CHAPTER 2000-211

Senate Bill No. 1788

An act relating to the Florida Statutes; repealing various statutory provisions that have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded; amending s. 161.163, F.S.; deleting an obsolete deadline for designation of coastal areas to be used by sea turtles for nesting; amending s. 161.56, F.S.; deleting an obsolete deadline for submission to the Administration Commission of lists of local governments having coastal zones which have not provided evidence of adoption of the required building code; amending s. 212.08, F.S.; conforming a cross-reference; repealing s. 376.185, F.S., relating to budget approval for funding enforcement of the Pollutant Discharge Prevention and Control Act; amending s. 376.11, F.S.; removing a cross-reference, to conform; repealing s. 376.303(1)(e), F.S., relating to the Department of Environmental Protection establishing a technical advisory committee to recommend certain legislation; amending s. 376.30714, F.S.; conforming a cross-reference; amending s. 376.3071, F.S., and repealing paragraph (6)(c), relating to a loan from the Florida Coastal Protection Trust Fund to provide funding to the Inland Protection Trust Fund; updating provisions relating to reimbursement for cleanup expenses from the Inland Protection Trust Fund; repealing s. 377.02, F.S., relating to the form of the interstate compact to conserve oil and gas; amending s. 378.208, F.S., and repealing subsection (3), relating to financial assurance requirements for phosphate land operators; conforming a cross-reference; amending s. 403.085, F.S.; deleting obsolete deadlines and references in provisions requiring certain sanitary sewage disposal treatment plants and industrial plants or facilities to provide for secondary and any ordered advanced waste treatment; amending s. 403.086, F.S.; deleting obsolete deadlines and references in provisions requiring certain sanitary sewage disposal facilities to provide for secondary and any ordered advanced waste treatment; amending s. 403.0872, F.S.; deleting an obsolete deadline relating to the audit of the major stationary source air-operation permit program; repealing s. 403.08851, F.S., relating to implementation of the state National Pollutant Discharge Elimination System (NPDES) Program; repealing s. 403.1826(6)(b), F.S., relating to a temporary waiver from accumulation requirements of the Florida Water Pollution Control and Sewage Treatment Plant Grant Act; repealing s. 403.221, F.S., relating to proceedings pending at the time of adoption of the Florida Air and Water Pollution Control Act; amending s. 403.7046, F.S.; deleting obsolete dates relating to regulation of recovered materials; amending s. 403.703, F.S.; correcting a cross-reference; amending s. 403.7049, F.S.; deleting obsolete dates relating to local government determination and notification of the full cost for solid waste management; amending s. 403.706, F.S.; deleting obsolete dates relating to the reduction and weighing of solid waste received by a solid waste management facility; amending s.

403.707, F.S.; deleting an obsolete date relating to solid waste management facility permits; amending s. 403.708, F.S.; deleting obsolete dates relating to beverage container and packaging requirements; amending s. 403.716, F.S.; deleting obsolete dates relating to training of operators of landfills, waste-to-energy facilities, biomedical waste incinerators, or mobile soil thermal treatment units or facilities; amending s. 403.7186, F.S.; deleting obsolete dates relating to environmentally sound management of mercury-containing devices and lamps; amending s. 403.7191, F.S.; deleting an obsolete date relating to reduction of toxics in packaging; amending s. 403.7192, F.S.; deleting obsolete provisions relating to requirements for manufacturers, sellers, and consumers with respect to batteries; repealing s. 403.7199, F.S., relating to the Florida Packaging Council; amending s. 403.724, F.S.; deleting an obsolete deadline for hazardous waste facilities to comply with financial responsibility requirements; amending s. 403.7265, F.S.; deleting an obsolete deadline for development of the local hazardous waste collection program; amending s. 403.767, F.S.; deleting an obsolete date relating to certification of used oil transporters; amending s. 403.769, F.S.; deleting an obsolete date relating to development of the permitting system for used oil processing facilities; repealing ch. 533, F.S., relating to mining wastes; providing an effective date.

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

Section 1. Section 161.163, Florida Statutes, is amended to read:

161.163 Coastal areas used by sea turtles; rules.—~~Within 2 years of July 1, 1986,~~ The department shall adopt by rule a designation of coastal areas which are utilized, or are likely to be utilized, by sea turtles for nesting. The department shall also adopt by rule guidelines for local government regulations that control beachfront lighting to protect hatching sea turtles.

