

Fall 1988

The 1988 Solid Waste Management Act -- Facing Up to the "Garbage" Component of Florida's Burgeoning Growth

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Recommended Citation

William D. Preston & Thomas M. DeRose, *The 1988 Solid Waste Management Act -- Facing Up to the "Garbage" Component of Florida's Burgeoning Growth*, 16 Fla. St. U. L. Rev. 597 (2017) .
<http://ir.law.fsu.edu/lr/vol16/iss3/4>

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THE 1988 SOLID WASTE MANAGEMENT ACT—FACING UP TO THE “GARBAGE” COMPONENT OF FLORIDA’S BURGEONING GROWTH

WILLIAM D. PRESTON AND THOMAS M. DEROSE

Due in part to the high rate of population growth in Florida and the increasing rates of solid waste generation by Floridians, the problem of solid waste management has generated serious statewide concern. In an effort to address this critical environmental issue, the Florida Legislature during the 1988 Regular Session passed the Solid Waste Management Act. In this Article, Mr. Preston and Mr. DeRose outline the development of this significant new legislation, summarize its main provisions, and highlight the Act’s funding sources as well as the new regulatory and rulemaking activities which will be undertaken to implement the Act.

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WILLIAM D. PRESTON* AND THOMAS M. DEROSE**

IN RECENT years, the Florida Legislature has tended to focus on and address the higher profile waste disposal issues surrounding “toxic” and “hazardous” substances and materials.¹ By the 1988 legislative session, however, Florida’s Representatives and Senators faced a much more common, but ultimately no less serious, waste management problem: what to do with the average seven pounds of garbage generated every day by each of the twelve million citizens of Florida.² It proved to be a legislative topic that few imagined would have generated the massive amounts of time, energy, and resources that it did. However, the Florida Department of Environmental Regulation (DER), the state’s chief environmental agency, the Florida Legislature, and executive policy-makers could not ignore the impact of basic facts which faced that group leading up to the 1988 legislative session. Some of these include:

1. By 1990, the state’s solid waste generation will have increased by almost five million tons due to population growth and increased rates of generation.
2. Solid waste generation rates of individuals are increasing by

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The authors wish to express their appreciation to Mr. James C. Wheeler, presently a second-year student at Duke University School of Law for his assistance in researching various provisions of this complex piece of legislation and in preparing this Article.

1. See Hopping & Preston, *The Water Quality Assurance Act of 1983—Florida’s “Great Leap Forward” Into Groundwater Protection and Hazardous Waste Management*, 11 FLA. ST. U.L. REV. 599 (1983); ch. 85-277, 1985 Fla. Laws 1762 (codified at FLA. STAT. § 403.771 (1987)) (enacted immediately following the accident in Bhopal, India to regulate stationary compression vessels); The State Underground Petroleum Environmental Response Act, ch. 86-159, 1986 Fla. Laws 655 (codified at FLA. STAT. §§ 376.30-.319 (1987)).

2. Staff of Fla. H.R. Comm. on Nat. Resources, CS for CS for HB 1487 (1988) Staff Analysis 4 (final July 1, 1988) [hereinafter CS for CS for HB 1487 Staff Analysis] (on file with committee).

eleven percent per year.

3. From 1980 to 1985, landfill costs increased by an average of only ten percent per year. However, by 1990 it is expected that landfill costs will increase by eighty-six percent over the 1985 level because of more stringent rules at both federal and state levels.

4. The cost of solid waste management is the second largest expense of local governments on a national basis.

5. Approximately one-third of the landfill space available in the state in 1985 will be closed by 1996.

6. The cost to counties for complying with more stringent landfill closure standards for their existing landfills is expected to be \$103 million by 1995.

7. In 1985, eighteen Florida counties reported that they will be closing all their existing landfill acreage by 1996.

8. At the current rate of landfilling in Florida, 64,000 more acres of landfills will need to be sited by 1997.³

On August 4, 1987, Senate President John W. Vogt⁴ created the Senate Select Committee on Solid Waste Management.⁵ In naming the committee members and identifying their "charge," Senator Vogt said, "[t]he committee's responsibilities will be to examine the problem local governments are experiencing in operating existing landfills, siting and funding solid waste landfills, [to] review methods available for reducing solid waste volume, and to review related hazardous waste problems."⁶ The Select Committee also was directed to explore the concepts of regionalizing certain solid waste services as well as alternatives to landfill disposal, such as recycling, volume reduction, resource recovery, and composting programs.⁷ Senator George Kirkpatrick,⁸ appointed as Chairman of the Select Committee, and the Senator ultimately in charge of marshaling the solid waste bill through the Florida Senate,⁹ noted that "Dale Twachtmann, Secretary of the Department of Environmental Regulation, has indicated that his

3. See Staff of Fla. S. Comm. on Nat. Resources & Conser., CS for CS for SB 1192 (1988) Staff Analysis 1-2 (May 18, 1988) [hereinafter CS for CS for SB 1192 Staff Analysis] (on file with committee).

4. Dem., Cape Canaveral, 1972-1988. Senator Vogt is past chairman of the Senate Natural Resources & Conservation Committee.

5. Fla. S., Office of the Pres., Press Release (Aug. 4, 1987) [hereinafter Senate Press Release] (on file, *Florida State University Law Review*).

6. *Id.*

7. *Id.*

8. Dem., Gainesville. Senator Kirkpatrick has been actively involved in past legislative activity concerning hazardous waste legislation, such as the hazardous waste amnesty days program. See FLA. STAT. § 403.7264 (1987).

