CHAPTER 2000-304

Committee Substitute for House Bill No. 1425

An act relating to governmental operations; providing requirements for local governments providing solid waste collection services in competition with private companies; providing remedies for such private companies; providing procedures and requirements; providing for award of damages, costs, and attorney fees; providing application; providing limitations for local government solid waste collection services outside the jurisdiction of the local government; providing remedies for certain injured parties; providing requirements and procedures; prohibiting local governments from displacing private waste collection companies under certain circumstances; providing requirements; providing procedures and requirements for such displacement; providing definitions; amending s. 171.062, F.S.; providing for continuation of certain solid waste services in certain annexed areas; providing an exception; amending s. 165.061, F.S.; providing for certain merger plans to honor certain solid waste contracts; providing limitations; amending s. 403.087, F.S.; clarifying application of certain permit fees; amending s. 403.7046, F.S.; providing a limitation relating to the local government registration fee for recovered materials dealers; revising local government authority with respect to certain contracts between recovered materials dealers and local commercial establishments that generate source-separated materials; amending s. 403.706, F.S.; authorizing counties and municipalities to grant certain solid waste fee waivers under certain circumstances; amending s. 403.722, F.S.; clarifying requirements for obtaining certain hazardous waste facility permits; creating s. 171.093, F.S.; providing for the assumption of an independent special district's service responsibilities in an area that is within the district's boundaries and that is annexed by a municipality; providing that the municipality may elect to assume such responsibilities; providing for an interlocal agreement regarding the transfer of such responsibilities; providing for the provision of services and payment therefor during a specified period if the municipality and district are unable to enter into an interlocal agreement; specifying effect of a municipality's election not to assume such responsibilities; providing for contraction of the district's boundaries if the municipality elects to assume such responsibilities; providing for levy of ad valorem taxes and assessments, user charges, and impact fees; providing exceptions; amending 190.004, F.S., to modify the preemption relating to Community Development Districts; repealing s. 403.7165(5), F.S., relating to the Applications Demonstration Center for Resource Recovery from Solid Organic Materials; repealing s. 403.7199, F.S., relating to the Florida Packaging Council; creating s. 403.08725, F.S.; providing requirements for citrus juice processing facilities with respect to obtaining air pollution, construction, and operations permits; providing definitions; providing emissions limits for such facilities; requiring certification of information submitted by citrus juice processing facilities to the Department of Environmental Protection; providing requirements with

respect to determination and reporting of facility emissions; requiring the submission of annual operating reports; requiring maintenance of records; providing an affirmative defense to certain enforcement actions; adopting and incorporating specified federal regulations by reference; providing requirements, specifications, and restrictions with respect to air emissions trading; providing for annual emissions fees; providing penalty for failure to pay fees; providing for deposit of fees in the Air Pollution Control Trust Fund; providing requirements with respect to construction of new facilities or modification of existing facilities; providing for the adoption of rules by the department; requiring the department to provide a report to the Legislature; providing for submission of the act to the United States Environmental Protection Agency; providing for applicability of the act and compliance requirements for facilities in the event of federal nonapproval; amending s. 120.80, F.S.; providing an exception to specified rulemaking by the Department of Environmental Protection; directing the department to explore alternatives to traditional methods of regulatory permitting and to consider specific limited pilot projects to test new compliance measures; providing reporting requirements; amending s. 403.0872, F.S.; requiring the Department of Environmental Protection to issue a separate acid rain permit for specified major sources of air pollution upon request of the applicant; providing an effective date.

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

Section 1. (1) SOLID WASTE COLLECTION SERVICES IN COMPETITION WITH PRIVATE COMPANIES.—

(a) A local government that provides specific solid waste collection services in direct competition with a private company:

1. Shall comply with the provisions of local environmental, health, and safety standards that also are applicable to a private company providing such collection services in competition with the local government.

2. Shall not enact or enforce any license, permit, registration procedure, or associated fee that:

a. Does not apply to the local government and for which there is not a substantially similar requirement that applies to the local government; and

b. Provides the local government with a material advantage in its ability to compete with a private company in terms of cost or ability to promptly or efficiently provide such collection services. Nothing in this sub-subparagraph shall apply to any zoning, land use, or comprehensive plan requirement.

(b)1. A private company with which a local government is in competition may bring an action to enjoin a violation of paragraph (a) against any local government. No injunctive relief shall be granted if the official action which forms the basis for the suit bears a reasonable relationship to the health,

safety, or welfare of the citizens of the local government unless the court finds that the actual or potential anticompetitive effects outweigh the public benefits of the challenged action.

2. As a condition precedent to the institution of an action pursuant to this paragraph, the complaining party shall first file with the local government a notice referencing this paragraph and setting forth the specific facts upon which the complaint is based and the manner in which the complaining party is affected. The complaining party may provide evidence to substantiate the claims made in the complaint. Within 30 days after receipt of such a complaint, the local government shall respond in writing to the complaining party explaining the corrective action taken, if any. If no response is received within 30 days or if appropriate corrective action is not taken within a reasonable time, the complaining party may institute the judicial proceedings authorized in this paragraph. However, failure to comply with this subparagraph shall not bar an action for a temporary restraining order to prevent immediate and irreparable harm from the conduct or activity complained of.