Section 2. Subsection (2) of section 161.56, Florida Statutes, is amended to read:

161.56 Establishment of local enforcement.—

(2) Each local government shall provide evidence to the state land planning agency that it has adopted a building code pursuant to this section. ~~Within 90 days after January 1, 1987,~~ The state land planning agency shall submit to the Administration Commission a list of those local governments which have not submitted such evidence of adoption. The sole issue before the Administration Commission shall be whether or not to impose sanctions pursuant to s. 163.3184(11)~~(8)~~.

Section 3. Subsection (13) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state

of the following are hereby specifically exempt from the tax imposed by this chapter.

(13) No transactions shall be exempt from the tax imposed by this chapter except those expressly exempted herein. All laws granting tax exemptions, to the extent they may be inconsistent or in conflict with this chapter, including, but not limited to, the following designated laws, shall yield to and be superseded by the provisions of this subsection: ss. 125.019, 153.76, 154.2331, 159.15, 159.31, 159.50, 159.708, 163.385, 163.395, 215.76, 243.33, ~~258.14,~~ 315.11, 348.65, 348.762, 349.13, 403.1834, 616.07, and 623.09, and the following Laws of Florida, acts of the year indicated: s. 31, chapter 30843, 1955; s. 19, chapter 30845, 1955; s. 12, chapter 30927, 1955; s. 8, chapter 31179, 1955; s. 15, chapter 31263, 1955; s. 13, chapter 31343, 1955; s. 16, chapter 59-1653; s. 13, chapter 59-1356; s. 12, chapter 61-2261; s. 19, chapter 61-2754; s. 10, chapter 61-2686; s. 11, chapter 63-1643; s. 11, chapter 65-1274; s. 16, chapter 67-1446; and s. 10, chapter 67-1681.

Section 4. Section 376.185, Florida Statutes, is repealed.

Section 5. Paragraph (a) of subsection (4) of section 376.11, Florida Statutes, is amended to read:

376.11 Florida Coastal Protection Trust Fund.—

(4) Moneys in the Florida Coastal Protection Trust Fund shall be disbursed for the following purposes and no others:

(a) Administrative expenses, personnel expenses, and equipment costs of the department and the Fish and Wildlife Conservation Commission related to the enforcement of ss. 376.011-376.21 ~~subject to s. 376.185~~.

Section 6. Paragraph (e) of subsection (1) of section 376.303, Florida Statutes, is repealed.

Section 7. Subsection (12) of section 376.30714, Florida Statutes, is amended to read:

376.30714 Site rehabilitation agreements.—

(12) Nothing in this section shall be construed to preclude the department from pursuing penalties in accordance with ss. 376.303(1)(j)~~(k)~~ and 376.311 for violations of any law or any rule, order, permit, registration, or certification adopted or issued by the department pursuant to its lawful authority.

Section 8. Paragraph (c) of subsection (6) of section 376.3071, Florida Statutes, is repealed, and paragraph (k) of subsection (12) of that section is amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(12) REIMBURSEMENT FOR CLEANUP EXPENSES.—Except as provided in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall not apply

to any site rehabilitation program task initiated after March 29, 1995. Effective August 1, 1996, no further site rehabilitation work on sites eligible for state-funded cleanup from the Inland Protection Trust Fund shall be eligible for reimbursement pursuant to this subsection. The person responsible for conducting site rehabilitation may seek reimbursement for site rehabilitation program task work conducted after March 28, 1995, in accordance with s. 2(2) and (3), chapter 95-2, Laws of Florida, regardless of whether the site rehabilitation program task is completed. A site rehabilitation program task shall be considered to be initiated when actual onsite work or engineering design, pursuant to chapter 62-770, Florida Administrative Code, which is integral to performing a site rehabilitation program task has begun and shall not include contract negotiation and execution, site research, or project planning. All reimbursement applications pursuant to this subsection must be submitted to the department by January 3, 1997. The department shall not accept any applications for reimbursement or pay any claims on applications for reimbursement received after that date; provided, however if an application filed on or prior to January 3, 1997, was returned by the department on the grounds of untimely filing, it shall be refiled within 30 days after the effective date of this act in order to be processed.

(k) Audits.—

1. The department is authorized to perform financial and technical audits in order to certify site restoration costs and ensure compliance with this chapter. The department shall seek recovery of any overpayments based on the findings of these audits. The department must commence any audit within 5 years after the date of reimbursement, except in cases where the department alleges specific facts indicating fraud.

2. Upon determination by the department that any portion of costs which have been reimbursed are disallowed, the department shall give written notice to the applicant setting forth with specificity the allegations of fact which justify the department's proposed action and ordering repayment of disallowed costs within 60 days of notification of the applicant.

