim petroleum storage system restoration.

In 2005, the Legislature created the Innocent Victim Petroleum Storage System Restoration Program to provide state clean-up assistance to property owners of petroleum-contaminated sites that were acquired prior to July 1, 1990. To be eligible for clean up, the site must have ceased operating as a petroleum storage or retail business prior to January 1, 1985. A conveyance of property to a spouse, a surviving spouse in trust or free of trust, or a revocable trust created for the benefit of the settlor, does not disqualify the site from participating in the Innocent Victim Petroleum Storage System Restoration Program. The current property owner of the contaminated site must have acquired the property prior to July 1, 1990.

The CS provides that the transfer of title for a petroleum contaminated site to a child, a child in trust or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance. The CS allows applicants who were previously denied coverage to reapply.

Section 12 amends s. 380.0657, F.S., relating to expedited permitting for economic development projects.

The DEP and WMDs are required to adopt programs to expedite the processing of wetland resource permits and ERPs when such permits are for the purpose of economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S.

Pursuant to s. 288.106(2)(q), F.S., a "target industry business" is defined as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the Office of Tourism, Trade and Economic Development (OTTED) in consultation with Enterprise Florida, Inc.:

- Future growth in both employment and output;
- Workforce is not subject to periodic layoffs;
- High wages compared to the surrounding area;
- Market and resource independence from Florida markets;
- Expansion or diversification of the state's or the area's economic base; and
- Strong economic benefits to the state or regional economies.

An intermodal logistics center, or inland port, is typically a distribution complex designed to provide intermodal transfers between ship, rail and truck operations. The Port of Palm Beach has limited expansion options. Its terminal size is also limiting its growth potential. To address its limitations, Port staff developed the inland port idea to be located in western Palm Beach County.[16] The project has not gotten out of the planning stage and has hit a number of delays. Two proposed sites have been scrapped due to, in large measure, environmental impacts and the potential interference with Everglades restoration. In March 2011, the Port St. Lucie Planning & Zoning Board rejected plans to annex 7,139 acres for development and to amend the comprehensive plan to change the land use from agricultural to heavy industrial.[17] The most recent plans call for collaboration between the Port of Palm Beach and Florida Crystals Corporation to develop 850 acres just north of South Bay, Florida, in unincorporated Palm Beach County.[18]

The CS specifies that any intermodal logistics center that receives and sends cargo to and from Florida's ports qualifies for expedited permitting review.

Section 13 amends s. 403.061, F.S., relating to zones of discharge to groundwater.

"Zone of Discharge" is defined in Rule 62-520.200(27), F.A.C. It means "a volume underlying or surrounding the site and extending to the base of a specifically designated aquifer or aquifers, within which an opportunity for the treatment, mixture or dispersion of wastes into receiving ground water is afforded." Additionally, Rule 62-520.300(2)(c), F.A.C., provides:

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[16] Florida Dep't of Transportation, *South Florida Inland Port Feasibility Study – final report* (June 2007), available at http://www.dot.state.fl.us/seaport/pdfs/SFL_Inland_Port_Final_Report_11_07.pdf (last visited Jan. 9, 2012).

[17] Alexi Howk, *Planning board rejection signals dwindling support for Port St. Lucie inland port project*, TCPalm, Mar. 3, 2011, *available at* http://www.tcpalm.com/news/2011/mar/03/planning-board-rejection-signals-dwindling-for/ (last visited Feb. 8, 2012).

[18] Susan Salisbury, *Port of Palm Beach , Florida Crystals have plan for inland port in Glades*, The Palm Beach Post, July 1, 2011, *available at* http://www.palmbeachpost.com/money/port-of-palm-beach-florida-crystals-have-plan-1632419.html (last visited Feb. 8, 2012).

> The zone of discharge and exemption provisions are designed to provide an opportunity for the future consideration of factors relating to localized situations which could not adequately be addressed in the rulemaking hearing of March 1, 1979, including economic and social consequences, attainability, irretrievable conditions, natural background and detectability.

Further, Rule 62-520.200(10), F.A.C., defines "existing installation" as:

> [A]ny installation which had filed a complete application for a water discharge permit on or before January 1, 1983, or which submitted a ground water monitoring plan no later than six months after the date required for that type of installation as listed in former Rule 17-4.245, F.A.C. (1983), and a plan was subsequently approved by the Department; or which was in fact an installation reasonably expected to release contaminants into the ground water on or before July 1, 1982, and operated consistently with statutes and rules relating to ground water discharge in effect at the time of the operation.