3. The court may, in its discretion, award to the prevailing party or parties costs and reasonable attorneys' fees.

(c) This subsection does not apply when the local government is exclusively providing the specific solid waste collection services itself or pursuant to an exclusive franchise.

(2) SOLID WASTE COLLECTION SERVICES OUTSIDE JURISDICTION.—

(a) Notwithstanding s. 542.235, Florida Statutes, or any other provision of law, a local government that provides solid waste collection services outside its jurisdiction in direct competition with private companies is subject to the same prohibitions against predatory pricing applicable to private companies under ss. 542.18 and 542.19.

(b) Any person injured by reason of violation of this subsection may sue therefor in the circuit courts of this state and shall be entitled to injunctive relief and to recover the damages and the costs of suit. The court may, in its discretion, award to the prevailing party or parties reasonable attorneys' fees. An action for damages under this subsection must be commenced within 4 years. No person may obtain injunctive relief or recover damages under this subsection for any injury that results from actions taken by a local government in direct response to a natural disaster or similar occurrence for which an emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36, Florida Statutes, or for which such a declaration might be reasonably anticipated within the area covered by such executive order or proclamation.

(c) As a condition precedent to the institution of an action pursuant to this subsection, the complaining party shall first file with the local government a notice referencing this subsection and setting forth the specific facts upon which the complaint is based and the manner in which the complaining party is affected. Within 30 days after receipt of such complaint, the local

government shall respond in writing to the complaining party explaining the corrective action taken, if any. If the local government denies that it has engaged in conduct that is prohibited by this subsection, its response shall include an explanation showing why the conduct complained of does not constitute predatory pricing.

(d) For the purposes of this subsection, the jurisdiction of a county, special district, or solid waste authority shall include all incorporated and unincorporated areas within the county, special district, or solid waste authority.

(3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

(a) As used in this subsection, the term "displacement" means a local government's provision of a collection service which prohibits a private company from continuing to provide the same service that it was providing when the decision to displace was made. The term does not include:

1. Competition between the public sector and private companies for individual contracts;

2. Actions by which a local government, at the end of a contract with a private company, refuses to renew the contract and either awards the contract to another private company or decides for any reason to provide the collection service itself;

3. Actions taken against a private company because the company has acted in a manner threatening to the public health or safety or resulting in a substantial public nuisance;

4. Actions taken against a private company because the company has materially breached its contract with the local government;

5. Refusal by a private company to continue operations under the terms and conditions of its existing agreement during the 3-year notice period;

6. Entering into a contract with a private company to provide garbage, trash, or refuse collection which contract is not entered into under an ordinance that displaces or authorizes the displacement of another private company providing garbage, trash, or refuse collection;

7. Situations in which a majority of the property owners in the displacement area petition the governing body to take over the collection service;

8. Situations in which the private companies are licensed or permitted to do business within the local government for a limited time and such license or permit expires and is not renewed by the local government. This subparagraph does not apply to licensing or permitting processes enacted after May 1, 1999, or to occupational licenses; or

9. Annexations, to the extent that the provisions of s. 171.062(4), Florida Statutes, apply.

(b) A local government or combination of local governments may not displace a private company that provides garbage, trash, or refuse collection service without first:

1. Holding at least one public hearing seeking comment on the advisability of the local government or combination of local governments providing the service.

2. Providing at least 45 days' written notice of the hearing, delivered by first-class mail to all private companies that provide the service within the jurisdiction.

3. Providing public notice of the hearing.

(c) Following the final public hearing held under paragraph (b), but not later than 1 year after the hearing, the local government may proceed to take those measures necessary to provide the service. A local government shall provide 3 years' notice to a private company before it engages in the actual provision of the service that displaces the company. As an alternative to delaying displacement 3 years, a local government may pay a displaced company an amount equal to the company's preceding 15 months' gross receipts for the displaced service in the displacement area. The 3-year notice period shall lapse as to any private company being displaced when the company ceases to provide service within the displacement area. Nothing in this paragraph prohibits the local government and the company from voluntarily negotiating a different notice period or amount of compensation.

(4) DEFINITIONS.—As used in this section:

(a) "In competition" or "in direct competition" means the vying between a local government and a private company to provide substantially similar solid waste collection services to the same customer.

(b) "Private company" means any entity other than a local government or other unit of government that provides solid waste collection services.

Section 2. Subsection (5) is added to section 171.062, Florida Statutes, to read:

171.062 Effects of annexations or contractions.—

(5) A party that has a contract that was in effect for at least 6 months prior to the initiation of an annexation to provide solid waste collection services in an unincorporated area may continue to provide such services to an annexed area for 5 years or the remainder of the contract term, whichever is shorter. Within a reasonable time following a written request to do so, the party shall provide the annexing municipality with a copy of the pertinent portion of the contract or other written evidence showing the duration of the contract, excluding any automatic renewals or so-called "evergreen" provisions. This subsection does not apply to contracts to provide solid waste collection services to single-family residential properties in those enclaves described in s. 171.046.

