

1                                   A bill to be entitled  
 2           An act relating to the Gold Star Permitting Program;  
 3           creating s. 403.0874, F.S.; providing a short title;  
 4           providing legislative findings and purpose; providing  
 5           definitions; providing compliance incentives for  
 6           applicants for renewal of certain environmental permits;  
 7           providing eligibility requirements for incentives;  
 8           providing consequences for noncompliance with certain  
 9           environmental permits; providing criteria for the  
 10          Department of Environmental Protection to consider when  
 11          taking action on permit applications; authorizing the  
 12          department to create reporting forms; requiring the  
 13          department to adopt rules; encouraging the department to  
 14          work with permittees and permit applicants to avoid the  
 15          need for enforcement; providing an exception for general  
 16          permits issued in accordance with s. 403.814, F.S.;  
 17          amending ss. 161.041 and 373.413, F.S.; specifying  
 18          application of the Gold Star Permitting Program to certain  
 19          permits; providing an effective date.

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

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 23           Section 1.   Section 403.0874, Florida Statutes, is created  
 24   to read:

25           403.0874   Gold Star Permitting Program.--

26           (1)   SHORT TITLE.--This section may be cited as the "Florida  
 27   Gold Star Permitting Act."

28           (2)   LEGISLATIVE FINDINGS AND PURPOSE.--The Legislature  
 29   finds and declares that a permit applicant's history of

30 compliance or noncompliance with environmental laws, rules, and  
31 permit conditions is a factor that should be considered by the  
32 department when it determines whether to issue a new permit to  
33 the applicant. Permit applicants with a history of compliance  
34 with the environmental laws, rules, and permit conditions should  
35 be eligible for longer term permits, short-form permit renewals,  
36 and other incentives to reward and encourage such applicants when  
37 those permits are renewed. Permit applicants with a history of  
38 noncompliance with environmental laws, rules, and permit  
39 conditions should be subject to more stringent requirements, and,  
40 in some cases, such applicants should be denied permits for an  
41 appropriate period of time. It is therefore declared to be the  
42 purpose of this section to provide the department with clear and  
43 specific authority to consider the compliance history of permit  
44 applicants when evaluating whether the applicant should be issued  
45 a new permit, in determining what conditions should be imposed on  
46 the permit, and in evaluating whether an applicant for renewal of  
47 a permit should be awarded incentives to encourage continued  
48 compliance with the applicant's permit and applicable  
49 environmental laws.

50 (3) DEFINITIONS.--For purposes of this section, the  
51 following terms have the following meanings:

52 (a) "Applicant" means the proposed permittee or transferee,  
53 the owner, and the operator of a regulated activity seeking an  
54 agency permit. If the applicant has not held an agency permit  
55 during at least four of the five years preceding submittal of the  
56 permit application, the term also includes any person who has the  
57 legal or actual authority to control the proposed permittee,  
58 transferee, owner, or operator.

59 (b) "Department" means the Department of Environmental  
 60 Protection and local governments acting under a delegation or  
 61 specific operating agreement with the department.

62 (c) "Environmental statutes" means any state or federal  
 63 statute that regulates activities for the purpose of protecting  
 64 the environment or for the purpose of protecting the public  
 65 health from pollution or contaminants, but does not include any  
 66 statute that regulates activities only for the purpose of zoning,  
 67 growth management, or land use.

68 (d) "Formal enforcement action" means that:

69 1. The department has issued or obtained an administrative  
 70 or judicial final order that finds that an applicant has  
 71 committed a violation of an environmental statute, department  
 72 rule, or department permit;

73 2. The applicant has executed a consent order with the  
 74 department; or

75 3. The applicant has been convicted of, pled guilty or nolo  
 76 contendere to, or entered into a deferred prosecution agreement  
 77 with respect to the charged offense, regardless of whether  
 78 adjudication has been withheld, for an environmental offense that  
 79 is or would be a criminal offense if committed in Florida.

80 (e) "Regulated activity" means any activity, including the  
 81 construction or operation of a facility, installation, system, or  
 82 project, for which a permit is required under Chapters 161 or  
 83 403, F.S., or for which any individual, standard general, or  
 84 conceptual permit is required under Part IV of Chapter 373.

85 (4) COMPLIANCE INCENTIVES.-- Unless otherwise prohibited by  
 86 state or federal statute, agency rule, or federal regulation, and  
 87 provided that the applicant meets all other applicable criteria

88 for the renewal of the permit, any applicant who meets the  
89 criteria set forth in this subsection is eligible for the  
90 following incentives:

91 (a) Level 1 incentives.--An applicant for renewal of a  
92 permit shall be eligible for incentives pursuant to this  
93 paragraph if the applicant has conducted the regulated activity  
94 at the site for at least 3 years preceding submittal of the  
95 application for renewal of the permit and has had no formal  
96 enforcement actions against the applicant since issuance of the  
97 permit being renewed. Level 1 incentives shall include:

98 1. Short-form renewal.--Renewal of operation or closure  
99 permits not involving substantial construction or expansion may  
100 be made upon a shortened application form specifying only the  
101 changes in the regulated activity or a certification by the  
102 applicant that no changes in the regulated activity are proposed  
103 if that is the case. Applicants for short-form renewals shall  
104 complete and submit the prescribed compliance form with the  
105 application. All other procedural requirements for renewal  
106 applications shall remain in effect.

107 2. Expedited permit review.--Applicants using short-form  
108 renewals for renewal of operation or closure permits not  
109 involving substantial construction or expansion shall be eligible  
110 for an expedited permit review by the department.