3. In the event the applicant does not make payment to the department within 60 days of receipt of such notice, the department shall seek recovery in a court of competent jurisdiction to recover reimbursement overpayments made to the person responsible for conducting site rehabilitation, unless the department finds the amount involved too small or the likelihood of recovery too uncertain.

4. In addition to the amount of any overpayment, the applicant shall be liable to the department for interest of 1 percent per month or the prime rate, whichever is less, on the amount of overpayment, from the date of overpayment by the department until the applicant satisfies the department's request for repayment pursuant to this paragraph. The calculation of interest shall be tolled during the pendency of any litigation.

5. Financial and technical audits frequently are conducted under this section many years after the site rehabilitation activities were performed and the costs examined in the course of the audit were incurred by the person responsible for site rehabilitation. During the intervening span of

years, the department's rule requirements and its related guidance and other nonrule policy directives may have changed significantly. The Legislature finds that it may be appropriate for the department to provide relief to persons subject to such requirements in financial and technical audits conducted pursuant to this section.

a. The department is authorized to grant variances and waivers from the documentation requirements of subparagraph (e)2. and from the requirements of rules applicable in technical and financial audits conducted under this section. Variances and waivers shall be granted when the person responsible for site rehabilitation demonstrates to the department that application of a financial or technical auditing requirement would create a substantial hardship or would violate principles of fairness. For purposes of this subsection, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this subsection, "principles of fairness" are violated when the application of a requirement affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are affected by the requirement or when the requirement is being applied retroactively without due notice to the affected parties.

b. A person whose reimbursed costs are subject to a financial and technical audit under this section may file a written request to the department for grant of a variance or waiver. The request shall specify:

(I) The requirement from which a variance or waiver is requested.

(II) The type of action requested.

(III) The specific facts which would justify a waiver or variance.

(IV) The reason or reasons why the requested variance or waiver would serve the purposes of this section.

c. Within 90 days after receipt of a written request for variance or waiver under this subsection, the department shall grant or deny the request. If the request is not granted or denied within 90 days of receipt, the request shall be deemed approved. An order granting or denying the request shall be in writing and shall contain a statement of the relevant facts and reasons supporting the department's action. The department's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Once adopted, model rules promulgated by the Administration Commission under s. 120.542 shall govern the processing of requests under this provision~~; however, the department may process requests prior to the adoption of those model rules~~.

6. The Comptroller may audit the records of persons who receive or who have received payments pursuant to this chapter in order to verify site restoration costs, ensure compliance with this chapter, and verify the accuracy and completeness of audits performed by the department pursuant to this paragraph. The Comptroller may contract with entities or persons to

perform audits pursuant to this subparagraph. The Comptroller shall commence any audit within 1 year after the department's completion of an audit conducted pursuant to this paragraph, except in cases where the department or the Comptroller alleges specific facts indicating fraud.

Section 9. Section 377.02, Florida Statutes, is repealed.

Section 10. Subsection (3) of section 378.208, Florida Statutes, is repealed, and paragraph (a) of subsection (2) of that section is amended to read:

378.208 Financial responsibility.—

(2) Operators who are not in compliance with the rate of reclamation established in s. 378.209 must post one or more of the following forms of security:

(a) A lien in favor of the state on unmined lands or on reclaimed and released real property owned in fee simple absolute by the operator. No formal appraisal of the property shall be required; however, the unencumbered value of the property shall be comparable to the cost of reclamation established pursuant to subsection (3) ~~(4)~~.

The form of security posted shall be at the option of the operator and shall cover the number of acres for which the operator is delinquent in reclaiming in the required time period as well as the number of acres that the operator must reclaim in the current 5-year period. The security, other than the donation of land, shall be released upon completion of reclamation of delinquent acres.

Section 11. Subsections (2) and (4) of section 403.085, Florida Statutes, are amended to read:

403.085 Sanitary sewage disposal units; advanced and secondary waste treatment; industrial waste, ocean outfall, inland outfall, or disposal well waste treatment.—

(2) Sanitary sewage disposal treatment plants which discharge effluent through ocean outfalls or disposal wells ~~on July 1, 1970,~~ shall provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the former Department of Environmental Regulation ~~by January 3, 1974~~. Failure to conform ~~by said date~~ shall be punishable by a fine of $500 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

(4) Industrial plants or facilities which discharge industrial waste of any kind through ocean outfalls, inland outfalls, or disposal wells ~~on July 1, 1971,~~ shall provide for secondary waste treatment or such other waste treatment as deemed necessary and ordered ~~by January 1, 1973,~~ by the former Department of Environmental Regulation. Failure to conform ~~by said date~~ shall be punishable as provided in s. 403.161(2).