Section 3. Paragraph (d) is added to subsection (2) of section 165.061, Florida Statutes, to read:

165.061 Standards for incorporation, merger, and dissolution.—

(2) The incorporation of a new municipality through merger of existing municipalities and associated unincorporated areas must meet the following conditions:

(d) In accordance with s. 10, Art. I of the State Constitution, the plan for merger or incorporation must honor existing solid waste contracts in the affected geographic area subject to merger or incorporation; however, the plan for merger or incorporation may provide that existing contracts for solid waste collection services shall be honored only for 5 years or the remainder of the contract term, whichever is shorter, and may require that a copy of the pertinent portion of the contract or other written evidence of the duration of the contract, excluding any automatic renewals or so-called "evergreen" provisions, be provided to the municipality within a reasonable time following a written request to do so.

Section 4. Paragraph (a) of subsection (6) of section 403.087, Florida Statutes, is amended to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(6)(a) The department shall require a processing fee in an amount sufficient, to the greatest extent possible, to cover the costs of reviewing and acting upon any application for a permit or request for site-specific alternative criteria or for an exemption from water quality criteria and to cover the costs of surveillance and other field services and related support activities associated with any permit or plan approval issued pursuant to this chapter. However, when an application is received without the required fee, the department shall acknowledge receipt of the application and shall immediately return the unprocessed application to the applicant and shall take no further action until the application is received with the appropriate fee. The department shall adopt a schedule of fees by rule, subject to the following limitations:

1. The ~~permit~~ fee for any of the following ~~permits~~ may not exceed $32,500:

a. Hazardous waste, construction permit.

b. Hazardous waste, operation permit.

c. Hazardous waste, postclosure ~~closure~~ permit, or clean closure plan approval.

2. The permit fee for a Class I injection well construction permit may not exceed $12,500.

3. The permit fee for any of the following permits may not exceed $10,000:

a. Solid waste, construction permit.

b. Solid waste, operation permit.

c. Class I injection well, operation permit.

4. The permit fee for any of the following permits may not exceed $7,500:

a. Air pollution, construction permit.

b. Solid waste, closure permit.

c. Drinking water, construction or operation permit.

d. Domestic waste residuals, construction or operation permit.

e. Industrial waste, operation permit.

f. Industrial waste, construction permit.

5. The permit fee for any of the following permits may not exceed $5,000:

a. Domestic waste, operation permit.

b. Domestic waste, construction permit.

6. The permit fee for any of the following permits may not exceed $4,000:

a. Wetlands resource management—(dredge and fill), standard form permit.

b. Hazardous waste, research and development permit.

c. Air pollution, operation permit, for sources not subject to s. 403.0872.

d. Class III injection well, construction, operation, or abandonment permits.

7. The permit fee for Class V injection wells, construction, operation, and abandonment permits may not exceed $750.

8. The permit fee for any of the following permits may not exceed $500:

a. Domestic waste, collection system permits.

b. Wetlands resource management—(dredge and fill and mangrove alterations), short permit form.

c. Drinking water, distribution system permit.

9. The permit fee for stormwater operation permits may not exceed $100.

10. The general permit fees for permits that require certification by a registered professional engineer or professional geologist may not exceed $500. The general permit fee for other permit types may not exceed $100.

11. The fee for a permit issued pursuant to s. 403.816 is $5,000, and the fee for any modification of such permit requested by the applicant is $1,000.

12. The regulatory program and surveillance fees for facilities permitted pursuant to s. 403.088 or s. 403.0885, or for facilities permitted pursuant to s. 402 of the Clean Water Act, as amended, 33 U.S.C. ss. 1251 et seq., and for which the department has been granted administrative authority, shall be limited as follows:

a. The fees for domestic wastewater facilities shall not exceed $7,500 annually. The department shall establish a sliding scale of fees based on the permitted capacity and shall ensure smaller domestic waste dischargers do not bear an inordinate share of costs of the program.

b. The annual fees for industrial waste facilities shall not exceed $11,500. The department shall establish a sliding scale of fees based upon the volume, concentration, or nature of the industrial waste discharge and shall ensure smaller industrial waste dischargers do not bear an inordinate share of costs of the program.

c. The department may establish a fee, not to exceed the amounts in subparagraphs 4. and 5., to cover additional costs of review required for permit modification or construction engineering plans.

Section 5. Paragraphs (b) and (d) of subsection (3) of section 403.7046, Florida Statutes, are amended to read:

403.7046 Regulation of recovered materials.—

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(b) Prior to engaging in business within the jurisdiction of the local government, a recovered materials dealer must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer must register with the local government prior to engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer to register its name, including the owner or operator of the dealer, and, if the dealer is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of this section. All

counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process which shall be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which shall, at a minimum, include requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials were disposed of as solid waste. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of s. 24(a), Art. I of the State Constitution and s. 119.07(1). The local government may charge the dealer a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this paragraph. Any reporting or registration process established by a local government with regard to recovered materials shall be governed by the provisions of this section and department rules promulgated pursuant thereto.