9. Senate Press Release, *supra* note 5.

agency offers its full support for seeking solutions to this statewide environmental problem."¹⁰

After eight months of work by the Select Committee, the development of comprehensive legislative proposals on the topic of solid waste management by both the Senate Natural Resources and Conservation Committee and the House Natural Resources Committee,¹¹ and deliberation and debate on these bills throughout the course of the 1988 legislative session culminating in a conference committee appointed to resolve differences between bills passed by the full Senate and House of Representatives, on the last day of the regularly scheduled 1988 session, the Florida Legislature passed a 185-page bill containing a host of solid waste issues, mandates, and provisions.¹² On June 24, 1988, Governor Bob Martinez signed into law¹³ this sweeping enactment and hailed the legislation as a major victory for Florida's environment.¹⁴ He noted:

One of the biggest problems we face as a growing state is what to do with the trash and other waste we produce. . . . With this law, Florida will finally begin to take a comprehensive approach to dealing with a serious environmental problem that simply won't go away on its own.¹⁵

Most provisions of the Act took effect on October 1, 1988.¹⁶

This Article will briefly outline the development of the Act,¹⁷ and will then summarize the main provisions of the law. It will also highlight the funding sources and likely expenditures designed to implement the new programs which the Act authorizes, as well as the significant new regulatory and rulemaking activities which will be undertaken to implement the Act.

10. *Id.*

11. These respective House and Senate committees were the primary committees engaged in the development of the various solid waste bills.

12. See FLA. S. JOUR. 982 (Reg. Sess. 1988); FLA. H.R. JOUR. 1493 (Reg. Sess. 1988).

13. Ch. 88-130, 1988 Fla. Laws 599.

14. Fla. Office of the Gov., Press Release (June 24, 1988) [hereinafter Governor's Press Release] (on file with Office of the Gov.).

15. *Id.*

16. Ch. 88-130, § 84, 1988 Fla. Laws 599, 699.

17. Due to the voluminous amendments and revisions to the primary bills serving as the framework for the Act as finally enacted, it would be impractical to discuss each of these changes in this short Article. Anyone seriously interested in a detailed legislative history of the Act is encouraged to consult the *History of Legislation* compiled by the Policy Studies Clinic, Florida State University College of Law.

I. DEVELOPMENT OF THE ACT

The Solid Waste Management Act is an ideal study not only of a piece of legislation that is complex in length, breadth and impact, but also of the legislative process that generated it. Several early versions of proposed bills appeared in response to the Florida Senate Select Committee's report which detailed the solid waste needs of the state and outlined preventive and remedial recommendations.¹⁸ Before the start of the legislative session, in addition to the primary Senate (SB 1192) and House (HB 1487) bills, there appeared several "bottle bills,"¹⁹ and a comprehensive solid waste management bill authored and proposed by DER.²⁰ Each of these other proposals either died of neglect or was killed as House Bill 1487 and Senate Bill 1192 became the framework for the final Act as the latter bills moved through their respective houses. As the legislative session progressed, these bills became festooned with countless amendments and were sometimes radically transformed by committee substitute language and bill revisions.

As expected, the House Natural Resources Committee and the Senate Natural Resources & Conservation Committee directed the development of the legislation and were responsible for most revisions. The Committees on Finance and Taxation and the Committees on Appropriations in each House played lesser, but still important roles. After each bill cleared the respective Appropriations Committee, they each passed by wide margins in their sponsoring houses.²¹ However, many provisions in the two bills appeared to be irreconcilable. As the end of the session drew near, a conference committee composed of members of both houses was assigned the unenviable task of drafting the final legislation.²² By cannibalizing parts of the Senate and House bills and

18. STAFF OF FLA. S. SELECT COMM. ON SOLID WASTE, REPORT ON THE ACTIVITIES OF THE SENATE SELECT COMMITTEE ON SOLID WASTE MANAGEMENT (Feb. 1988) [hereinafter SENATE SELECT COMMITTEE REPORT] (on file with S. Comm. on Nat. Resources & Conser).

19. Fla. SB 76 (1988) (proposed by Sen. McPherson, Dem., Ft. Lauderdale); Fla. SB 1175 (1988) (proposed by Sen. Malchon, Dem., St. Petersburg); Fla. HB 265 (1988) (proposed by Rep. Souto, Repub., Miami, 1984-1988); Fla. HB 1137 (1988) (proposed by Rep. Bainter, Rep., Mt. Dora).

20. Fla. SB 942 (1988) (introduced by Sens. Grizzle, Repub., Belleair Bluffs, 1978-1988; and Lehtinen, Repub., Miami, 1986-1988); Fla. HB 1141 (1988) (introduced by Rep. Dunbar, Rep., Dunedin).

21. Fla. CS for CS for SB 1192 passed the Senate on May 25, 1988 by a vote of 40 to 0. FLA. S. JOUR. 402 (Reg. Sess. 1988); Fla. CS for CS for HB 1487 passed the House of Representatives on May 10, 1988 by a vote of 102 to 13. FLA. H.R. JOUR. 387-88 (Reg. Sess. 1988).

22. The Senate conferees were Senators Crawford, Dem., Winter Haven; Kirkpatrick; and Lehtinen. The alternates were Senators McPherson and Grizzle. FLA. S. JOUR. 501 (Reg. Sess. 1988). The House conferees were Representatives Martin, Dem., Hawthorne; Friedman, Dem., North Bay Village; and Dunbar. The alternates were Representatives Saunders, Dem., Key West; and Drage, Rep., Orlando. FLA. H.R. JOUR. 902 (Reg. Sess. 1988).

creating some new provisions, in six days the conference committee produced a compromise of quite literally colossal proportion.²³ The conference committee's bill filled 185 pages, longer than either the House or the Senate bill.²⁴ The conference committee's compromise bill easily passed both Houses on June 3, 1988,²⁵ the last day of the regularly scheduled legislative session.