Currently, many existing installations do not have permits or groundwater monitoring plans. It is therefore impossible in these instances for the DEP to designate a specific aquifer for discharge. The DEP has historically used the uppermost aquifer as the default and specified other aquifers if required on case-by-case basis.

The CS provides that for existing installations, as defined by rule 62-520.200(10), F.A.C., zones of discharge to groundwater are authorized horizontally to a facility's or owner's property boundary and extending vertically to the base of a specifically designated aquifer or aquifers. The CS specifies that the zones of discharge may be modified in accordance with DEP rules. It also clarifies that exceedance of primary and secondary groundwater standards that occurs within a zone of discharge does not create liability pursuant to chs. 376 or 403, F.S., for site cleanup, and the exceedance of soil cleanup target levels is not a basis for enforcement or site cleanup, unless it is caused by an illegal discharge.

Section 14 amends s. 403.087, F.S., relating to revocation of permits by DEP.

Currently, the DEP may revoke permits for the following reasons:

- The permit holder has submitted false or inaccurate information on the application;
- The permit holder has violated law, DEP orders, rules, or regulations, or permit conditions;
- The permit holder has failed to submit operational reports or other information required by DEP rule or regulation; or
- The permit holder has refused lawful inspection under s. 403.091, F.S.[19]

[19] Section 403.091(c), F.S., states that no person shall refuse reasonable entry or access to any authorized representative of the DEP who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

The CS narrows those violations that the DEP may consider in revoking a permit. The CS allows the DEP to revoke permits for the following violations:

- The permit holder has violated a law, DEP order, rule or condition, which directly relate to the permit;
- The permit holder has failed to submit required operational reports or other information that directly relates to the permit and has refused to correct or cure such violations when requested to do so; and
- The permit holder has refused a lawful inspection at the facility authorized by the permit.

Section 15 amends s. 403.1838, F.S., relating to the small community sewer construction act.

Florida's Small Community Wastewater Facilities Grants Program is administered by the DEP. The DEP grants funds for the planning, design and construction of wastewater management systems for qualifying small municipalities. Highest priority is given to projects that address the most serious risks to public health, are necessary to achieve compliance, or assist systems most in need based on an affordability index. The population limit to qualify as a financially disadvantaged small community is currently 7,500 or less.

The CS increases the population size from 7,500 to 10,000 or fewer to qualify as a financially disadvantaged small community. More communities will be eligible to qualify for grants.

Section 16 amends s. 403.7045, F.S., relating to industrial waste.

Currently, solid waste is defined in statute to mean sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material. Industrial byproducts are not considered hazardous wastes.

The CS clarifies that sludge from industrial waste treatment works that meet certain exemptions contained in s. 403.7045(1)(f), F.S., is not considered solid waste.

Section 17 amends s. 403.706, F.S., relating to recycling credits for waste-to-energy facilities.

According to the DEP, as of 2011, there are 11 waste-to-energy (WTE) facilities operating in Florida. Through the mass combustion of municipal solid waste and refuse-derived fuel, Florida's WTE facilities generate 3.25 million megawatts of energy per year, enough to power 300,000 homes for one year.

Section 403.706(4)(a), F.S., provides recycling credits for the production of renewable energy from solid waste that are to be counted toward the county recycling goals. Current law requires that recycling credits for WTE facilities be applied at a rate of 1 ton of recycled material per megawatt-hour (1 ton/mwh) of renewable energy produced. Section 403.406(4)(a) also provides that a county shall count additional recycling credits for WTE facilities for the following two cases:

- If a county maintains a 50 percent recycling rate by means other than renewable energy production, it shall get an additional 1 ton credit per megawatt-hour, a total of 2 tons/mwh.

- If a county with renewable energy production from solid waste has a debt service payment related to its waste to energy facility, it shall get an additional credit of 1 ton /mwh.

Therefore, if a county has a debt service funded WTE facility and maintains a 50 percent recycling rate, it receives a 3 ton/mwh recycling credit. In addition, s. 403.406(4)(a), F.S., provides that byproducts, mostly ash, resulting from the WTE process do not count as waste. The result is several counties are expected to exceed a 100 percent recycling rate.[20]

The CS reduces the additional recycling credit from 1 ton to 0.25 tons for each megawatt-hour produced from WTE facilities in counties that maintain a 50 percent recycling rate. It deletes the 1 ton/mwh credit for counties with outstanding debt service on their WTE facilities. Additionally, it clarifies that byproducts, when recycled, shall count towards county recycling goals in accordance to DEP rules. Otherwise the byproducts are considered waste.