(d) In addition to any other authority provided by law, a local government is hereby expressly authorized to prohibit a person or entity not certified under this section from doing business within the jurisdiction of the local government; to enter into a nonexclusive franchise or to otherwise provide for the collection, transportation, and processing of recovered materials at commercial establishments, provided that a local government may not require a certified recovered materials dealer to enter into such franchise agreement in order to enter into a contract with any commercial establishment located within the local government's jurisdiction ~~such franchise or provision does not prohibit a certified recovered materials dealer from entering into a contract with a commercial establishment~~ to purchase, collect, transport, process, or receive source-separated recovered materials; and to enter into an exclusive franchise or to otherwise provide for the exclusive collection, transportation, and processing of recovered materials at single-family or multifamily residential properties.

Section 6. Paragraph (d) is added to subsection (17) of section 403.706, Florida Statutes, to read:

403.706 Local government solid waste responsibilities.—

(17) To effect the purposes of this part, counties and municipalities are authorized, in addition to other powers granted pursuant to this part:

(d) To grant a solid waste fee waiver to nonprofit organizations that are engaged in the collection of donated goods for charitable purposes and that have a recycling or reuse rate of 50 percent or better.

Section 7. Subsection (1) of section 403.722, Florida Statutes, is amended to read:

403.722 Permits; hazardous waste disposal, storage, and treatment facilities.—

(1) Each person who intends to construct, modify, operate, or close a hazardous waste disposal, storage, or treatment facility shall obtain a construction permit, operation permit, postclosure ~~or closure~~ permit, or clean closure plan approval from the department prior to constructing, modifying, operating, or closing the facility. By rule, the department may provide for the issuance of a single permit instead of any two or more hazardous waste facility permits.

Section 8. Section 171.093, Florida Statutes, is created to read:

171.093 Municipal annexation within independent special districts.—

(1) The purpose of this section is to provide an orderly transition of special district service responsibilities in an annexed area from an independent special district which levies ad valorem taxes to a municipality following the municipality's annexation of property located within the jurisdictional boundaries of an independent special district, if the municipality elects to assume such responsibilities.

(2) The municipality may make such an election by adopting a resolution evidencing the election and forwarding the resolution to the office of the special district and the property appraiser and tax collector of the county in which the annexed property is located. In addition, the municipality may incorporate its election into the annexation ordinance.

(3) Upon a municipality's election to assume the district's responsibilities, the municipality and the district may enter into an interlocal agreement addressing the orderly transfer of service responsibilities, real assets, equipment, and personnel to the municipality. The agreement shall address allocation of responsibility for special district services, avoidance of double taxation of property owners for such services in the area of overlapping jurisdiction, prevention of loss of any district revenues which may be detrimental to the continued operations of the independent district, avoidance of impairment of existing district contracts, disposition of property and equipment of the independent district and any assumption of indebtedness for it, the status and employee rights of any adversely affected employees of the independent district, and any other matter reasonably related to the transfer of responsibilities.

(4)(a) If the municipality and the district are unable to enter into an interlocal agreement pursuant to subsection (3), the municipality shall so advise the district and the property appraiser and tax collector of the county in which the annexed property is located and, effective October 1 of the calendar year immediately following the calendar year in which the municipality declares its intent to assume service responsibilities in the annexed area, the district shall remain the service provider in the annexed area for a period of 4 years. During the 4-year period, the municipality shall pay the district an amount equal to the ad valorem taxes or assessments that would have been collected had the property remained in the district.

(b) By the end of the 4-year period, or any extension mutually agreed upon by the district the municipality, the municipality and the district shall enter into an agreement that identifies the existing district property located in the municipality or primarily serving the municipality that will be assumed by the municipality, the fair market value of such property, and the manner of transfer of such property and any associated indebtedness. If the municipality and district are unable to agree to an equitable distribution of the district's property and indebtedness, the matter shall proceed to circuit court. In equitably distributing the district's property and associated indebtedness, the taxes and other revenues paid the district by or on behalf of the residents of the annexed area shall be taken into consideration.

(c) During the 4-year period, or during any mutually agreed upon extension, district service and capital expenditures within the annexed area shall continue to be rationally related to the annexed area's service needs. Service and capital expenditures within the annexed area shall also continue to be rationally related to the percentage of district revenue received on behalf of the residents of the annexed area when compared to the district's total revenue. A capital expenditure greater than $25,000 shall not be made by the district for use primarily within the annexed area without the express consent of the municipality.

(5) If the municipality elects not to assume the district's responsibilities, the district shall remain the service provider in the annexed area, the geographical boundaries of the district shall continue to include the annexed area, and the district may continue to levy ad valorem taxes and assessments on the real property located within the annexed area. If the municipality elects to assume the district's responsibilities in accordance with subsection (3), the district's boundaries shall contract to exclude the annexed area at the time and in the manner provided in the agreement.

(6) If the municipality elects to assume the district's responsibilities and the municipality and the district are unable to enter into an interlocal agreement, and the district continues to remain the service provider in the annexed area in accordance with subsection (4), the geographical boundaries of the district shall contract to exclude the annexed area on the effective date of the beginning of the 4-year period provided for in subsection (4). Nothing in this section precludes the contraction of the boundary of any independent special district by special act of the Legislature. The district shall not levy ad valorem taxes or assessments on the annexed property in the calendar year in which its boundaries contract and subsequent years, but it may continue to collect and use all ad valorem taxes and assessments levied in prior years. Nothing in this section prohibits the district from assessing user charges and impact fees within the annexed area while it remains the service provider.