Section 12. Subsection (2) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(2) Any facilities for sanitary sewage disposal ~~existing on July 1, 1971,~~ shall provide for secondary waste treatment ~~by January 1, 1973,~~ and, in addition thereto, advanced waste treatment as deemed necessary and ordered by ~~the former Department of Pollution Control, its successor, the former Department of Environmental Regulation, or its successor,~~ the Department of Environmental Protection. Failure to conform ~~by said date~~ shall be punishable by a civil penalty of $500 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

Section 13. Paragraph (c) of subsection (11) of section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section, which is the only department operation permit for a major source of air pollution required for such source. Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the following procedures and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section prevail:

(11) Commencing in 1993, each major source of air pollution permitted to operate in this state must pay between January 15 and March 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(c) An audit of the major stationary source air-operation permit program must be conducted 2 years after the United States Environmental Protection Agency has given full approval of the program~~, or by the end of 1996, whichever comes later,~~ to ascertain whether the annual operation license fees collected by the department are used solely to support any reasonable direct and indirect costs as listed in paragraph (b). A program audit must be performed biennially after the first audit.

Section 14. Section 403.08851, Florida Statutes, is repealed.

Section 15. Paragraph (b) of subsection (6) of section 403.1826, Florida Statutes, is repealed.

Section 16. Section 403.221, Florida Statutes, is repealed.

Section 17. Subsection (1) of section 403.7046, Florida Statutes, is amended to read:

403.7046 Regulation of recovered materials.—

(1) ~~After January 1, 1994,~~ Any person who handles, purchases, receives, recovers, sells, or is an end user of recovered materials shall annually certify to the department on forms provided by the department. The department may by rule exempt from this requirement generators of recovered materials, persons who handle or sell recovered materials as an activity which is incidental to the normal primary business activities of that person, or persons who handle, purchase, receive, recover, sell, or are end users of recovered materials in small quantities as defined by the department. The department shall adopt rules for the certification of and reporting by such persons and shall establish criteria for revocation of such certification. Prior to the adoption of such rules, the department shall appoint a technical advisory committee of no more than nine persons, including, at a minimum, representatives of the Florida Association of Counties, the Florida League of Cities, the Florida Recyclers Association, and the Florida Chapter of the National Solid Waste Management Association, to aid in the development of such rules. Such rules shall be designed to elicit, at a minimum, the amount and types of recovered materials handled by registrants, and the amount and disposal site, or name of person with whom such disposal was arranged, of any solid waste generated by such facility. Such rules may provide for the department to conduct periodic inspections. The department may charge a fee of up to $50 for each registration, which shall be deposited into the Solid Waste Management Trust Fund for implementation of the program.

Section 18. Subsection (10) of section 403.703, Florida Statutes, is amended to read:

403.703 Definitions.—As used in this act, unless the context clearly indicates otherwise, the term:

(10) "Solid waste management facility" means any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities which meet the requirements of s. 403.7046~~(4)~~, except the portion of such facilities, if any, that is used for the management of solid waste.

Section 19. Subsection (1) and paragraph (a) of subsection (2) of section 403.7049, Florida Statutes, are amended to read:

403.7049 Determination of full cost for solid waste management; local solid waste management fees.—

(1) ~~Within 1 year of October 1, 1988, or within 1 year after rules are established by the department, whichever occurs later,~~ Each county and each municipality shall determine <u>each year</u> the full cost for solid waste management within the service area of the county or municipality ~~for the 1-year period beginning on October 1, 1988, and shall update the full cost~~

~~every year thereafter~~. The department shall establish by rule the method for local governments to use in calculating full cost. ~~Rulemaking shall be initiated and at least one public hearing shall be held by March 1, 1989.~~ In developing the rule, the department shall examine the feasibility of the use of an enterprise fund process by local governments in operating their solid waste management systems.

(2)(a) ~~Within 1 year from October 1, 1988,~~ Each municipality shall establish a system to inform, no less than once a year, residential and nonresidential users of solid waste management services within the municipality's service area of the user's share, on an average or individual basis, of the full cost for solid waste management as determined pursuant to subsection (1). Counties shall provide the information required of municipalities only to residential and nonresidential users of solid waste management services within the county's service area that are not served by a municipality. Municipalities shall include costs charged to them or persons contracting with them for disposal of solid waste in the full cost information provided to residential and nonresidential users of solid waste management services.