Sections 18 amends s. 403.707, F.S., relating to permitting of solid waste management facilities.

Currently, a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without valid permits issued by the DEP. Permits under s. 403.707, F.S., are not required for the following activities, if an activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders:

- Disposal by persons of solid waste resulting from their own activities on their properties, if such waste is ordinary household waste or rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations;
- Storage in containers by persons of solid waste resulting from their own activities on their properties, if the solid waste is collected at least once a week; and
- Disposal by persons of solid waste resulting from their own activities on their properties if the environmental effects of such disposal on groundwater and surface waters are addressed or authorized by a site certification order or a permit issued by the DEP under ch. 403, F.S., or rules adopted pursuant to ch. 403, F.S., or addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the DEP.

The DEP provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state. Section 403.707, F.S., requires that a solid waste management facility must obtain a permit from DEP in order to operate. In addition, the DEP typically limits the amount of specific materials that a WTE facility may accept through air permit or certification conditions. For example, many facilities are limited by conditions in their air permits to accepting used oil filters that make up less than 5 percent of their waste streams. There is no statutory provision that requires or restricts this practice. However, current law allows the DEP to restrict certain types of waste to comply with air emission limitations.

Section 403.707(3), F.S., limits permit duration to 10 years for a potential source of water pollution, which includes most solid waste management facilities. The DEP rules currently limit

[20] DEP, *Waste to Energy Recycling Credits* (2012) (on file with the Senate Committee on Environmental Preservation and Conservation).

permit duration to 5 years, except for certain long-term care permits for closed facilities, which may be approved up to 10 years. The fees for most solid waste permits are limited to $10,000.

Leachate from a landfill varies widely in composition depending on the age of the landfill and the type of waste it contains. It can usually contain both dissolved and suspended solids. The generation of leachate is caused principally by precipitation percolating through waste deposited in a landfill. The term "leachate" refers to the fluid flowing out of waste material after coming in contact with decomposing solid waste.

The risks of leachate generation can be mitigated by properly designed and engineered landfill sites, such as sites that are constructed on geologically impermeable materials or sites that use impermeable liners made of geomembranes or engineered clay.

The CS requires the DEP to allow WTE facilities to maximize acceptance and processing of nonhazardous solid and liquid waste. This will limit the DEP's authority to restrict certain waste types to a percentage of the total waste stream. This provision does not affect the DEP's authority to restrict waste types to comply with air emission limitations.

The CS deletes the public nuisance and adverse impact requirements in s. 403.707(2), F.S., which provide that a permit is not required if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders.

The CS provides that if a facility has a permit authorizing disposal activity for solid waste resulting from their own activities on their own property, new areas where solid waste is being disposed of which are monitored by an existing or modified groundwater monitoring plan are not required to be specifically authorized in a permit or other certification.

The CS requires the DEP to issue 20-year permits for solid waste management facilities having leachate control systems that meet DEP's requirements. This provision applies to new applications and renewals made on or after October 1, 2012

The CS also allows a permit to be issued to a solid waste management facility that does not have a leachate control system for 10 years if the applicant meets certain criteria. The applicant seeking renewal must:

- have regularly utilized the site for at least 4 and a half months before the application;
- not be subject to a notice, at the time of applying for the renewal permit, by the DEP, or be in violation of an applicable rule;
- not have been notified to implement assessment or evaluation monitoring as a result of exceedances of applicable groundwater standards, or completing corrective actions in accordance with applicable DEP rules;
- be in compliance with the applicable financial assurance requirements.

This section also authorizes the DEP to adopt rules but does not require those rules to be submitted to the Environmental Regulation Commission for approval. The CS specifies that existing permit cap fees do not apply. The DEP is authorized to prorate existing fees for these longer permits. For example, a Class I landfill operation permit fee is currently $10,000 for a 5-

year permit. If these provisions become law, the permit fee will increase to a maximum of $40,000 for a 20-year permit.

Section 19 amends s. 403.7125, F.S., relating to financial assurance for solid waste management facilities.