111 (b) Level 2 incentives.--An applicant shall be eligible for  
112 incentives pursuant to this paragraph if the applicant meets the  
113 requirements for Level 1 incentives described in paragraph (a)  
114 and is a member of the National Environmental Performance Track  
115 established by the United States Environmental Protection Agency.  
116 Level 2 incentives shall include:

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117 1. Extended permits.--Provided that the applicant has  
118 conducted the permitted activity at the site for at least 4  
119 years, the department may issue the applicant a 10-year permit.

120 2. Gold Star public recognition program.--The department  
121 shall establish a recognition program to ensure that the public  
122 is able to readily determine which entities permitted by the  
123 department are eligible for Level 2 incentives.

124 4. Expedited permitting.--A permit application shall be  
125 approved or denied within 60 days after receipt of the original  
126 application, the last item of timely requested additional  
127 material, or the applicant's written request to begin processing  
128 the permit application.

129 5. Other incentives.--The department may develop additional  
130 incentives designed to encourage performance beyond that required  
131 by law, provided that no such incentives shall result in a  
132 lessening of environmental protection.

133 (5) CONDITIONS ON THE ISSUANCE OF NEW PERMITS.--

134 (a) The department shall issue a new permit only after the  
135 permit applicant affirmatively provides the department with  
136 reasonable assurance based on plans, test results, installation  
137 of pollution control equipment, or other information, that the  
138 construction, operation, or activity of the installation will not  
139 discharge, emit, or cause pollution in violation of any of the  
140 provisions of Chapter 161, Part IV of Chapter 373, or Chapter  
141 403, F.S., or the rules promulgated thereunder. The department  
142 shall also take into consideration violations by the new permit  
143 applicant of any provisions of Chapter 161, Part IV of Chapter  
144 373, or Chapter 403, F.S., or the rules promulgated thereunder.  
145 When considering a new permit applicant's history of violations,

146 the department shall consider any matter relevant to whether the  
 147 applicant is willing or able to comply with the permit or any  
 148 applicable environmental laws or rules, including:

149 1. The number of violations and the seriousness of such  
 150 violations in relation to the industry norm and history for the  
 151 department regulated activity;

152 2. The number of other similar facilities controlled by the  
 153 applicant;

154 3. The number and complexity of any permits held by the  
 155 applicant and the statistical potential for violations to occur;

156 4. Whether the violations involved regulatory programs that  
 157 are the same as, or similar to, the regulatory program from which  
 158 the permit is being requested;

159 5. Whether the violations involved activities that are the  
 160 same as, similar to, or related to the regulated activity for  
 161 which a permit is being requested;

162 6. Whether the violations resulted in harm to human health  
 163 or the environment and the extent of such harm;

164 7. Whether the applicant has implemented an approach or  
 165 remedial measure that is effectively designed to prevent a  
 166 recurrence of the violations or crimes;

167 8. Whether the facility or operation for which a permit is  
 168 being requested provides or proposes to provide utility services  
 169 to the public or serves a similar public purpose;

170 9. Whether a denial of the permit will have an adverse  
 171 effect on the public at large;

172 10. Any relevant evidence offered in mitigation by the  
 173 applicant; and

174 11. Whether the applicant has acted reasonably to resolve

175 previous violations and to prevent their recurrence.

176 (b) For the purposes of this subsection, the department may  
177 only consider the applicant's compliance record during the five  
178 years preceding the receipt of the permit application under  
179 review.

180 (c) Nothing in this section shall be construed to limit the  
181 department's existing authority to impose conditions on permits,  
182 to impose conditions on permits necessary to provide reasonable  
183 assurance, to issue shorter term permits, or establish  
184 requirements for the issuance of permits.

185 (6) REPORTING FORM.--The department may establish a form,  
186 by rule, to be used for the purpose of implementing this section.  
187 The department may require a responsible official of the  
188 applicant to certify under penalty of perjury that the facts set  
189 forth on the form are true. Once such a form is adopted, every  
190 application for a new permit or for a permit that includes  
191 compliance incentives that is submitted to the agency shall be  
192 accompanied by the completed form in order to be considered  
193 complete.

194 (7) RULEMAKING.--The department shall adopt rules to  
195 implement section (4). The rules may specify the format and  
196 procedural requirements for requesting incentives, what  
197 additional incentives will be made available, how applicants may  
198 qualify for incentives, whether and how extended permits may be  
199 transferred and the limitations on transfer, under what  
200 circumstances extended permits may be revised based on formal  
201 enforcement actions against the permittee, and how other  
202 incentives may be removed or revoked if the applicant fails to  
203 maintain the programs entitling it to an incentive or if the

204 applicant's compliance history changes. In addition, the  
 205 department may adopt rules implementing subsection (5).

206 (8) NOTIFICATION. The department is encouraged to work  
 207 with permittees and permit applicants prior to taking any of the  
 208 actions authorized under this section, in order to encourage  
 209 compliance and avoid overly burdensome consequences of  
 210 noncompliance.

211 (9) INAPPLICABLE TO GENERAL PERMITS. This section shall  
 212 not apply to general permits issued in accordance with s.  
 213 403.814. However, the agency may continue to use its existing  
 214 authority to consider the compliance history of those wishing to  
 215 use general permits.

216 Section 2. Subsection (5) is added to section 161.041,  
 217 Florida Statutes, to read:

218 161.041 Permits required.--

219 (5) The provisions of the Gold Star Permitting Program  
 220 under s. 403.0874 shall apply to all permits issued under this  
 221 chapter.

222 Section 3. Subsection (6) is added to section 373.413,  
 223 Florida Statutes, to read:

224 373.413 Permits for construction or alteration.--

225 (6) The provisions of the Gold Star Permitting Program  
 226 under s. 403.0874 shall apply to individual, standard general,  
 227 and conceptual permits issued under this part.

228 Section 4. This act shall take effect October 1, 2007.