II. KEY PROVISIONS OF THE ACT

Probably the hallmark of this complex legislation is the sheer breadth and scope of solid waste-related topics the Act addresses. The legislation spells out specific areas of responsibility to be assigned to state and local governments, and establishes key definitions and permitting requirements. The Act also addresses the management and regulation of specified types of waste materials, many for the first time in Florida, as well as addressing a host of other topics and issues.

A. State Responsibilities

While the Legislature recognized that many of the solid waste-related problems which it identified as leading to the need for legislative action were essentially "local" problems throughout Florida, it also understood that some form of state level coordination and example setting was imperative to address fully those issues which had been targeted for attention.²⁶ Toward that end, as discussed in more detail below,²⁷ the Act grants to DER and other state agencies a substantial increase in existing rulemaking authority, along with specific authority to enact new and far-reaching regulations. Additionally, DER's statutory responsibilities to establish and implement a "state solid waste management program" were substantially overhauled.²⁸ This management program must be "initiated" by DER no later than February 1, 1989, and that agency is required to begin adoption of those rules necessary to implement the program by the end of calendar year 1988.²⁹ The general purpose of the state program as outlined by the Act is to serve as a coordinating tool, guide, and vehicle for technical assistance

23. See FLA. S. JOUR. 944 (Reg. Sess. 1988) (Conference Committee Report on Fla. CS for CS for SB 1192) [hereinafter Conference Committee Report].

24. Fla. CS for CS for SB 1192 (1988) (First Engrossed) was 168 pages long, and Fla. CS for CS for HB 1487 (1988) (Second Engrossed) was 130 pages long.

25. In the Senate, the vote was 35 yeas to 0 nays. FLA. S. JOUR. 982 (Reg. Sess. 1988). In the House, the vote was 111 yeas to 4 nays. FLA. H.R. JOUR. 1493 (Reg. Sess. 1988).

26. See ch. 88-130, § 2, 1988 Fla. Laws 599, 604 (amending FLA. STAT. § 403.702 (1987)).

27. See *infra* notes 176-253 and accompanying text.

28. See ch. 88-130, § 10, 1988 Fla. Laws 599, 619 (amending FLA. STAT. § 403.705 (1987)).

29. *Id.*

to municipalities, counties, other state agencies, business and industry organizations, and the general public.³⁰ As an additional component of the state program, DER must prepare by October 1, 1989, and in every year thereafter, a report on the status of solid waste management efforts in Florida.³¹

Another area of state level solid waste-related responsibilities contained in the Act concerns the recycling of solid wastes. With certain exceptions, any state agency or agency of a political subdivision of the state which is using state funds, or any person contracting with any such agency with respect to work performed under contract, is now required to procure products or materials with recycled content when those products or materials are available at reasonable prices.³² The term "recycled content" is specifically defined to mean recycled materials including, but not limited to, paper, aluminum, glass, and compost material.³³ To set an example for local governments and the citizenry of the state, all state agencies, the judicial branch of state government, and the State University System are mandated to establish by September 1, 1989, a program for the collection of all recyclable materials generated in state offices.³⁴ The Act spells out specific goals and responsibilities for recycling imposed directly upon certain entities of state government.³⁵

The Legislature also recognized the need for enhanced education to foster an awareness of Florida's solid waste management problems and recycling needs at all levels of our state's school systems and also with the general public.³⁶ This is an additional component of the state

30. *Id.*

31. *Id.* The report must include at a minimum a comprehensive analysis of solid waste generation and disposal in the state, projected over a 20-year period; quantification of the amounts of solid waste generated, recycled, and disposed of and the methods employed in doing so; evaluation of the development, implementation, and success of local solid waste management programs and recycling programs; evaluation of the markets for recycled materials and of state efforts to enhance those markets; recommendations concerning existing and potential programs for solid waste reduction and recycling at the state and local level; and recommendations for improving solid waste management and recycling.

32. *Id.* § 12, 1988 Fla. Laws at 627 (amending FLA. STAT. § 403.7065 (1987)).

33. *Id.*

34. *Id.* § 21, 1988 Fla. Laws at 641 (amending FLA. STAT. § 403.714 (1987)).

35. *See id.* § 12, 1988 Fla. Laws at 627 (amending FLA. STAT. § 403.7065 (1987)); *id.* § 22, 1988 Fla. Laws at 642 (codified at FLA. STAT. § 403.7145 (Supp. 1988)); *id.* § 49, 1988 Fla. Laws at 659 (codified at FLA. STAT. § 366.044 (Supp. 1988)); *id.* § 55, 1988 Fla. Laws at 666 (codified at FLA. STAT. § 403.4131 (Supp. 1988)); *id.* § 59, 1988 Fla. Laws at 673; *id.* § 60, 1988 Fla. Laws at 673. *See also* memorandum from Rick Wilkins, Dir., Div. of Waste Mgt., Fla. Dep't of Env'tl. Reg. to All Parties Interested in Implementation of the 1988 Solid Waste Act (Oct. 1, 1988) [hereinafter DER memorandum from Rick Wilkins] (on file with Div. of Waste Mgt., Dep't of Env'tl. Reg.).

36. *See* SENATE SELECT COMMITTEE REPORT, *supra* note 18, at 80.

solid waste management program which DER is required to develop.³⁷ The Department of Education, in cooperation with the State University System, must develop, distribute, and encourage the use of guidelines for the collection of recyclable materials and for solid waste reduction in the state system of education.³⁸ The school boards of each school district in the state must provide a program of student instruction in the recycling of waste materials,³⁹ and the Department of Education is directed to develop from funds appropriated for environmental education curriculum materials and resource guides for a recycling awareness program.⁴⁰ All research, training, and service activities related to solid and hazardous waste management which are conducted by state universities are to be coordinated by the Board of Regents through the Office of the Chancellor.⁴¹ The Board of Regents' responsibilities in this respect could potentially overlap or even conflict with similar directives imposed upon the Florida High Technology and Industry Council which is now statutorily required to direct and coordinate the scientific and technological resources of the state to undertake research projects which may alleviate the problems of critical economic or environmental magnitude.⁴²

37. See ch. 88-130, § 10, 1988 Fla. Laws 599, 619 (amending FLA. STAT. § 403.705 (1987)).

38. *Id.* § 21, 1988 Fla. Laws at 641 (amending FLA. STAT. § 403.714 (1987)).