The EPA adopted rules for solid waste management facilities in 1991. According to the DEP, if a state's program was determined to be at least equivalent to the federal program, it would be approved and the federal regulation would not apply in that state. Florida's program was approved in 1993. One of the conditions for approval was that DEP amend existing rules to require financial assurance for corrective actions at landfills. The DEP adopted Rules 62-701.630 and 62-701.730, F.A.C., to include provisions requiring permittees that have an approved corrective action plan to put up financial assurance for the costs of the corrective actions. The Joint Administrative Procedures Committee has stated that the DEP does not have the statutory authority for these rules. If the DEP had to repeal the existing rules, the EPA could determine that Florida's program is no longer equivalent and disapprove it, in which case owners of solid waste management facilities would be required to comply with all of the EPA's regulations in addition to all of Florida's rules. This would create a burden on the regulated community and could create conflict since Florida's rules are not identical to EPA's.[21]

Additionally, owners and operators of landfills are jointly and severally liable for the improper operation and resulting closure of the facility.[22] To offset potential liabilities where the landfill is owned or operated by a local, state, or federal governmental entity, the owner or operator must establish and collect a fee, surcharge, or other revenue source in an amount necessary to ensure adequate funds are available in the event the landfill must be closed. The funds collected must be deposited in an interest-bearing escrow account maintained by the owner or operator.[23] Alternatively, owners or operators may provide DEP with a financial assurance of funds for the closure of the facility, in the form of a surety bond, certificates of deposit, or other specified financial instruments.[24]

The CS directs the DEP to require, by rule, the owner or operator of a solid waste management facility receiving waste after October 9, 1993, and who is the responsible party for corrective actions for violations of water quality standards, to provide financial assurance to cover the costs of corrective actions. The CS also specifies that the financial assurance mechanisms available for closure costs shall be available for corrective actions. This change should alleviate any potential ch. 120, F.S., challenges that the DEP does not have the statutory authority for the existing rules.

Section 20 amends 403.814, F.S., relating to delegation of general permits.

Currently, the DEP is authorized to adopt rules establishing and providing for general permits for projects which have, either singularly or cumulatively, a minimal adverse environmental effect. Such rules must specify design or performance criteria that, if applied, would result in compliance with appropriate standards. Any person complying with the requirements of a

[21] Conversation with a Florida Dep't of Environmental Protection representative (Jan. 6, 2012).
[22] Section 403.7125(1), F.S.
[23] Section 403.7125(2), F.S.
[24] Section 403.7125(3), F.S.

general permit may use the permit 30 days after giving notice to the DEP without any agency action by the DEP.[25] Projects include, but are not limited to:

- Construction and modification of boat ramps of certain sizes,
- Installation and repair of riprap at the base of existing seawalls,
- Installation of culverts associated with stormwater discharge facilities, and
- Construction and modification of certain utility and public roadway construction activities.

The CS directs the DEP to create a general permit for construction, alteration and maintenance of surface water management systems for up to 10 acres. When the stormwater management system conforms to ch. 373, part IV, F.S., it creates a rebuttable presumption that discharges comply with state water quality standards. The CS specifies that construction of a system may proceed without action by the DEP or a WMD if, within 30 days after commencement of construction, an electronic self-certification is submitted to the DEP or a WMD that certifies the system was designed by a registered professional and meets the following criteria:

- The total project area is less than 10 acres and contains less than two acres of impervious surface;
- The activities will not impact wetlands or other surface waters;
- The activities are not conducted in, on or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;
- The project is not part of a larger common plan of development or sale; and
- The project does not cause:
  - adverse water quantity or flooding to receiving waters or adjacent lands;
  - adverse impacts to existing surface water storage and conveyance capabilities;
  - violations of state water quality standards; or
  - adverse impacts to the maintenance of surface water or groundwater levels or surface water flows established pursuant to s. 373.042, F.S., or a work of a WMD provided for in s. 373.086, F.S.; and

Section 21 amends s. 403.853, F.S., relating to drinking water standards for religious institutions.

Under the federal Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) has promulgated national primary drinking water regulations for contaminants that may adversely affect human health, if it is likely to occur in public water systems often and at levels of public health concern. The EPA will regulate the contaminant if the EPA's Administrator decides that regulating the contaminant will meaningfully reduce health risks for those served by public water systems. The federal act also authorizes states to assume implementation and enforcement. In 1977 Florida adopted the Florida Safe Drinking Water Act (FSDWA), which is jointly administered by the DEP, as lead-agency, and the Department of Health (DOH), which has specific duties and responsibilities of its own. The DOH and its agents have general supervision and control over all private water systems and public water systems not covered or included in the FSDWA. Every county health department in Florida has a minimum degree of mandatory participation in the FSDWA. This minimal level of participation is supportive in nature because most of the county health departments do not have sufficient staff or capability to

[25] Section 403.814(1), F.S.

be fully responsible for the program. In those counties where the county health department is without adequate capability, the appropriate DEP office is heavily involved in administering all aspects of the program.