Section 20. Paragraph (a) of subsection (4) and subsection (18) of section 403.706, Florida Statutes, are amended to read:

403.706 Local government solid waste responsibilities.—

(4)(a) A county's solid waste management and recycling programs shall be designed to provide for sufficient reduction of the amount of solid waste generated within the county and the municipalities within its boundaries in order to meet goals for the reduction of municipal solid waste prior to the final disposal or the incineration of such waste at a solid waste disposal facility. The goals shall provide, at a minimum, that the amount of municipal solid waste that would be disposed of within the county and the municipalities within its boundaries is reduced by at least 30 percent ~~by the end of 1994~~. In determining whether the municipal solid waste reduction goal established by this subsection has been achieved, no more than one-half of the goal may be met with yard trash, white goods, construction and demolition debris, and tires that are removed from the total amount of municipal solid waste. However, if a county that is a special district created by chapter 67-764, Laws of Florida, demonstrates that yard trash, construction and demolition debris, white goods, and waste tires comprise more than 50 percent of the municipal solid waste generated in the county and municipalities within its boundaries, the county may meet the reduction goal established by this subsection by reducing the Class I municipal solid waste generated in the county and municipalities within its boundaries at a rate equal to the average rate Class I municipal solid waste is reduced in the 20 most populous counties, as determined by the department for the previous reporting period. As used in this subsection, "Class I municipal solid waste" means municipal solid waste other than yard trash, construction and demolition debris, white goods, and waste tires.

(18) ~~On and after July 1, 1989,~~ Each operator of a solid waste management facility owned or operated by or on behalf of a county or municipality~~, except existing facilities which will not be in use 1 year after October 1, 1988,~~

shall weigh all solid waste when it is received. The scale used to measure the solid waste shall conform to the requirements of chapter 531 and any rules promulgated thereunder.

Section 21. Subsection (1) of section 403.707, Florida Statutes, is amended to read:

403.707 Permits.—

(1) No solid waste management facility may be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the department. ~~Effective October 1, 1989,~~ Solid waste construction permits issued under this section may include any permit conditions necessary to achieve compliance with the recycling requirements of this act. The department shall pursue reasonable timeframes for closure and construction requirements, considering pending federal requirements and implementation costs to the permittee. The department shall adopt a rule establishing performance standards for construction and closure of solid waste management facilities. The standards shall allow flexibility in design and consideration for site-specific characteristics.

Section 22. Subsections (2) and (9) of section 403.708, Florida Statutes, are amended to read:

403.708 Prohibition; penalty.—

(2) ~~After January 1, 1989,~~ No beverage shall be sold or offered for sale within the state in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab.

(9) No person shall~~, on or after October 1, 1990,~~ distribute, sell, or expose for sale in this state any product packaged in a container or packing material manufactured with fully halogenated chlorofluorocarbons (CFC). Producers of containers or packing material manufactured with chlorofluorocarbons (CFC) are urged to introduce alternative packaging materials which are environmentally compatible.

Section 23. Subsection (3) of section 403.716, Florida Statutes, is amended to read:

403.716 Training of operators of solid waste management and other facilities.—

(3) A person may not perform the duties of an operator of a landfill ~~after July 1, 1991~~, or perform the duties of an operator of a waste-to-energy facility, biomedical waste incinerator, or mobile soil thermal treatment unit or facility ~~after July 1, 1994~~, unless she or he has completed an operator training course approved by the department or she or he has qualified as an interim operator in compliance with requirements established by the department by rule. An owner of a landfill, waste-to-energy facility, biomedical waste incinerator, or mobile soil thermal treatment unit or facility may not employ any person to perform the duties of an operator unless such person has completed an approved landfill, waste-to-energy facility, biomedical

waste incinerator, or mobile soil thermal treatment unit or facility operator training course, as appropriate, or has qualified as an interim operator in compliance with requirements established by the department by rule. The department may establish by rule operator training requirements for other solid waste management facilities and facility operators.

Section 24. Subsections (2), (3), and (4) of section 403.7186, Florida Statutes, are amended to read:

403.7186 Environmentally sound management of mercury-containing devices and lamps.—

(2) PROHIBITION ON INCINERATION OR DISPOSAL OF MERCURY-CONTAINING DEVICES.—Mercury-containing devices may not be disposed of or incinerated in any manner prohibited by this section or by the rules of the department promulgated under this section. ~~After July 1, 1994,~~ If the secretary of the department determines that sufficient recycling capacity exists to recycle mercury-containing devices generated in the state, the secretary may, by rule, designate regions of the state in which a person shall not place such a device that was purchased for use or used by a government agency or an industrial or commercial facility in a mixed solid waste stream. ~~After January 1, 1996,~~ A mercury-containing device shall not knowingly be incinerated or disposed of in a landfill.