39. *Id.* In support of this effort, Waste Management of Leon County, Inc. (WMLCI) has entered into a "gentleman's agreement" with the Tallahassee City Commission, under which WMLCI would use proceeds from the sale of recyclable materials collected through its recycling pilot program in the Killlearn subdivision area of Tallahassee (described in greater detail *infra* note 63) to purchase instructional materials for use in educating Leon County students about the need for and availability of methods to be used in recycling. The materials include study guides for teachers, coloring books, and fact sheets and brochures referencing solid waste management and disposal data. Telephone Conversation with Steve Pralle, Controller, Waste Management of Leon County, Inc., Tallahassee, Fla. (Oct. 11, 1988) [hereinafter conversation with Steve Pralle] (memorandum on file, *Florida State University Law Review*).

40. Ch. 88-130, § 21, 1988 Fla. Laws 599, 641 (amending FLA. STAT. § 403.714 (1987)).

41. *Id.* § 50, 1988 Fla. Laws at 660 (codified at FLA. STAT. § 240.5325 (Supp. 1988)). This section requires the Board of Regents to "consult with the Department of Environmental Regulation in developing the research programs and provide the department with a copy of the proposed program for review and comment before the research is undertaken." *Id.* The Board is also required to review proposals using an advisory board of university personnel appointed by the Chancellor and shared and directed by an individual appointed by the Chancellor.

42. See *id.* § 45, 1988 Fla. Laws at 655 (amending FLA. STAT. § 240.539 (1987)). This section provides in part:

[W]ith funds appropriated by the Legislature, the council shall develop research programs to resolve problems associated with designing and implementing programs to recycle material such as plastics, rubber, metal, glass, paper, and other components of the solid waste stream. The council shall consult with the Department of Environmental Regulation in developing the research programs. The council shall report its findings to the Legislature by February 1, 1989, and recommend areas where additional research is needed.

Id.

The Legislature also wrestled with a solid waste policy component contained within Florida's State Comprehensive Plan adopted in 1985 as part of the sweeping growth management legislation enacted that year.⁴³ A goal of the state plan is to ensure that all solid waste is properly managed, and that the use of landfills is eventually eliminated.⁴⁴ One policy aimed at fostering this goal, as stated in the 1985 legislation, is to reduce by 1995 the volume of non-hazardous solid waste disposed of in landfills to fifty-five percent of the 1985 volume.⁴⁵ After considerable debate and compromise between the Florida House and Senate positions on this issue, the existing goal of solid waste management was retained, but the 1985 policy designed to implement this goal was replaced with three new legislative statements of policy:

1. By 1994, reduce all volume of solid waste requiring disposal by 30 percent.
2. By 1994, provide in all counties, a countywide solid waste collection system to discourage littering and the illegal dumping of solid waste.
3. Initiate programs to develop or expand recyclable material markets, especially those involving plastics, metals, paper and glass.⁴⁶

Lastly, a relatively little noticed and barely discussed provision of the Act imposes an additional requirement upon DER to establish qualifications and encourage the development of training programs for operators of landfills, coordinators of local recycling programs, and other solid waste management facilities.⁴⁷ After January 1, 1990, no person may perform the duties of an operator of a solid waste management facility unless he has completed an operator training

43. Ch. 85-57, 1985 Fla. Laws 295 (codified at scattered sections of FLA. STAT. ch. 186, 187 (1985)). See also Hopping Boyd Green & Sams, *Florida's 1985 Growth Management Legislation (A Summary and Analysis)* (1985).

44. FLA. STAT. § 187.201(13)(a) (1987).

45. Ch. 85-57, § 2, 1985 Fla. Laws 295, 296 (current version at FLA. STAT. § 187.201(13)(b)(1) (1987)).

46. Ch. 88-130, § 47, 1988 Fla. Laws 599, 656 (amending FLA. STAT. § 187.201(13) (1987)). Initial versions of the Senate and House bills differed on the solid waste quantity reductions and times for compliance. The bill initially passed by the Senate required a 25% reduction in the annual volume of solid waste by 1993. See Fla. CS for CS for SB 1192, § 56 (1988) (First Engrossed). The House bill as initially passed established a three-tier series of waste reduction goals which called for municipal solid waste amounts to be reduced by 20% by 1992, 30% by 1994, and 35% by 1996. See Fla. CS for CS for HB 1487, § 10 (1988) (Second Engrossed). The Act as passed represents an obvious compromise worked out by the conference committee between these various positions.