Under the FSDWA, a regulated "public water system" is a system that provides water for human consumption through pipes or other constructed conveyances and has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.[26] The only exception is for those systems that, in addition to meeting the criteria for being a public water system, also meet all four criteria provided for in s. 403.853(2), F.S. The system:

- Consists of distribution and storage facilities only and cannot treat or collect water;
- Obtains all its water from a public water system but is not owned or operated by it;
- Does not sell water; and
- Is not a carrier of passengers in interstate commerce.

Public water systems are either community or noncommunity. A community water system serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. A noncommunity water system is either a nontransient noncommunity system or a transient noncommunity water system. A nontransient noncommunity water system serves at least 25 of the same persons over six months per year. A transient noncommunity water system has at least 15 service connections or regularly serves at least 25 persons daily at least 60 days out of the year but does not regularly serve 25 or more of the same persons for more than six months per year.[27]

The CS provides that the DEP, or a local county health department designated by the DEP, is authorized at the request of the owner or operator of a transient noncommunity water system using groundwater as a source of supply and serving religious institutions, except those with school or day care services, to perform a sanitary survey. Upon receipt of satisfactory results, the DEP must reduce the monitoring and reporting requirements for such religious institutions.

Section 22 amends s. 403.973, F.S., relating to expedited permitting and comprehensive plan amendments.

Section 403.973, F.S., provides for an expedited permitting and comprehensive plan amendment process for certain projects that are identified to encourage and facilitate the location and expansion of economic development, offer job creation and high wages, strengthen and diversify the state's economy, and which have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., OTTED or a Quick Permitting County may certify a business as eligible to use the process. Recommendations on which projects should use the process may come from Enterprise Florida, any county or municipality, or the Rural Economic Development Initiative (REDI). Eligibility criteria stipulate that a business must:

- Create at least 50 jobs; or

[26] *See* s. 403.852(2), F.S.
[27] *See generally* s. 403.852, F.S.

- Create 25 jobs if the project is located in an enterprise zone, in a county with a population of fewer than 75,000, or in a county with a population of fewer than 100,000 that is contiguous to a county having a population of 75,000 residing in incorporated and unincorporated areas of the county.

Regional Permit Action Teams are established by a Memorandum of Agreement (MOA) with the secretary of the DEP directing the creation of these teams. The MOA is between the secretary and the applicant with input solicited from the DCA, DOT, Florida Department of Agriculture and Consumer Services; the Florida Fish and Wildlife Conservation Commission; the Regional Planning Councils; and the WMDs. The MOA accommodates participation by federal agencies, as necessary. At a local government's option, a special MOA may be developed on a case-by-case basis to allow some or all local development permits or orders to be covered under the expedited review. Implementation of the local government MOA requires a noticed public workshop and hearing.

Presently, certified projects receive the following benefits:

- Pre-application meeting of regulatory agencies and business representatives held within 14 days after eligibility determination;
- Identification of all necessary permits and approvals needed for the project;
- Designation of a project coordinator and regional permit action team contacts;
- Identification of the need for any special studies or reviews that may affect the time schedule;
- Identification of any areas of significant concern that may affect the outcome of the project review;
- Development of a consolidated time schedule that incorporates all required deadlines, including public meetings and notices;
- Final agency action on permit applications within 90 days from the receipt of complete application(s);
- Waiver of twice-a-year limitation on local comprehensive plan amendments; and
- Waiver of interstate highway concurrency with approved mitigation.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The administrative law judge's (ALJ) recommended order is not the final state agency action unless the participating agencies of the state opt at the preliminary hearing conference to allow the ALJ's decision to constitute the final agency action. Where only one state agency action is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the ALJ's recommended order. In those proceedings where more than one state agency action is challenged, the Governor shall issue the final order within 10 working days of receipt of the ALJ's recommended order.

Expedited permitting provides a special assistance process for REDI counties. OTTED, working with REDI and the regional permitting teams, is to provide technical assistance in preparing permit applications for rural counties. This additional assistance may include providing guidance in land development regulations and permitting processes, and working cooperatively with state, regional and local entities to identify areas within these counties that may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 403.973(19), F.S., prohibits the following projects from using the expedited process:

- A project funded and operated by a local government and located within that government's jurisdiction; or
- A project, the primary purpose of which is to:
  - Affect the final disposal of solid waste, biomedical waste, or hazardous waste in the state,
  - Produce electrical power (unless the production of electricity is incidental and not the project's primary function);
  - Extract natural resources;
  - Produce oil; or
  - Construct, maintain or operate an oil, petroleum, natural gas or sewage pipeline.

