

STORAGE NAME: h4077.ep

DATE: April 3, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4077

RELATING TO: Phosphogypsum rulemaking

SPONSOR(S): Representative Murman

COMPANION BILL(S): SB 1176 (s) by Senator Lee

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill would require the Department of Environmental Protection (DEP) to establish, by rule, prior to January 1, 1999, safety standards for temporary impoundments and water conveyance structures used in the phosphogypsum (gypsum) industry. The rules would be required to establish criteria for design, construction, operation and maintenance of the impoundments on the top of phosphogypsum stacks, as well as cooling ponds and wastewater conveyance systems. Additionally, the rules would also address techniques for pipe removal, dike reconstruction, phosphogypsum stabilization, and improvements to the management of process water.

The act would take effect upon becoming law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Impoundments on the top of gypsum stacks are used to: settle the water that is a by-product of the gypsum mining process; provide for cooling and evaporation; and provide water management. The process water is transferred as necessary from the top of the stack to the ponds and ditching at the base by different methods, including decant pipes, siphon piping and excavated ditching.

On December 7, 1997, approximately 54 million gallons of acid-laden water spilled from the top of a gypsum stack owned and operated by Mulberry Phosphates and entered the Alafia River with severe environmental effects. Although the final impacts of the spill are still being investigated, the DEP estimates that at least 10 million fish were killed as the acid plume traveled 37 miles down the river.

In processing phosphate, hot water containing acids is pumped to the top of the gypsum stacks to cool before being decanted and reused. In the 1997 incident, the berm containing the water, apparently weakened by the removal of a pipe two days before, gave way and the water overwhelmed the containment system below the stack, finding its way into the Alafia River.

Through ch. 62-272, F.A.C., the DEP has provided minimum requirements for earthen dams, phosphate mining and processing operations. These rules, however, do not specifically address temporary impoundment structures and water conveyance piping systems in detail. Since the December spill the phosphate industry and the DEP have been working together to prevent future incidents from occurring and all parties have agreed to implement interim measures.

B. EFFECT OF PROPOSED CHANGES:

The bill would require the DEP to adopt rules dealing with gypsum stacks. Specific rulemaking authority is granted and direction is given concerning the minimum content of such rules. Specific issues to be addressed by the rule are:

- Critical safety standards for the design and maintenance of temporary impoundment structures and water conveyance piping systems.
- Any temporary impoundment structure used in a gypsum stack together with all component equipment or systems must be reasonably constructed and operated to avoid catastrophic spills.
- That gypsum stack system owners must maintain a log detailing the inspection schedule, results, and any corrective actions taken.
- That the stack owner maintain an emergency contingency plan to demonstrate the ability to mobilize equipment and manpower to respond to situations that may arise.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill would grant specific rulemaking authority to the DEP to address issues related to the operation of temporary impoundment structures and water conveyance systems used in the operation of gypsum stacks.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Rules developed because of the bill would add requirements to the operations of phosphate mining.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION RESEARCH:

Section 1: Directs the DEP to develop rules governing the operation of temporary impoundment structures and water conveyance piping systems used in the phosphogypsum industry. In addition specific criteria to be included in the rule are described.

Section 2: Provides that the act shall take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The DEP estimates that the cost to develop the rule will be \$10,000. Costs for rule development include: staff time; public notices; copying; mailings; and travel.

2. Recurring Effects:

According to the DEP the rule will result in the necessity for one additional position (Professional Engineer II). Year one costs are \$71,958. Succeeding annual costs would be \$67,033. The difference is attributed to the one-time OCO costs associated with position establishment.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

Expenditures	<u>FY 98-99</u>	<u>FY 99-00</u>
Rulemaking costs	\$10,000	\$0
One FTE	<u>71,958</u>	<u>67,033</u>
Total Expenditures	\$81,958	\$67,033

Provisions of the bill will produce no revenues.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill has no direct impact on the private sector although the rules required to be developed could require additional expenditures by the industry.

2. Direct Private Sector Benefits:

The new safety standards should reduce industry's exposure to liability because of less spills.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of cities or counties.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with cities and counties.

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V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

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