47. See ch. 88-130, § 39, 1988 Fla. Laws 599, 649 (codified at FLA. STAT. § 403.716 (Supp. 1988)).

course approved by DER.⁴⁸ The Department strongly advocated the inclusion of such a requirement within the Act because agency personnel believed that many of the solid waste-related operational problems which had led to development of this legislation could be traced back to uninformed, unprofessional, and unqualified operators attempting to run and manage landfill facilities.⁴⁹ Unfortunately, the language of the Act imposes this training component upon a broad range of persons engaged in or in charge of the actual operation, supervision, and maintenance of not only "landfills," but also any "solid waste management facility," a broadly defined term under the Act.⁵⁰ While the concept of requiring properly trained operators at sanitary landfills would appear to be sound and in keeping with the intent of the Legislature as expressed in the Act, a corresponding requirement imposing the same training requirements upon persons in charge of recycling facilities, transfer stations, volume reduction plants, or any other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste, may not be well-advised.⁵¹

B. Local Government Responsibilities

For the first time, the Florida Legislature has specifically included local government as an integral member of the solid waste management "team" and has imposed substantial new and additional associated responsibilities on this level of government. The drafters of initial versions of the Act realized that the problems of solid waste management in Florida could not be addressed or solved solely through *state* funding and action.⁵² Accordingly, the bills initially under considera-

48. *Id.*

49. Telephone conversation with William H. Hinkley, Env'tl. Adm'r., Solid Waste/Resource Recovery Group, Bur. of Waste Planning & Reg., Fla. Dep't of Env'tl. Reg. (Oct. 14, 1988) [hereinafter conversation with William H. Hinkley] (memorandum on file, *Florida State University Law Review*).

50. See ch. 88-130, § 39, 1988 Fla. Laws 599, 649 (codified at FLA. STAT. § 403.716 (Supp. 1988)). The term "solid waste management facility" is defined to mean "any solid waste disposal area, volume reduction plant, transfer station, 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 facilities which use or ship recovered materials unless such facilities are managing solid waste." *Id.* § 3, 1988 Fla. Laws at 606 (amending FLA. STAT. § 403.703 (1987)).

51. The Legislature properly recognized that operators of landfills have the responsibility to properly handle, process, cover, and monitor a wide variety of waste. Training of such operators is vital to ensure that their activities are protective of the environment. However, by contrast, a transfer station is essentially a stop over point for a short period of time during the transport of solid waste to a processing or disposal facility. The operator of such a transfer station performs few activities which directly affect the waste or which likely could have any significant impact on the environment. For such operators, the *same* level of training is clearly inappropriate.

52. See SENATE SELECT COMMITTEE REPORT, *supra* note 18, at 80.

tion specifically identified the role of local government and clearly spelled out the needs and responsibilities that counties and municipalities were to satisfy.⁵³

To that end, DER is required to develop descriptive literature to inform local governments of their new solid waste management responsibilities and opportunities and must schedule at least one regional workshop in each regional planning council⁵⁴ during fiscal year 1988-1989 in order to provide information to both the public and private sector on the provisions of the Act.⁵⁵ Each county is given primary responsibility and power to conduct a solid waste management/disposal program.⁵⁶ Municipalities may carry out their responsibilities under the new law through interlocal agreements or special acts among themselves or in conjunction with the governing county body.⁵⁷ Other components of this local government level responsibility for solid waste management addressed by the Act include the following:

1. Each county must initiate a recyclable materials recycling program by July 1, 1989. Separation and segregation requirements apply to construction and demolition debris, newspapers, aluminum cans, glass, and plastic bottles.⁵⁸
2. County solid waste management and recycling programs must be designed to meet the municipal solid waste volume reduction goal of at least thirty percent by the end of 1994.⁵⁹ The term "municipal solid waste" is specifically defined.⁶⁰ DER is authorized to reduce or modify the percentage reduction goal that a county is required to achieve under certain enumerated conditions.⁶¹

53. See Fla. S. Comm. on Nat. Resources & Conser., Draft 8, § 7 (Feb. 26, 1988); Fla. H.R. Comm. on Nat. Resources, PCB 88-2, §§ 7-12 (draft of Feb. 19, 1988).

54. The Florida Regional Planning Council Act created 11 regional planning councils. The primary function of each council is to create a comprehensive regional policy plan containing regional goals and policies relating to growth management, resource management infrastructure needs and other issues of importance within the region. See FLA. STAT. §§ 186.501-.513 (1987).

55. Ch. 88-130, § 10, 1988 Fla. Laws 599, 619 (amending FLA. STAT. § 403.705 (1987)).

56. *Id.* § 11, 1988 Fla. Laws at 621 (amending FLA. STAT. § 403.706 (1987)).

57. *Id.*

58. See *id.*

59. See *id.*

60. See *id.* "Municipal solid waste" is defined to mean:

any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash, but does not include solid waste from industrial, mining, or agricultural operations.

Id.

61. See *id.* The conditions specified in the Act are (1) that achieving the goal would have an adverse effect on the county's financial obligations which are directly related to a waste-to-energy facility owned or operated by the county; and (2) that the county's waste-to-energy facility would not be able to process sufficient volumes to maintain its financial viability if the county segregated combustible materials from the solid waste.

3. Each county must prepare and submit an annual report to DER on the local government's solid waste management program and recycling activities.⁶² Curbside recyclable materials collection programs may be undertaken by any county or municipality. Local governments are encouraged to use both for-profit and nonprofit organizations in fulfilling this responsibility.⁶³

4. After July 1, 1989, solid waste management facilities owned or operated by or on behalf of a county or municipality (except for existing facilities which will be closed by October, 1989) are required by the Act to have scales for weighing all solid waste when it is received.⁶⁴

To underscore the seriousness with which the Florida Legislature has directed local government to initiate its own recyclable materials recycling program and to meet the above-referenced volume reduction goals in a timely manner, those cities and counties not complying with such requirements will not be eligible to receive grants from the Solid Waste Management Trust Fund, or from funds payable to the local government by DER from the General Revenue Fund or any other state fund.⁶⁵ Only if such funds are pledged to retire bonded indebtedness or if the local government demonstrates "good faith efforts" to meet the statutory requirements is DER authorized to remove this "club" from over the head of a local government and funnel money to that entity.⁶⁶

C. Key Definitions and Permitting Requirements

Two sections of the Solid Waste Management Act that will likely be the focus of considerable scrutiny and review in the future deal with definitions of terms⁶⁷ and facility permitting requirements.⁶⁸ Both sec-