The CS revises the structure and process for expedited permitting of targeted industries. The CS expands eligibility for activities qualifying for expedited review to commercial or industrial development projects that will be occupied by businesses that would individually or collectively create at least 50 jobs. The CS requires regional teams to be established through the execution of a project-specific MOA. It clarifies that the standard form of the MOA will be used only if the local government participates in the expedited review process. It also fixes several technical errors stemming from the creation of the Department of Economic Opportunity in 2011.

Section 23 amends s. 526.203, F.S., relating to the sale of unblended fuels.

The Federal Energy Independence and Security Act of 2007, signed into law on December 19, 2007, set the renewable fuels standard (RFS) minimum annual goal for renewable fuel use at 9.0 billion gallons in 2008 and 36 billion gallons by 2022. Beginning in 2016, all of the fuel increase in the RFS target must be met by advanced biofuels, defined as fuels derived from other than corn starch.[28] Motor gasoline and diesel fuel, both fossil fuels, make up more than 87 percent of Florida's transportation energy costs, with aviation fuel accounting for less than 10 percent.

The Legislature passed a comprehensive energy bill in 2008 that, in part, established the Florida Renewable Fuel Standard Act (Act). The act provided the following definitions:

- "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "Blended gasoline" means a mixture of ninety percent gasoline and ten percent fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services. The ten percent fuel ethanol portion may be derived from any agricultural source.
- "Unblended gasoline" means gasoline that has not been blended with fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "10 percent" means 9-10 percent ethanol by volume.

The act provided that by December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender or wholesaler was to contain, at a minimum, 10 percent of agriculturally derived, denatured ethanol fuel by volume.

[28] U.S. Dep't of Energy, *Federal & State Incentives & Laws*, http://www.afdc.energy.gov/afdc/laws/eisa (last visited Jan. 13, 2012).

The following are exempt from the act:

- Fuel used in aircraft;
- Fuel sold at marinas and mooring docks for use in boats and similar watercraft;
- Fuel sold to a blender;
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, offroad vehicles, motorcycles, or small engines;
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency;
- Fuel bulk transferred between terminals;
- Fuel exported from the state in accordance with s. 206.052, F.S.;
- Fuel qualifying for any exemption in accordance with ch. 206, F.S.;
- Fuel at an electric power plant that is regulated by the United States Nuclear Regulatory Commission unless such commission has approved the use of fuel meeting the requirements of the act;
- Fuel for a railroad locomotive; and
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if it were to be operated using fuel meeting the requirements of the act.

The CS clarifies that s. 526.203, F.S., does not prohibit the sale of unblended fuels for the uses exempted in s. 526.203(3), F.S., as listed above. It also expands the definition of "blended gasoline" to include alternative fuels other than ethanol. It specifies that the alternative fuel portion of the 9 to 10 percent for blended fuels may be derived from any agricultural source. The CS defines "alternative fuel" as fuel derived from biomass to replace or reduce fossil fuels used for transportation fuel. Within the definition of "alternative fuel," the CS specifies that "biomass" means the definition provided in s. 366.91, F.S., and "alternative fuel" means the definition provided in s. 525.01(1)(c), F.S., which is suitable for blending with gasoline (not diesel-derived fuels).

Section 24 creates an unnumbered section of law addressing permit extensions granted by the Legislature to account for the economic downturn.

Chapter 2011-139, ss. 73 and 79 of the Laws of Florida provide that any building permit and any permit issued by the DEP or by a WMD, pursuant to ch. 373, part IV, F.S., which has an expiration date between January 1, 2012, and January 1, 2014, is extended and renewed for a period of two years after its previously scheduled date of expiration. The extension includes any local government-issued development order or building permit including certificates of levels of service.

The extension does not apply to permits:

- issued by the Army Corps of Engineers;
- held by an owner or operator determined to be in significant noncompliance with the conditions of the permit as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency; or

- that, if granted an extension, would delay or prevent compliance with a court order.

There are some local governments charging renewal fees for permits that were extended automatically by the Legislature if their expiration dates fell within the specified dates. The intent of ch. 2011-139, ss. 73 and 79 of the Laws of Florida was to automatically extend certain permits to allow for the economy to recover. It was never the intent to authorize issuing agencies to charge for permit extensions granted under these sections.

The CS specifies that the holder of a valid permit or other authorization is not required to pay a renewal fee to an authorizing agency for an extension granted under ch. 2011-139, ss. 73 or 79 of the Laws of Florida. The CS applies this provision retroactively to June 2, 2011.