(3) PROHIBITION ON INCINERATION OF SPENT LAMPS.—~~After July 1, 1994,~~ Spent mercury-containing lamps shall not knowingly be incinerated in any municipal or other incinerator. This subsection shall not apply to incinerators that are permitted to operate under state or federal hazardous waste regulations.

(4) WASTE MANAGEMENT REQUIREMENT FOR SPENT LAMPS.—

(a) ~~Effective July 1, 1994,~~ Any person owning or operating an industrial, institutional, or commercial facility in this state or providing outdoor lighting for public places in this state, including streets and highways, that disposes of more than 10 spent lamps per month shall arrange for disposal of such lamps in permitted lined landfills or at appropriately permitted reclamation facilities.

(b) ~~After July 1, 1994,~~ The department may, by rule, designate regions of the state wherein any person owning or operating an industrial, institutional, or commercial facility in such a designated region, or providing lighting for public places in such designated region, including streets and highways, that disposes of more than 10 spent lamps per month shall arrange for disposal of such lamps at appropriately permitted reclamation facilities; provided, however, that before such rule is adopted, the secretary of the department first determines that appropriately permitted reclamation facilities are reasonably available and afford sufficient recycling capacity.

Section 25. Subsection (3) of section 403.7191, Florida Statutes, is amended to read:

403.7191 Toxics in packaging.—

(3) PROHIBITIONS; SCHEDULE FOR REMOVAL OF INCIDENTAL AMOUNTS.—Except as provided in subsection (4), a manufacturer or distributor may not sell a package or packaging component, and a manufacturer or distributor of products shall not offer for sale or promotional purposes in this state, any package or any packaging component with a total concentration of lead, cadmium, mercury, and hexavalent chromium that exceeds ~~after July 1, 1996,~~ 100 parts per million by weight (.01 percent).

Section 26. Section 403.7192, Florida Statutes, is amended to read:

403.7192 Batteries; requirements for consumer, manufacturers, and sellers; penalties.—

(1) As used in this section, the term:

(a) "Cell" means a galvanic or voltaic device weighing 25 pounds or less consisting of an enclosed or sealed container containing a positive and negative electrode in which one or both electrodes consist primarily of cadmium or lead and which container contains a gel or liquid starved electrolyte.

(b) "Cell manufacturer" means an entity which manufactures cells in the United States; or imports into the United States cells or units for which no unit management program has been put into effect by the actual manufacturer of the cell or unit.

(c) "Marketer" means any person who manufactures, sells, distributes, assembles, or affixes a brand name or private label or licenses the use of a brand name on a unit or rechargeable product. Marketer does not include a person engaged in the retail sale of a unit or rechargeable product.

(d) "Rechargeable battery" means any small, nonvehicular, rechargeable nickel-cadmium or sealed lead-acid battery, or battery pack containing such a battery, weighing less than 25 pounds and not used for memory backup.

(e) "Unit" means a cell, a rechargeable battery, or a rechargeable product with nonremovable rechargeable batteries.

(f) "Unit management program" means a program or system for the collection, recycling, or disposal of units put in place by a marketer in accordance with this section.

(2)(a) ~~After July 1, 1993,~~ A person may not distribute, sell, or offer for sale in this state an alkaline-manganese or zinc-carbon battery that contains more than 0.025 percent mercury by weight. ~~After January 1, 1996,~~ A person may not distribute, sell, or offer for sale in this state an alkaline-manganese or zinc-carbon battery that contains any intentionally introduced mercury and more than 0.0004 percent mercury by weight.

(b) For any alkaline-manganese battery resembling a button or coin in size and shape, the limitation shall be 25 milligrams of mercury.

(c) ~~After October 1, 1993,~~ A person may not distribute, sell, or offer for sale in this state a consumer button dry cell battery containing a mercuric oxide electrode or a product containing such a battery.

(d) The secretary of the department may exempt a specific type of battery from this subsection if there is not a battery that meets those requirements and that reasonably can be substituted for the battery for which the exemption is sought.

(3)(a) ~~After January 1, 1994,~~ A person may not knowingly place in a mixed solid waste stream a dry cell battery that uses a mercuric oxide electrode or a product containing such a battery, and that was purchased for use or used by a consumer or by a government, industrial, communications, or medical facility that is a conditionally exempt small quantity generator of hazardous waste under 40 C.F.R. s. 261.5.