62. *See id.*

63. *See id.* By way of example, in April, 1988, Waste Management, Inc. introduced a pilot recycling program in Tallahassee, Florida called "Recycle America." Over 3,000 households in targeted sections of the city are participating in the project. Each household has been furnished three color-coded bins, one each to hold newspapers, glass containers, and metal cans. Once each week, on a day which coincides with a regular refuse collection day for that residence, WMLCI, a local subsidiary of Waste Management, Inc., deploys a specially outfitted "Recycle America" truck to pick up the recyclables. The residents' "regular" garbage is taken to the Leon County landfill, and the recyclable materials are taken to a special facility for processing, shipment, and sale to various industries. Waste Management, Inc. Recycle America Press Release (Mar. 15, 1988) (on file, Corporate and Public Affairs, Waste Management, Inc., Ft. Lauderdale, Fla.). *See supra* note 39.

64. *See* ch. 88-130, § 11, 1988 Fla. Laws 599, 621 (amending FLA. STAT. § 403.706 (1987)).

65. *Id.*

66. *Id.*

67. *See id.* § 3, 1988 Fla. Laws at 606 (amending FLA. STAT. § 403.703 (1987)).

68. *See id.* § 13, 1988 Fla. Laws at 628 (amending FLA. STAT. § 403.707 (1987)).

tions underwent considerable change and revision during the course of the law's development. As with any significant new law or rule, it is imperative that definitional changes or additions be carefully scrutinized for their content, meaning, and application throughout the law created. This axiom is even more crucial for one to understand fully the changes in Florida's solid waste management program that have resulted from the passage of the Act.

1. *Definitions*

A number of new solid waste-related terms are defined and included under section 403.704, Florida Statutes.⁶⁹ Certain other key existing terms are revised or redefined. To begin with, the term "solid waste" continues to be broadly defined so as to include any "discarded material" of a liquid, semi-solid, or contained gaseous nature resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.⁷⁰ Added to that term is the listing of any "garbage, refuse, yard trash, clean debris, white goods, special waste or ashes."⁷¹ Simply put, virtually anything that is thrown away could be included under the new meaning of this important term.

The Act also readdresses the type of "facility" which will be subject to its provisions. Under prior existing law, a "resource recovery and management facility" was the entity to which statutory solid waste provisions and DER rules applied.⁷² Under the new law, although the scope of the term remains essentially unchanged, this facility has been relabeled as a "solid waste management facility."⁷³ The term still includes any solid waste disposal area, volume reduction plant, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing or storage of solid waste.⁷⁴ Excluded from the term are facilities which use or ship recovered materials unless such facilities are managing solid waste.⁷⁵ New types of solid waste-related facilities defined under the Act include a "solid waste disposal facility"⁷⁶ and a "transfer station."⁷⁷

69. Chapter 403 is the principal source of DER's statutory authority to regulate the environment. In addition to solid waste management, chapter 403 also addresses air pollution, surface and groundwater pollution, hazardous waste management, protection of wetlands, and electric power plant siting. See FLA. STAT. ch. 403 (1987).

70. See ch. 88-130, § 3, 1988 Fla. Laws 599, 606 (amending FLA. STAT. § 403.703 (1987)).

71. *Id.*

72. See FLA. STAT. § 403.703(7) (1987).

73. See ch. 88-130, § 3, 1988 Fla. Laws 599, 606 (amending FLA. STAT. § 403.703 (1987)).

74. *Id.*

75. *Id.*

76. See *id.*

77. See *id.*

Consistent with its increased focus on the subject of solid waste recycling, the new law also defines or revises terms related to this topic. "Recyclable material" and "recovered materials" are defined for the first time.⁷⁸ The principal intent of such new definitions is to recognize that, to the extent possible, materials should be kept out of the "solid waste" category if they can be recycled or recovered. The existing definitions for "recycling" and "resource recovery" are also substantially amended.⁷⁹

New or revised definitions are also included for a number of specific types of solid waste which are the subject of particular provisions of the new law⁸⁰ and which will be addressed through subsequent DER rulemaking proceedings as discussed below. Separate terms are included for "construction and demolition debris" and "clean debris."⁸¹ In the course of developing such terms, the Legislature recognized that those kinds of waste materials which do not pose the same degree of risk as other solid waste should not be subject to standards which might apply to wastes possessing a greater potential for harm to the environment or public health. Under the same theory,

78. *See id.* "Recyclable material" is defined to mean "those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste." *Id.* "Recovered materials" is defined to mean "those materials which have known recycling potential, can be feasibly recycled, and have been diverted or removed from the solid waste stream for sale, use or reuse, by separation, collection, or processing." *Id.*

79. *See id.* "Recycling" is defined to mean "any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products." *Id.* "Resource recovery" is defined to mean "the process of recovering materials or energy from solid waste, excluding those materials or solid waste under control of the Nuclear Regulatory Commission." *Id.*

80. *See id.*

81. *See id.* "Construction and demolition debris" is defined to mean:

materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project, and including rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project. Mixing of construction and demolition debris with other types of solid waste, including material from the construction or demolition site which is not from the actual construction or destruction of a structure, will cause it to be classified as other than construction and demolition debris.

Id.

"Clean debris" is defined to mean:

any solid waste which is virtually inert and which is not a pollution threat to ground-water or surface waters and is not a fire hazard and which is likely to retain its physical and chemical structure under expected conditions of disposal or use. The term includes uncontaminated concrete, including imbedded pipe or steel, brick, glass, ceramics, and other wastes designated by the department.