(7) In addition to any other authority provided by law, a municipality is authorized to levy assessments on property located in an annexed area to offset all or a portion of the costs incurred by the municipality in assuming district responsibilities pursuant to this section. Such assessments may be collected pursuant to and in accordance with applicable law.

(8) This section does not apply to districts created pursuant to chapter 190 or chapter 373.

Section 9. Subsection (2) of section 190.004, Florida Statutes, is amended to read:

190.004 Preemption; sole authority.—

(2) The adoption of chapter 84-360, Laws of Florida ~~This act~~ does not affect the validity of the establishment of any community development district or other special district existing on June 29, 1984; and existing community development districts will ~~continue to~~ be subject to the provisions of chapter ~~80-407, Laws of Florida~~ 190, as amended. All actions taken prior to July 1, 2000, by a community development district existing on June 29, 1984, if taken pursuant to the authority contained in chapter 80-407 or this chapter are hereby deemed to have adequate statutory authority. Nothing herein shall affect the validity of any outstanding indebtedness of a community development district established prior to June 29, 1984, and such district is hereby authorized to continue to comply with all terms and requirements of trust indentures or loan agreements relating to such outstanding indebtedness.

Section 10. Section 403.08725, Florida Statutes, is created to read:

403.08725 Citrus juice processing facilities.—

(1) COMPLIANCE REQUIREMENTS; DEFINITIONS.—Effective July 1, 2002, all existing citrus juice processing facilities shall comply with the provisions of this section in lieu of obtaining air pollution construction and operation permits, notwithstanding the permit requirements of ss. 403.087(1) and 403.0872. For purposes of this section, "existing juice processing facility" means any facility that currently has air pollution construction or operation permits issued by the department with a fruit processing capacity of 2 million boxes per year or more. For purposes of this section, "facility" means all emissions units at a plant that processes citrus fruit to produce single-strength or frozen concentrated juice and other products and byproducts identified by Major Group Standard Industrial Classification Codes 2033, 2037, and 2048 which are located within a contiguous area and are owned or operated under common control, along with all emissions units located in the contiguous area and under the same common control which directly support the operation of the citrus juice processing function. For purposes of this section, facilities that do not operate a citrus peel dryer are not subject to the requirements of paragraph (2)(c). For purposes of this section, "department" means the Department of Environmental Protection. Notwithstanding any other provision of law to the contrary, for purposes of the permitted emission limits of this section, "new sources" means emissions units constructed or added to a facility on or after July 1, 2000, and "existing sources" means emissions units constructed or modified before July 1, 2000.

(2) PERMITTED EMISSIONS LIMITS.—All facilities authorized to construct and operate under this section shall operate within the most stringent of the emissions limits set forth in paragraphs (a)-(g) for each new and existing source:

(a) Any applicable standard promulgated by the United States Environmental Protection Agency.

(b) Each facility shall comply with the emissions limitations of its Title V permit, and any properly issued and certified valid preconstruction permits, until October 31, 2002, at which time the requirements of this section shall supersede the requirements of the permits. Nothing in this paragraph shall preclude the department's authority to evaluate past compliance with all department rules.

(c) After October 31, 2002, for volatile organic compounds, the level of emissions achievable by a 50-percent recovery of oil from citrus fruits processed as determined by the methodology described in subparagraph (4)(a)1. One year after EPA approval pursuant to subsection (9), for volatile organic compounds, the level of emissions achievable by a 65 percent recovery of oil from citrus fruits processed as determined by the methodology described in subparagraph (4)(a)1.

(d) After October 31, 2002, except as otherwise provided herein, no facility shall fire fuel oil containing greater than 0.5 percent sulfur by weight. Those facilities without access to natural gas shall be limited to fuel oil containing no greater than 1 percent sulfur by weight. In addition, facilities may use fuel oil with no greater than 1.5 percent sulfur by weight for up to 400 hours per calendar year. The use of natural gas is not limited by this paragraph. The use of d-limonene as a fuel is not limited by this paragraph.

(e) After October 31, 2002, for particulate matter of 10 microns or less, the emissions levels, expressed in pounds per million British thermal units of heat input, unless otherwise specified, are established for the following types of new and existing sources:

1. Citrus peel dryer, regardless of production capacity: 15 pounds per hour.

2. Pellet cooler or cooling reel, regardless of production capacity: 5 pounds per hour.

3. Process steam boiler:

a. Sources fired with natural gas, propane, ethanol, biogas, or d-limonene: not limited.

b. New sources fired with fuel oil: 0.10 pounds per million British thermal units.

No process steam boiler shall fire any fuel other than natural gas, propane, ethanol, biogas, d-limonene, or fuel oil. No process steam boiler shall fire used oil.

4. Combustion turbine:

a. Existing sources regardless of fuel: not limited.

b. New sources fired with natural gas, propane, or biogas: not limited.

c. New sources fired with fuel oil: 0.10 pounds per million British thermal units.