(b) ~~Eighteen months after the effective date of this subsection, or October 1, 1995, whichever is later,~~ A person may not knowingly place in a mixed solid waste stream a rechargeable battery, or a product containing such a rechargeable battery, which was purchased for use or used by a consumer or by a government, industrial, commercial, communications, or medical facility that is a conditionally exempt small quantity generator of hazardous waste under 40 C.F.R. s. 261.5.

(c) Each government, industrial, commercial, communications, or medical facility shall collect and segregate its batteries to which the prohibitions in paragraphs (a) and (b) apply and send each segregated collection of batteries back to a collection site designated by the manufacturer or distributor in the case of mercuric oxide batteries, to a collection site designated by a marketer or cell manufacturer of rechargeable batteries, or the products powered by nonremovable batteries, or to a facility permitted to dispose of those batteries.

(4) A cell manufacturer or marketer shall not sell or offer for sale in this state any consumer product or nonconsumer product that is ~~manufactured on or after October 1, 1993, and that is~~ powered by a rechargeable battery unless:

(a) In the case of consumer products, the battery can be easily removed by the consumer, or the battery is contained in a battery pack that is separate from the product and can be easily removed from the product.

(b) In the case of nonconsumer products, the battery can be removed or is contained in a battery pack that is separate from the product.

(c) The product or the battery, or the package in the case of a consumer product, is labeled with a recycling symbol and includes, as an indication of the chemical composition of the battery, the term “Cd” for nickel-cadmium batteries or “Pb” for small sealed lead batteries.

(d) The instruction manual for the product or, in the case of a consumer product, the package containing the product states that the sealed lead or nickel-cadmium battery must be recycled or disposed of properly.

(5) The secretary of the department may authorize the sale of a consumer or nonconsumer product that does not comply with paragraphs (4)(a) and (b), if the secretary finds that~~:~~

~~(a) The product was available for sale on or before May 12, 1993, and the product cannot reasonably be redesigned and manufactured by January 1, 1994; or,~~

~~(b)~~ the design of the product, to comply with the requirements of this subsection, would result in significant danger to public health and safety.

(6) ~~By October 1, 1993,~~ Manufacturers and distributors of mercuric oxide batteries and products containing these batteries~~;~~ and~~, 6 months after the report required in paragraph (7)(b) is due to be presented to the department,~~ marketers of rechargeable batteries or the products powered by such batteries, excluding those used solely for memory~~,;~~ whose batteries and products are sold and distributed in this state and that are subject to the requirements of subsection (3), must:

(a) Implement a unit management program, other than a local government curbside program and other local government collection system, unless the local government agrees otherwise, through which the discarded batteries or products powered by nonremovable batteries may be returned to designated collection sites and submit this information to the department. The unit management program must be accessible for consumers or local governments collecting batteries or products from consumers, for returning the discarded batteries or products. In addition to other requirements which cell manufacturers have as marketers, cell manufacturers shall accept rechargeable batteries collected in this state. Cell manufacturers shall accept rechargeable batteries returned to them of the same general type, including differing brands, not to exceed the same annual rate as batteries manufactured by them are sold in this state. Cell manufacturers shall have the sole responsibility for reclamation and disposal of rechargeable batteries returned to them.

(b) Clearly inform each purchaser of the prohibition on the disposal in the solid waste stream of these batteries and products powered by nonremovable batteries and of the system for return available to the purchaser for their proper collection, transportation, recycling, or disposal. A telephone number must be provided to each final purchaser of the batteries, or products powered by these batteries, so that the final purchasers can call to get information on returning the discarded batteries or products for recycling or proper disposal. The telephone number must also be provided to the department.

(c) Accept waste batteries or products containing these batteries returned to their designated collection sites as allowed by federal, state, and local laws and regulations.

(d) Ensure that each battery is clearly identifiable as to the type of electrode used in the battery.

(7)~~(a) Twelve months after the effective date of this subsection, cell manufacturers and marketers of rechargeable batteries or products powered by rechargeable batteries which are sold in the state shall implement pilot projects for the collection and transportation of these batteries and products. Pilot projects implemented in other jurisdictions and lasting for at least 18~~

~~months may be used to satisfy the requirements of this subsection. Marketers and cell manufacturers may satisfy the requirements of this subsection individually or as part of a representative organization of marketers and cell manufacturers. Representative organizations of manufacturers shall supply to the department a list of those organization members for whom the association is conducting the pilot program to satisfy the requirements of this subsection.~~

~~(b)~~ On or before October 7, 1997, and annually thereafter, for a period of 3 years ~~Twenty-five months after the effective date of this subsection~~, cell manufacturers and marketers or their representative organization shall report to the department ~~the final results of the pilot projects and~~ plans for the implementation of the requirements under subsection (6). The reports shall include estimates of the cadmium disposal reductions. Representative organizations of manufacturers shall supply to the department a list of those organization members for whom the association is conducting the unit management program ~~achieved through the pilot projects. Plans for implementation and the determination of the reasonableness of those plans shall be based on the results of the pilot programs~~.