Id.

other new terms were added and defined, including "special wastes," "sludge," and "white goods."⁸²

Lastly, with considerable input from both DER and the Florida Department of Health and Rehabilitative Services, the topic of infectious waste materials was addressed through the creation of three new terms: "biohazardous waste," "biohazardous waste generator," and "biological waste."⁸³ Perhaps coincidentally, the Legislature recognized the need to define such terms and prescribe methods of handling and disposing of these materials even before this subject received wide public attention during the summer of 1988.⁸⁴

2. Solid Waste Facility Permitting

Since the act of obtaining solid waste facility permits from DER has become subject to the NIMBY syndrome over the past few years in Florida,⁸⁵ the issues surrounding the permitting of such a facility has

82. See *id.* "Special waste" is defined to mean "solid wastes that can require special handling and management, including, but not limited to, white goods, whole tires, used oil, mattresses, furniture, lead-acid batteries, and biological waste." *Id.* "Sludge" is defined to mean "the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, and similar waste disposal appurtenances." The term "white goods" is defined to include "inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances." *Id.*

83. See *id.* "Biohazardous waste" is defined to mean:

any solid waste or liquid waste which may present a threat of infection to humans. The term includes, but is not limited to, nonliquid human tissue and body parts; laboratory and veterinary waste which contain human-disease-causing agents; used disposable sharps; human blood, and human blood products and body fluids; and other materials which in the opinion of the Department of Health and Rehabilitative Services represent a significant risk of infection to persons outside the generating facility.

Id.

"Biohazardous waste generator" is defined to mean "a facility or person that produces or generates biohazardous waste. The term includes, but is not limited to, hospitals, skilled nursing or convalescent hospitals, intermediate care facilities, clinics, dialysis clinics, dental offices, health maintenance organizations, surgical clinics, medical buildings, physicians offices, laboratories, veterinary clinics, and funeral homes." *Id.* "Biological waste" is defined to mean "solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biohazardous waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals." *Id.*

84. See Morgantheau, *Don't Go Near the Water*, NEWSWEEK, Aug. 1, 1988, at 42; Toufexis, *The Dirty Seas*, TIME, Aug. 1, 1988, at 43.

85. "NIMBY" stands for "Not In My Backyard." Symptoms of the NIMBY syndrome begin to appear in ordinary citizens upon their realization that waste disposal capacity must be expanded. People affected by the syndrome will challenge any proposal to locate a recycling or waste disposal facility anywhere in their immediate vicinity. A recent outbreak of the NIMBY syndrome occurred when the Florida Environmental Regulation Commission designated a site in Union County, Florida, for construction and operation of a statewide multi-purpose hazardous

become particularly relevant. The Act provides that “[n]o solid waste management facility may be operated, maintained, constructed, expanded, modified or closed without an appropriate and currently valid permit issued” by DER.⁸⁶ As an additional “hammer” to enforce compliance with the recycling requirements of the Act, effective October 1, 1989, the Legislature also authorized DER to include within such permits those conditions necessary to achieve compliance with the Act’s recycling requirements at the time of permit issuance.⁸⁷ It should also be recognized that because of the broad definitions for “solid waste” and “solid waste management facility,” the permitting requirement will apply to many different types of facilities throughout Florida. For example, since the term solid waste even includes *liquid* wastes, the “disposal”⁸⁸ of sewage or liquid industrial effluent into an evaporation-percolation pond could be deemed subject to this solid waste permitting requirement.

Partly for this reason, the Legislature recognized that certain solid waste management facility permitting “exemptions” or exceptions continue to be appropriate. Thus, the Act provides that no solid waste management facility permit is required for the following activities, *if* no public nuisance or condition adversely affecting the environment or public health is created:

1. Disposal of solid waste resulting from one’s own activities on one’s own property, *if* the waste is from residential property or is rocks, soils, trees, and other vegetative matter normally resulting from land development operations.
2. Storage in containers by persons of solid waste resulting from their own activities on their own property, *if* such waste is collected at least once a week.
3. Disposal of solid waste resulting from one’s own activities on one’s own property, *if* the environmental effect of such disposal on groundwater and surface water are addressed or authorized in some other DER permit or was addressed or authorized by (or exempted

waste facility. The affected citizens requested an administrative hearing to contest the state’s action. See *United Citizens Against Pollution, Inc. v. Florida Dep’t of Env’tl. Reg.*, Div. of Admin. Hearings Case No. 2438 (May 6, 1988) (Petition for Formal Proceedings).

86. Ch. 88-130, § 13, 1988 Fla. Laws 599, 628 (amending FLA. STAT. § 403.707 (1987)).

87. *Id.*

88. “Disposal” is defined to mean:

the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or upon any land or water so that such solid waste or hazardous waste or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including ground waters, or otherwise enter the environment.

FLA. STAT. § 403.703(19) (1987).

from) a groundwater monitoring plan approved by DER.

4. Disposal of construction and demolition debris, *if* the disposal area is covered, graded and vegetated (as necessary) when disposal is completed.

5. Disposal by persons of solid waste resulting from one's own activities on one's own property, *if* such disposal occurred prior to October 1, 1988.

6. Disposal of solid waste resulting from normal farming operations.

7. The use of clean debris as fill material in any area.⁸⁹

A related permitting provision of the new law for the first time authorizes DER to "refuse to issue a permit to an applicant who by past conduct in [Florida] has repeatedly violated pertinent statutes, rules, or orders or permit terms or conditions relating to any solid waste management facility and who is deemed to be responsible as defined by department rule."⁹⁰

D. Special Waste Handling Requirements and Prohibitions

During the course of its committee deliberations and consideration of testimony from a variety of persons and different sources, the Legislature became aware that certain types of solid waste materials were presenting special waste handling and management problems throughout Florida and beyond.⁹¹ For that reason, and in keeping with the legislative intent to attempt to address Florida's solid waste management solutions in a broad and far-reaching manner, many provisions of the Act were drafted to deal with these specified wastes and accompanying special needs. Where possible, specific industry sources were enlisted to prepare initial versions of proposed legislative provisions on topics particularly unique to those groups.⁹² Relevant provisions of the Act which address these special types of wastes are briefly summarized below.

