

CHAPTER 2013-68

Committee Substitute for Committee Substitute for Senate Bill No. 682

An act relating to fossil fuel combustion products; creating s. 403.7047, F.S.; providing definitions; providing standards for storage of certain fossil fuel combustion products; providing an exemption for beneficial use of fossil fuel combustion products from certain rules; providing that the act does not prohibit the Department of Environmental Protection from taking appropriate action to regulate a beneficial use in certain circumstances; providing that the act does not limit other requirements applicable to the beneficial use of fossil fuel combustion products; providing that the act does not limit the recovery of beneficial use products or the authority of the department to approve the beneficial use of materials other than fossil fuel combustion products; clarifying that the act does not limit or modify any fossil fuel combustion product beneficial use previously approved by the department; amending s. 403.7222, F.S.; excluding certain types of facilities from provisions on hazardous waste landfills; providing an effective date.

WHEREAS, fossil fuel combustion products are currently used in a variety of beneficial applications, and

WHEREAS, beneficial use of fossil fuel combustion products allows certain industries and end users to avoid the mining and processing of virgin materials through the substitution of fossil fuel combustion products for virgin materials, thereby preserving natural resources and minimizing environmental emissions, and

WHEREAS, beneficial use of fossil fuel combustion products reduces the volume of materials placed in disposal facilities and ultimately lowers overall energy consumption required for processing and disposing of fossil fuel combustion products, and

WHEREAS, beneficial use of fossil fuel combustion products promotes economic activity, and

WHEREAS, beneficial use of fossil fuel combustion products is consistent with the purpose of Florida's Resource Recovery and Management Act and furthers the purpose of the act by encouraging waste reduction and recycling as a means of managing solid waste and conserving resources, and

WHEREAS, after balancing all the competing needs of the state, the Legislature has determined that it is in the state's best interest to conserve natural resources, reduce overall energy consumption, reduce or eliminate the need to dispose of fossil fuel combustion products in disposal facilities, and facilitate the development of readily available markets for fossil fuel combustion products, NOW, THEREFORE,

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

Section 1. Section 403.7047, Florida Statutes, is created to read:

403.7047 Regulation of fossil fuel combustion products.—

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

(a) “Beneficial use” means the use of fossil fuel combustion products in building products, and as substitutes for raw materials, necessary ingredients, or additives in products, according to accepted industry practices, including the following:

1. Asphalt, concrete or cement products, flowable fill, and roller-compacted concrete.

2. Structural fill or pavement aggregate that meets the following requirements:

a. The fossil fuel combustion product is not placed within 3 feet of groundwater or 15 feet of wetlands or natural water bodies, or within 100 feet of a potable well that is being used or might be used for human or livestock water consumption;

b. The placement of the fossil fuel combustion product does not extend beyond the outside edge of the structure or pavement. Placement of the structure or pavement must be completed as soon as practicable after placement of the fossil fuel combustion product;

c. The fossil fuel combustion product is not placed so that such product, or any constituent thereof, may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment in a manner that causes a significant threat to public health or contamination in excess of applicable department standards and criteria; and

d. The owner or duly authorized agent of the owner of the property where the product is placed has given the department written notice, which may be submitted electronically, of the dates, placement locations, and types of fossil fuel combustion products used for structural fill or pavement aggregate.

3. Use of flue-gas emission control materials which meet the definition of gypsum and are used in accordance with applicable Florida Department of Agriculture and Consumer Services rules.

4. Waste stabilization, or initial or intermediate cover material used for lined Class I or III landfills, provided that the material meets applicable department rules for landfill cover or a landfill’s permit conditions for cover.

5. Any other use that meets the criteria of s. 403.7045(1)(f) or that is approved by the department prior to use as having an equivalent or reduced

potential for environmental impacts, when used in equivalent quantities, compared to the substituted raw products or materials.

(b) “Fossil fuel combustion products” means fly ash, bottom ash, boiler slag, flue-gas emission control materials, and other non-hazardous materials, such as gasifier slag, fluidized-bed combustion system products, and similar combustion materials produced from the operation of a fossil fuel-fired electric or steam generation facility, from a clean coal or other innovative technology process at a fossil fuel-fired electric or steam generation facility, or from any combination thereof.