No combustion turbine shall fire any fuel other than natural gas, propane, biogas, or fuel oil. No combustion turbine shall fire used oil.

5. Duct burner:

a. New and existing sources fired with natural gas, propane, or biogas: not limited.

b. New and existing sources fired with fuel oil: 0.10 pounds per million British thermal units.

No duct burner shall fire any fuel other than natural gas, propane, biogas, or fuel oil. No duct burner shall fire used oil.

6. Glass plant furnace: existing sources with a maximum non-cullet material process input rate of 18 tons per hour; hourly emissions limited as determined by the following equation: Emission limit (pounds per hour) = 3.59 x (process rate, tons per hour raised to the 0.62 power). No glass plant furnace shall fire any fuel other than natural gas, propane, biogas, d-limonene, or fuel oil. No glass plant furnace shall fire used oil.

7. Biogas flare for anaerobic reactor: not limited.

8. Emergency generator: not limited.

9. Volatile organic compounds emission control incinerator: not limited.

(f) After October 31, 2002, for nitrogen oxides, the emissions levels, expressed in pounds of nitrogen dioxide per million British thermal units of heat produced, unless otherwise specified, are established for the following types of new and existing sources:

1. Citrus peel dryer:

a. Sources that fire natural gas, propane, ethanol, biogas, or d-limonene: not limited.

b. Sources that fire fuel oil: 0.34 pounds per million British thermal units.

2. Process steam boiler:

a. New sources with a heat input capacity of 67 million British thermal units per hour or less and existing sources regardless of heat input capacity: not limited.

b. New sources with a heat input capacity of more than 67 million British thermal units per hour: 0.10 pounds per million British thermal units.

3. Combustion turbine:

a. Existing sources regardless of fuel:

(I) Existing combustion turbine of approximately 425 million British thermal units per hour heat input capacity: 42 parts per million volume dry at 15 percent oxygen.

(II) Existing combustion turbines of approximately 50 million British thermal units per hour heat input capacity each, constructed prior to July 1999: 168 parts per million volume dry at 15 percent oxygen.

(III) Existing combustion turbine of approximately 50 million British thermal units per hour heat input capacity, constructed after July 1999: 50 parts per million volume dry at 15 percent oxygen.

b. New sources with less than 50 megawatts of mechanically generated electrical capacity, regardless of fuel: 25 parts per million volume dry at 15 percent oxygen.

c. New sources with greater than or equal to 50 megawatts of mechanically generated electrical capacity, regardless of fuel: 3.5 parts per million volume dry at 15 percent oxygen.

4. Duct burner:

a. Existing sources fired with natural gas, propane, or biogas: not limited.

b. Sources fired with fuel oil: 0.20 pounds per million British thermal units.

5. Glass plant furnace:

a. Existing sources regardless of production capacity: not limited.

b. New sources firing gaseous fuels or fuel oil, regardless of production capacity: 5.5 pounds per ton of glass produced.

6. Biogas flare for anaerobic reactor: not limited.

7. Emergency generator: not limited.

8. Volatile organic compound emission control incinerator: not limited.

(g) After October 31, 2002, for visible emissions, the levels of visible emissions at all times during operation, expressed as a percent of opacity, are established for the following types of emission sources:

1. Citrus peel dryer: 20 percent.

2. Pellet cooler or cooling reel: 5 percent.

3. Process steam boiler: 20 percent.

4. Combustion turbine: 10 percent.

5. Duct burner: limited to the visible emissions limit of the associated combustion turbine.

6. Glass plant furnace: 20 percent.

7. Biogas flare for anaerobic reactor: 20 percent.

8. Emergency generator: 20 percent.

9. Lime storage silo: 10 percent.

10. Volatile organic compounds emission control incinerator: 5 percent.

(3) EMISSIONS DETERMINATION AND REPORTING.—

(a) All information submitted to the department by facilities authorized to operate under this section shall be certified as true, accurate, and complete by a responsible official of the facility. For purposes of this section, "responsible official" means that person who would be allowed to certify information and take action under the department's Title V permitting rules.

(b) All emissions for which the facility is limited by any standard promulgated by the United States Environmental Protection Agency must be determined and reported by a responsible official of the facility in accordance with the promulgated requirement. Reports required by this section shall be certified and submitted to the department.

(c) All emissions units subject to any enhanced monitoring requirement under any regulation promulgated by the United States Environmental Protection Agency must comply with such requirement.

(d) All emissions for which the facility is limited by paragraphs (2)(b)-(f) shall be determined on a calendar-year basis and reported to the department by a responsible official of the facility no later than April 1 of the following year. Emissions shall be determined for each emissions unit by means of recordkeeping, test methods, units, averaging periods, or other statistical conventions which yield reliable data; are consistent with the emissions limit being measured; are representative of the unit's actual performance; and are sufficient to show the actual emissions of the unit.

(e) Each facility authorized to operate under this section shall submit annual operating reports in accordance with department rules.

(f) Each facility shall have a responsible official provide and certify the annual and semiannual statements of compliance required under the department's Title V permitting rules.