~~Annually thereafter, for a period of 3 years, they shall report on the results of their unit management programs as described in this subsection.~~

~~(8) The effective date of subsections (1) and (2), paragraph (3)(a), and subsections (4), (5), and (6) for mercuric oxide batteries, and subsections (8), (10), and (11), shall be July 1, 1993. The effective date of paragraphs (3)(b) and (c) and subsection (6) for rechargeable batteries, and subsections (7) and (9), shall be upon final adoption by the United States Environmental Protection Agency of 40 C.F.R. part 273 as proposed in Federal Register, Volume 58, Number 27, pp. 8101 et seq., February 11, 1993, and adoption by the department.~~

(8)~~(9)~~ Manufacturers and importers of mercuric oxide batteries and cell manufacturers and marketers of rechargeable batteries or products powered by these batteries that do not comply with the requirements in subsection (6) ~~and paragraph (7)(a)~~ may not sell, distribute, or offer for sale in this state these batteries or products powered by these batteries. Manufacturers or marketers may satisfy the requirements of subsection (6) ~~and paragraph (7)(a)~~ individually, as part of a representative organization of manufacturers, or by contracting with private or government parties. Any such contractual arrangements may include appointment of agents, allocation of costs and duties, and such indemnifications as the parties deem appropriate.

(9)~~(10)~~ Any person who violates any provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A manufacturer or distributor who violates such provision is subject to a minimum fine of $100 per violation.

(10)~~(11)~~ In an enforcement action under this section in which the state prevails, the state may recover reasonable administrative expenses, court costs, and attorney's fees incurred to take the enforcement action, in an amount to be determined by the court.

Section 27. Section 403.7199, Florida Statutes, is repealed.

Section 28. Subsection (5) of section 403.724, Florida Statutes, is amended to read:

403.724 Financial responsibility.—

(5) Hazardous waste facilities ~~in operation on October 1, 1980,~~ shall, within 1 year after the effective date of rules regarding financial responsibility pursuant to this act, establish financial responsibility or have the requirement waived.

Section 29. Subsection (2) of section 403.7265, Florida Statutes, is amended to read:

403.7265 Local hazardous waste collection program.—

(2) ~~By March 1, 1991,~~ The department shall develop a statewide local hazardous waste management plan which will ensure comprehensive collection and proper management of hazardous waste from small quantity generators and household hazardous waste in Florida. The plan shall address, at a minimum, a network of local collection centers, transfer stations, and expanded hazardous waste collection route services. The plan shall assess the need for additional compliance verification inspections, enforcement, and penalties. The plan shall include a strategy, timetable, and budget for implementation.

Section 30. Subsection (1) of section 403.767, Florida Statutes, is amended to read:

403.767 Certification of used oil transporters.—

(1) Any person who transports over public highways ~~after January 1, 1990,~~ more than 500 gallons annually of used oil must be a certified transporter. This subsection does not apply to:

(a) Local governments or private solid waste haulers under contract to a local government that transport used oil collected from households to a public used oil collection center.

(b) Persons who transport less than 55 gallons of used oil at one time that is stored in tightly closed containers which are secured in a totally enclosed section of the transport vehicle.

(c) Persons who transport their own used oil, which is generated at their own noncontiguous facilities, to their own central collection facility for storage, processing, or energy recovery. However, such persons shall provide the same proof of liability insurance or other means of financial responsibility for liability which may be incurred in the transport of used oil as provided by certified transporters under subsection (3).

Section 31. Subsection (2) of section 403.769, Florida Statutes, is amended to read:

403.769 Permits for used oil processing and rerefining facilities.—

(2) ~~By January 1, 1990,~~ The department shall develop a permitting system for used oil processing facilities after reviewing and considering the applicability of the permit system for hazardous waste treatment, storage, or disposal facilities.

Section 32. Sections 533.01, 533.02, 533.03, 533.04, 533.05, and 533.06, Florida Statutes, are repealed.

Section 33. This act shall take effect July 1, 2000.

Approved by the Governor June 5, 2000.

Filed in Office Secretary of State June 5, 2000.