Section 25 provides an effective of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Issuing agencies for permits with expiration dates between January 1, 2012 and December 31, 2012 are prohibited from collecting renewal fees. This provision is retroactive to June 2, 2012.

B. Private Sector Impact:

Reducing environmental permitting requirements, time, necessity and compliance costs will collectively save business and individuals significant amounts of money; however, the savings cannot be calculated on an individual basis. Expansion of Internet-based self-certification and additional general permits may also reduce costs for constructing qualifying projects.

Owners and operators of lined solid waste management facilities that opt for longer-term permits may benefit from the increased predictability those longer permits provide. For example, it may be easier to obtain financing for these projects and operational and design criteria are less likely to need updating and amending as frequently. After five

years, the cost savings from not having to apply for and receive permit renewals will be significant.

Solid waste management facilities will have more flexibility when preparing to apply for permits as the life of the permit will be increased by 15 years. Further, the costs associated with filing renewal applications will decrease.

Owners and operators of unlined solid waste management facilities that meet DEP's requirements may opt for longer-term permits and may benefit from the increased predictability such longer permits provide.

Owners or operators of transient noncommunity water systems using groundwater as their source of drinking water serving religious institutions may have reduced reporting and monitoring costs.

Increasing the qualifying low-scored site initiative priority ranking score from 10 to 29 may significantly benefit owners of contaminated sites who do not currently qualify. The impact, which may be significant on a cumulative and individual basis, cannot be determined because the program is voluntary.

A child of an original owner or a corporation created to hold title to a contaminated site who gained ownership of that site through the transfer of the property may qualify for financial assistance to aid cleanup of the site. Previous applicants who were denied may reapply. The DEP estimates the average cost to clean up a contaminated site is $380,000.

Producers of alternative fuels, other than ethanol, may benefit from expanding the types of fuels that may be blended with gasoline.

Lastly, an individual who paid a permit renewal fee since June 2, 2011, will get a refund of that fee if the permit qualifies. Renewal fees for qualifying permits can be hundreds of dollars.

C. Government Sector Impact:

State Government Impact:

The DEP has estimated there will be an unknown impact to the Permit Fee Trust Fund associated with reducing or waiving permit processing fees for entities created by special acts, local ordinances, and interlocal agreements by low-population counties.

Expanding the eligibility criteria for the Innocent Victim Petroleum Storage System Restoration will likely result in more sites being eligible to participate in the state-funded cleanup program. As mentioned above, the average cost of each cleanup is $380,000. The number of additional sites that may be eligible is unknown.

The DEP anticipates an increase in the amount of fees collected due to the extended length of certain permits. This increase will level out, as the new permits will not need to

be renewed as often. In addition, there may be some cases when the costs associated with closing a facility would exceed the face value of the insurance policy. In this instance, Solid Waste Trust Fund dollars would need to be spent and would not be reimbursed by an insurance company.

Increasing the qualifying low-scored site initiative priority ranking score may allow the DEP to clear the backlog of contaminated sites more quickly. There are 4,865 sites that scored 29 or lower. Due to the backlog, the DEP may not realize any savings in the short-term but may in the long-term if the backlog of contaminated sites can be eliminated. Given that participation in the program is voluntary for owners of contaminated sites, the impact is indeterminate.

All other impacts to the DEP can be absorbed by existing staff and resources.

WMD governing boards may have to schedule additional meetings in order to comply with taking a denial action within 60 days of receiving completed permit applications. However, some permits will fall within a normal governing board meeting schedule and will not require any additional costs for a WMD to take action. Meeting costs vary by WMD and cannot be determined at this time. Since denials are infrequent because WMD staff work with applicants to avoid such action, the impact of this provision may be negligible.

Local Government Impact:

As with the private sector, when a local government is a permit applicant, reducing environmental permitting requirements, time, necessity and compliance costs will collectively save significant amounts of money; however, the savings cannot be calculated on an individual, local government basis.

When a local government is an ERP permit applicant, shortened permitting time clocks might reduce costs to obtain a permit if overall permit times are actually reduced, and the provisions do not result in additional permit denials or the need for timeclock waivers.

Entities created by special acts, local ordinances or interlocal agreements of certain local governments will pay fewer permit fees so the savings would likely be passed on to the local government but without knowing how many of these entities exist, the actual effect is unknown.

Financially disadvantaged municipalities with a population between 7,500 and 10,000 will now be eligible for wastewater grants under the Small Community Sewer Construction Assistance Act.

There may be a negative impact to local governments for reductions to recycling credits issued for WTE facilities. The impact would be greatest if grants or other funding is tied to achieving or maintaining a specific recycling goal and the changes in the CS resulted in a local government falling below a specified goal.