(c) “Fossil fuel-fired electric or steam generation facility” means any electric or steam generation facility that is fueled with coal, alone or in combination with petroleum coke, oil, coal gas, natural gas, other fossil fuels, or alternative fuels.

(d) “Pavement aggregate” means fossil fuel combustion products used as sub-base material under a paved road, sidewalk, walkway, or parking lot as a substitute for conventional aggregate, raw material, or soil.

(e) “Structural fill” means the use of a fossil fuel combustion product as a substitute for a conventional aggregate, raw material, or soil under an industrial or commercial building or structure. Structural fill does not include uses of fossil fuel combustion products that involve general filling or grading operations or valley fills.

(2) The storage of fossil fuel combustion products destined for beneficial use must comply with applicable department rules and be conducted in a manner that does not pose a significant risk to public health or violate applicable air or water quality standards.

(3) Fossil fuel combustion products beneficially used in accordance with this section are not subject to regulation as a solid or hazardous waste, but the department may take appropriate action if the beneficial use is demonstrated to be causing violations of applicable air or water quality standards or criteria in department rules, or if such beneficial use poses a significant risk to public health. This section does not limit any other requirements applicable to the beneficial use of fossil fuel combustion products established under this chapter or chapter 376 or under local or federal laws, including requirements governing air pollution control permits, national pollutant discharge elimination system permits, and water quality certifications pursuant to s. 401 of the Clean Water Act.

(4) Nothing in this section shall be construed to limit the department’s authority to approve the beneficial use of materials other than fossil fuel combustion products as defined in this section pursuant to other provisions of this part. This section may not be construed to limit or otherwise modify any fossil fuel combustion product beneficial use previously approved by the department, use in the onsite construction of surface impoundments, roads, or similar works at fossil fuel-fired electric or steam generation facilities, or

the recovery of these products for beneficial use from fossil fuel combustion product landfills, impoundments, or storage areas.

Section 2. Section 403.7222, Florida Statutes, is amended to read:

403.7222 Prohibition of hazardous waste landfills.—

(1) As used in this section, the term “hazardous waste landfill” means a disposal facility or part of a facility at which hazardous waste that has not undergone treatment is placed in or on land, including an injection well, which is not a land treatment facility. However, hazardous waste may not be disposed of through an injection well or other subsurface method of disposal, which is defined as a Class IV well in 40 C.F.R. s. 144.6(d), except those Class I wells permitted for hazardous waste disposal as of January 1, 1992. The department shall annually review the operations of any such Class I well permitted as of January 1, 1992, and prepare a report analyzing any impact on groundwater systems. ~~Nothing in~~ This section may not shall be construed to refer to the products of membrane technology, including reverse osmosis, for the production of potable water where disposal is through a Class I well as defined in 40 C.F.R. s. 144.6(a), or to refer to remedial or corrective action activities conducted in accordance with 40 C.F.R. s. 144.13.

(2) The Legislature declares that, due to the permeability of the soil and high water table in Florida, future hazardous waste landfills are prohibited. Therefore, the department may not issue a permit pursuant to s. 403.722 for a newly constructed hazardous waste landfill. However, if by executive order the Governor declares a hazardous waste management emergency, the department may issue a permit for a temporary hazardous waste landfill. Any such landfill shall be used only until such time as an appropriate alternative method of disposal can be derived and implemented. Such a permit may not be issued for a period exceeding 6 months without a further declaration of the Governor. A Class IV injection well, as defined in 40 C.F.R. s. 144.6(d), may not be permitted for construction or operation under this section.

(3) This section does not prohibit the department from banning the disposal of hazardous waste in other types of waste management units in a manner consistent with federal requirements, except as provided under s. 403.804(2).

(4) This section does not apply to a disposal facility or part of a facility that accepts fly ash, bottom ash, boiler slag, or flue-gas emission control materials from the operation of a fossil fuel-fired electric or steam generation facility, from a clean coal or other innovative technology process at a fossil fuel-fired electric or steam generation facility, or from any combination thereof.

Section 3. This act shall take effect July 1, 2013.

Approved by the Governor May 30, 2013.

Filed in Office Secretary of State May 30, 2013.