

Committee Substitute for House Bill No. 3701

An act relating to pollution control; creating s. 403.7211, F.S.; restricting authority of the Department of Environmental Protection to issue permits for construction, modification, and initial operation of facilities for disposal, storage, or treatment of hazardous wastes generated off-site; restricting the locations of hazardous waste transfer facilities; providing application to pending permits and proposed transfer stations; providing an effective date.

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

Section 1. Section 403.7211, Florida Statutes, is created to read:

403.7211 Hazardous waste facilities managing hazardous wastes generated off-site; federal facilities managing hazardous waste.

(1) This section applies to facilities managing hazardous waste generated off-site. This section does not apply to manufacturers, power generators, or other industrial operations that have received or apply for a permit or a modification to a permit from the department for the treatment, storage, or disposal of hazardous waste generated only on-site or from other sites owned or acquired by the permittee. Power generators are electric utilities as defined in s. 403.522 which own or operate facilities necessary for the generation, transmission, or distribution of electric energy, federally qualified facilities under the Public Utility Regulatory Act of 1978 or exempt wholesale generators under the Energy Policy Act of 1992. Notwithstanding the foregoing, this section shall apply to all federal facilities that manage hazardous waste.

(2) The department shall not issue any permit under s. 403.722 for the construction, initial operation, or substantial modification of a facility for the disposal, storage, or treatment of hazardous waste generated off-site which is proposed to be located in any of the following locations:

(a) Any area where life-threatening concentrations of hazardous substances could accumulate at any residence or residential subdivision as the result of a catastrophic event at the proposed facility, unless each such residence or residential subdivision is served by at least one arterial road or urban minor arterial road, as defined in s. 334.03, which provides safe and direct egress by land to an area where such life-threatening concentrations of hazardous substances could not accumulate in a catastrophic event. Egress by any road leading from any residence or residential subdivision to any point located within 1,000 yards of the proposed facility is unsafe for the purposes of this paragraph. In determining whether egress proposed by the applicant is safe and direct, the department shall also consider, at a minimum, the following factors:

1. natural barriers such as water bodies, and whether any road in the proposed evacuation route is impaired by a natural barrier such as a water body;

2. potential exposure during egress and potential increases in the duration of exposure;

3. whether any road in a proposed evacuation route passes in close proximity to the facility; and

4. whether any portion of the evacuation route is inherently directed toward the facility.

(b) Any location within 1,500 yards of any hospital, prison, school, nursing home facility, day care facility, stadium, place of assembled workshop, or any other similar site where individuals are routinely confined or assembled in such a manner that reasonable access to immediate evacuation is likely to be unavailable;

(c) Any location within 1,000 yards of any residence; or

(d) Any location which is inconsistent with rules adopted by the department under part IV.

For the purposes of this subsection, all distances shall be measured from the outer limit of the active hazardous waste management area. "Substantial modification" includes: any physical change in, change in the operations of, or addition to a facility which could increase the potential off-site impact, or risk of impact, from a release at that facility; and any change in permit conditions which is reasonably expected to lead to greater potential impacts or risks of impacts, from a release at that facility. "Substantial modification" does not include a change in operations, structures or permit conditions which does not substantially increase either the potential impact from, or the risk of, a release. Physical or operational changes to a facility related solely to the management of non-hazardous waste at the facility shall not be considered a substantial modification. The department shall, by rule, adopt criteria to determine whether a facility has been substantially modified. "Initial operation" means the initial commencement of operations at the facility.

(3) It shall be presumed, for the purposes of section 2(a) only, that life-threatening concentrations of hazardous substances could accumulate in a catastrophic event in any area within a radius of 3 miles of a hazardous waste transfer, disposal, storage, or treatment facility. This presumption may be rebutted by a demonstration that such life-threatening concentrations could accumulate at a greater distance, or that such life-threatening concentrations could accumulate only at a lesser distance, in light of the composition, quantity, and concentration of hazardous waste proposed to be disposed of, treated, or stored at the proposed facility. This demonstration may be made, at the election of the facility, in the form of the submissions required under Program 3 of the Accidental Release Prevention Program of s. 112(r)(7) of the Clean Air Act.

(4) For the purposes of this section, a concentration of hazardous substances shall be deemed to be life-threatening when the concentration could cause susceptible or sensitive individuals, excluding hypersensitive or hy-

persusceptible individuals, to experience irreversible or other serious, long-lasting effects or impaired ability to escape.

(5) No person shall construct or operate a transfer facility for the management of hazardous waste unless the facility meets the siting requirements of subsection (2).

(6) This section shall not prohibit the operation of existing transfer facilities that have commenced operation as of the effective date of this section, if the transfer facility is not relocated or if there is no substantial modification in the structure or operation of the facility after the effective date of this section.

Section 2. Section 403.7211, Florida Statutes, as created by this act, shall apply to any permit applications for the construction, initial operation, or substantial modification of a facility pending on the effective date of this act for which the Department of Environmental Protection has not issued a final order and to any proposed transfer facility which has not commenced operation as of the effective date of this act.

Section 3. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 30, 1998.

Filed in Office Secretary of State May 29, 1998.