(g) Each facility shall have a responsible official provide the department with sufficient information to determine compliance with all provisions of this section and all applicable department rules, upon request of the department.

(h) Records sufficient to demonstrate compliance with all provisions of this section and all applicable department rules shall be made available and maintained at the facility for a period of 5 years, for inspection by the department during normal business hours.

(i) Emission sources subject to limitations for particulate matter, nitrogen oxides, and visible emissions pursuant to paragraphs (2)(e)-(g) shall test emissions annually, except as provided in subparagraphs 1.-4., in accordance with department rules using United States Environmental Protection Agency test methods or other test methods specified by department rule.

1. Tests for particulate matter of 10 microns or less may be conducted using United States Environmental Protection Agency Method 5, provided that all measured particulate matter is assumed to be particulate matter of 10 microns or less. Tests for compliance with the particulate matter emission limit of subparagraph (2)(e)2. for the pellet cooler or cooling reel are waived as long as the facility complies with the visible emissions limitation of subparagraph (2)(g)2. If any visible emissions test for the pellet cooler or cooling reel does not demonstrate compliance with the visible emissions limitation of subparagraph (2)(g)2., the emissions unit shall be tested for compliance with the particulate matter emission limit of subparagraph (2)(e)2. within 30 days after the visible emissions test.

2. Tests for visible emissions shall be conducted using United States Environmental Protection Agency Method 9. Annual tests for visible emissions are not required for biogas flares, emergency generators, and volatile organic compounds emission control incinerators.

3. Tests for nitrogen oxides shall be conducted using Environmental Protection Agency Method 7E.

4. Tests for particulate matter of 10 microns or less for process steam boilers, combustion turbines, and duct burners, and tests for nitrogen oxides for citrus peel dryers, process steam boilers, and duct burners, are not required while firing fuel oil in any calendar year in which these sources did not fire fuel oil for more than 400 hours.

(j) Measurement of the sulfur content of fuel oil shall be by latest American Society for Testing and Materials methods suitable for determining sulfur content. Sulfur dioxide emissions shall be determined by material balance using the sulfur content and amount of the fuel or fuels fired in each emission source, assuming that for each pound of sulfur in the fuel fired, two pounds of sulfur dioxide are emitted.

(k) A situation arising from sudden and unforeseeable events beyond the control of the source which causes a technology-based emissions limitation to be exceeded because of unavoidable increases in emissions attributable to the situation and which requires immediate corrective action to restore normal operation shall be an affirmative defense to an enforcement action in accordance with the provisions and requirements of 40 CFR 70.6(g)(2) and (3), hereby adopted and incorporated by reference as the law of this state. It shall not be a defense for a permittee in an enforcement action that

maintaining compliance with any permit condition would necessitate halting of or reduction of the source activity.

(4) EMISSIONS TRADING.—If the facility is limited by the emission limit listed in paragraph (2)(c) for any such limit which the facility exceeded during the calendar year, the facility must obtain, no later than March 1 of the reporting year, sufficient allowances, generated in the same calendar year in which the limit was exceeded, to meet all limits exceeded. Any facility which fails to meet the limit and fails to secure sufficient allowances that equal or exceed the emissions resulting from such failure to meet the limit shall be subject to enforcement in the same manner and to the same extent as if the facility had violated a permit condition. For purposes of this section, an "allowance" means a credit equal to emissions of 1 ton per year of a pollutant listed in paragraph (2)(c), subject to the particular limitations of paragraphs (a) and (b).

(a) Emissions allowances may be obtained from any other facility authorized to operate under this section, provided such allowances are real, excess, and are not resulting from the shutdown of an emissions unit. Emissions allowances must be obtained for each pollutant the emissions limit of which was exceeded in the calendar year. Allowances can be applied on a pollutant-specific basis only. No cross-pollutant trading shall be allowed.

1. Real allowances are those created by the difference between the emissions limit imposed by this section and the lower emissions actually measured during the calendar year. Measurement of emissions for allowance purposes shall be determined in the manner described in this subparagraph. For purposes of measuring whether an allowance was created, a single stack test or use of emissions estimates cannot be used. Measurement of recovery of oil from citrus fruits processed shall be by material balance using the measured oil in the incoming fruit, divided into the sum of the oil remaining in juice, the cold press oil recovered, d-limonene recovered, and oil remaining in the dried pellets, expressed as a percentage. Alternatively, the material balance may use the measured oil in the incoming fruit divided into the oil measured remaining in the pressed peel prior to introduction into the feed mill dryers, in which case the decimal result shall be subtracted from the numeral one, and added to the decimal result of the measured oil in the incoming fruit divided into the oil measured remaining in the dried pellets, with the resulting sum expressed as a percentage. Measurement of recovery of oil shall be made each operational day and averaged over the days of facility operation during each calendar year. Facilities may accept wet peel from offsite sources for drying, provided that the facility receives sufficient recorded information from the offsite source to measure available oil and oil recovery at the offsite source, and accounts for those values in determining compliance with the limitation of paragraph (2)(c) and the number of allowances that are required to be obtained, if any. Wet peel not processed through the peel dryer shall be excluded from the oil recovery calculations. Methodologies for determining oil contents shall be developed by the Institute of Food and Agricultural Sciences and approved by rule of the department. Other methods of measuring oil recovery or determining oil content may be approved by rule of the department, for trading purposes, provided the methods yield results equivalent to the approved methodologies.