The provision in the bill making retroactive the prohibition that holders of extended permits make payments on such permits could result in a negative impact on local government revenues if local governments are required to return any such payments they collected. However, this is not revenue the Legislature intended to authorize local governments to collect when it extended certain permits in ch. 2011-139, ss. 73 and 79 of the Laws of Florida.

VI. Technical Deficiencies:

On lines 932, 940, 956, 971 and 1052, "memoranda" should be changed to "memorandum."

VII. Related Issues:

The WMD governing boards are responsible for approving or denying certain permits. While some approval functions are delegated from the governing boards to the staffs, denial actions can only be taken by the governing boards. They typically do not meet on a schedule that would allow for consistent denials of permits within 60 days. Denials are infrequent because WMD staff work with applicants to avoid such actions.

Section 403.707(2)(c), F.S., allows persons, which are statutorily defined to include corporations,[29] to dispose of solid waste *resulting* from their own activities on their own properties. The CS allows *facilities* to dispose of solid waste in new areas without a permit or certification if certain leachate and monitoring plans are in place. This provision, if interpreted broadly, may allow for expansion of a solid waste facility to a new area without a permit or certification even if the solid waste was not *generated* on the property where it was being disposed. This is not the intention of the CS. Clarification may be needed to ensure this provision only applies to facilities that generate and dispose of their own solid waste on their own properties.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on February 6, 2012:

- Clarifies the act applies to development permit applications filed with a county or municipality after July 1, 2012, related to conditioning permit issuance on prior state or federal permits or approvals;
- Authorizes the DEP to issue coastal construction permits before an incidental take authorization is issued pursuant to the ESA;
- Deletes provision exempting the dredge and fill activities of a public waterfront promenade in the Biscayne Bay Aquatic Preserve;
- Deletes provisions related to an intermodal logistics center or inland logistics center (inland port) for facilities designation of the Strategic Intermodal System;
- Clarifies that the State Underground Injection Control Program does not apply to Class I, II, III, IV or V wells, except for Class V, Group 1 wells;

[29] Section 403.703(22), F.S.

- Deletes provisions that required counties and municipalities to apply for delegation of the ERP program or be preempted from permitting activities that affected surface water and groundwater resources;
- Raises the priority ranking score for the low-scored site initiative from 10 to 29;
- Clarifies that a facility's zone of discharge extends horizontally to the property boundary and vertically to the base of the authorized aquifer; however, it may be modified in accordance with DEP rules;
- Clarifies the DEP may revoke a permit if the permit holder has violated a law, DEP order, rule or condition, which directly relate to the permit;
- Reduces recycling credits for certain WTE facilities;
- Clarifies that recycled byproducts from WTE count towards a county's recycling goals or, if not recycled, is considered waste;
- Requires the DEP to allow WTE facilities to maximize their acceptance of nonhazardous solid and liquid waste;
- Deletes provisions that amended s. 403.709, F.S., relating to solid waste management facility closure accounts;
- Directs the DEP to require certain financial assurance from owners or operators of solid waste management facilities for corrective actions for violations of water quality standards;
- In Section 20, changes "and" to "or" for a list of four impacts that would make a surface water management system ineligible for a general permit;
- Specifies that alternative fuels other than ethanol may be used as blending fuels for blending gasoline;
- Provides a definition for "alternative fuel" with clarifications for "biomass" and "alternative fuel" as used within that definition; and
- Provides that payment of permit extension fees are not required for permit extension authorized in ch. 2011-139, ss. 73 and 79 of the Laws of Florida.

CS by Community Affairs on January 12, 2012:

- Deletes sections related to RAI requirements; permitting beach management projects and extending deadlines for upgrades to secondary containment systems for fuel tank systems;
- Moves provisions related to inland ports from s. 166.3180, F.S. to s. 339.63, F.S.;
- Exempts previously authorized underground injection wells from ch. 373, part III, F.S., relating to the regulation of wells;
- Directs the Secretary of Transportation to designate certain facilities as part of the SIS;
- Revises and expands eligibility for sites that may qualify for an inland port;
- Removes the 5-year duration for transportation impacts from an inland port that allows for up to a 150 percent increase in the adopted level of service;
- Requires a county or a municipality with a specified population by July 1, 2012, to apply for delegation of authority by certain deadlines for environmental resource permitting;
- Includes many provisions from CS/SB 938, related to solid waste disposal, management and permitting; and
- Expands the definitions used as part of the renewable fuel standards.

B. Amendments:

None.