2. Excess allowances are those not used for any other regulatory purpose.

(b) No facility located in an area designated nonattainment for ozone shall be allowed to acquire allowances of volatile organic compounds. Nothing shall preclude such a facility from trading volatile organic compounds allowances that it might generate to facilities not located in a nonattainment area for ozone.

(5) EMISSIONS FEES.—All facilities authorized to operate under this section shall pay annual emissions fees in the same amount to which the facility would be subject under the department's Title V program. For purposes of determining fees until October 31, 2002, emission fees shall be based on the requirements of s. 403.0872. Commencing July 1, 2002, the allowable annual emissions for fee purposes shall be computed as the emissions limits established by this section multiplied by the actual operation rates, heat input, and hours of operation of each new and existing source for the previous calendar year. Actual operation rates, heat input, and hours of operation of each new and existing source shall be documented by making and maintaining records of operation of each source. Fees shall not be based on stack test results. In the event that adequate records of actual operation rates and heat input are not maintained, actual operation shall be assumed to occur at the source's maximum capacity during hours of actual operation, if adequately documented. In the event that adequate records of hours of operation are not maintained, the source shall be assumed to have operated from January 1 through May 31 and October 1 through December 31 of the previous calendar year. All such annual emissions fees shall be due and payable April 1 for the preceding calendar year. Failure to pay fees shall result in penalties and interest in the same manner and to the same extent as failure to pay fees under the department's Title V program. For purposes of determining actual emissions for fee purposes, any allowances traded away shall be deducted and any allowances acquired shall be included. All fees shall be deposited into the Air Pollution Control Trust Fund.

(6) MODIFICATIONS AND NEW CONSTRUCTION.—Any facility authorized to operate under this section that makes any physical change or any change to the method of operation of the facility shall comply with the requirements of this section at all times, except that any facility located in an area designated as a nonattainment area for any pollutant shall also comply with limits established by department rules for all changes which increase emissions of such pollutant, and except that any facility that becomes subject to the federal acid rain program is no longer authorized to construct or operate under this section and must obtain proper department permits.

(7) RULES.—The department shall adopt rules pursuant to ss. 120.54 and 120.536(1) to implement the provisions of this section. Such rules shall, to the maximum extent practicable, assure compliance with substantive federal Clean Air Act requirements.

(8) LEGISLATIVE REVIEW.—By March 2004, the department, after consultation with the citrus industry, shall report to the Legislature concerning the implementation of this section, and shall make recommendations for any changes necessary to improve implementation.

(9) ENVIRONMENTAL PROTECTION AGENCY APPROVAL.—No later than February 1, 2001, the department shall submit this act to the United States Environmental Protection Agency as a revision of Florida's state implementation plan and as a revision of Florida's approved state Title V program. If the United States Environmental Protection Agency fails to approve this act as a revision of Florida's state implementation plan within 2 years after submittal, this act shall not apply with respect to construction requirements for facilities subject to regulation under the act, and the facilities subject to regulation thereunder must comply with all construction permitting requirements, including those for prevention of significant deterioration, and must make application for construction permits for any construction or modification at the facility which was not undertaken in compliance with all permitting requirements of the Florida state implementation plan, within 3 months thereafter. If the United States Environmental Protection Agency fails to approve this act as a revision of Florida's approved state Title V program within 2 years after submittal, this act shall not apply with respect to operation requirements, and all facilities subject to regulation under the act must immediately comply with all Title V program requirements and must make application for Title V operation permits within 3 months thereafter.

Section 11. Subsection (16) is added to section 120.80, Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.—

(16) DEPARTMENT OF ENVIRONMENTAL PROTECTION.—Notwithstanding the provisions of s. 120.54(1)(d), the Department of Environmental Protection, in undertaking rulemaking to establish best available control technology, lowest achievable emissions rate, or case-by-case maximum available control technology for purposes of s. 403.08725, shall not adopt the lowest regulatory cost alternative if such adoption would prevent the agency from implementing federal requirements.

Section 12. The Department of Environmental Protection is directed to explore alternatives to traditional methods of regulatory permitting, provided that such alternative methods will not allow a material increase in pollution emissions or discharges. Working with industry, business associations, other government agencies, and interested parties, the department is directed to consider specific limited pilot projects to test new compliance measures. These measures should include, but not be limited to, reducing transaction costs for business and government and providing economic incentives for emissions reductions. The department shall report to the Legislature prior to implementation of a pilot project initiated pursuant to this section.

Section 13. The introductory paragraph 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. This operation permit~~, which~~ is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate Acid Rain permit for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). 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 contained in this section 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.~~:~~

Section 14. Subsection (5) of section 403.7165 and section 403.7199, Florida Statutes, are repealed.

Section 15. This act shall take effect July 1, 2000.

Approved by the Governor June 15, 2000.

Filed in Office Secretary of State June 15, 2000.