*1. Used Oil*⁹³

Although the Legislature had addressed this subject in 1984⁹⁴, the Act now goes even further in mandating strict used oil-related man-

89. See ch. 88-130, § 13, 1988 Fla. Laws 599, 628 (amending FLA. STAT. § 403.707 (1987)).

90. *Id.*

91. See SENATE SELECT COMMITTEE REPORT, *supra* note 18, at 11.

92. For example, Senator Kirkpatrick contacted the Florida Petroleum Council for assistance in drafting that portion of the Senate bill which addressed the topic of "used oil." Telephone conversation with Robert W. McVety, Assoc. Dir., Florida Petroleum Council (Nov. 13, 1987) (memorandum on file, *Florida State University Law Review*).

93. "Used Oil" is defined to mean:

agement regulations and prohibitions and in fostering greater public involvement in the management of this material. The Act prohibits the discharge of used oil into septic tanks, and the mixing or commingling of used oil with solid waste that is to be disposed in landfills or the direct disposal of such used oil into landfills.⁹⁵ The mixing or commingling of used oil with hazardous substances, thereby making it unsuitable for recycling or beneficial use, is also prohibited,⁹⁶ as is its use for road oiling, dust control, weed abatement, or other similar uses that have the potential to release used oil into the environment.⁹⁷

The Act directs DER to encourage the voluntary establishment of public used oil collection centers and recycling programs as one means of dealing with the burgeoning problem of used oil generation in the state.⁹⁸ Further, DER may establish an incentive program to encourage individuals who change their own oil to return their used oil to a used oil collection center.⁹⁹ Additionally, a new permitting requirement is established for any person who intends to operate, modify, or close a used oil recycling facility,¹⁰⁰ with certain permitting exceptions.¹⁰¹

2. *Biohazardous¹⁰² and Biological Wastes¹⁰³*

The Act establishes a major new initiative "to protect the public health by establishing standards for the safe packaging, storage, treatment, and disposal of biohazardous waste."¹⁰⁴ Existing law had only defined the term "infectious waste"¹⁰⁵ and had authorized disposal of such wastes which emanated from a hospital or ambulatory surgical

any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and is economically recyclable.

Ch. 88-130, § 25, 1988 Fla. Laws 599, 643 (amending FLA. STAT. § 403.75 (1987)).

94. See ch. 84-338, §§ 57-65, 1984 Fla. Laws 1917, 1949-53 (codified at FLA. STAT. §§ 403.75-.759 (1987)).

95. Ch. 88-130, § 26, 1988 Fla. Laws 599, 644 (amending FLA. STAT. § 403.751 (1987)).

96. *Id.*

97. *Id.*

98. *Id.* § 33, 1988 Fla. Laws at 646 (codified at FLA. STAT. § 403.760 (Supp. 1988)).

99. *Id.* § 34, 1988 Fla. Laws at 647 (codified at FLA. STAT. § 403.761 (Supp. 1988)).

100. "Used oil recycling facility" is defined as "any facility that recycles more than 10,000 gallons of used oil annually." *Id.* § 25, 1988 Fla. Laws at 643 (amending FLA. STAT. § 403.75 (1987)).

101. See *id.* § 37, 1988 Fla. Laws at 649 (codified at FLA. STAT. § 403.769 (Supp. 1988)).

102. For the definition of "biohazardous waste," see *supra* note 83.

103. For the definition of "biological waste," see *supra* note 83.

104. See ch. 88-130, § 51, 1988 Fla. Laws 599, 661 (codified at FLA. STAT. § 381.80 (Supp. 1988)).

105. See FLA. STAT. § 395.002(13)(c) (1987).

center only as approved by DER.¹⁰⁶ Under the Act, a split of agency responsibility over this growing problem is contemplated. The Department of Health and Rehabilitative Services is required to "regulate the packaging, storage, and treatment of biohazardous waste which occurs at facilities where [such] waste is generated."¹⁰⁷ The Act requires DER to "regulate biohazardous waste from the point at which the waste is transported from the facility where it was generated," and to also "regulate on-site and off-site incineration of biohazardous waste and its off-site transport, storage, treatment, or disposal."¹⁰⁸ An inter-agency agreement between those two agencies will be developed "to ensure maximum efficiency in coordinating, administering, and regulating" activities associated with the management of biohazardous wastes.¹⁰⁹

3. Batteries

Legislative members accumulated evidence which indicated that lead-acid batteries present special problems when disposed of in sanitary landfills or incineration facilities.¹¹⁰ For that reason, the Act bans the disposal of such wastes in landfills after January 1, 1989.¹¹¹ By that same date, lead-acid batteries also may not be disposed of in any waste-to-energy facility.¹¹² To encourage the proper collection and recycling of these batteries, all persons who sell lead-acid batteries at retail must accept used lead-acid batteries as trade-ins for new batteries.¹¹³

4. Waste Tires

The proper disposal and management of worn-out or "waste" tires can present immense problems.¹¹⁴ A waste tire is essentially incompressible and takes up valuable space at a sanitary landfill.¹¹⁵ Waste

106. FLA. STAT. § 403.7045(3)(d) (1987).

107. Ch. 88-130, § 51, 1988 Fla. Laws 599, 661 (codified at FLA. STAT. § 381.80 (Supp. 1988)).

108. *Id.*

109. *Id.* See also DER memorandum from Rick Wilkins, *supra* note 35; Telephone conversation with Steven Chick, Env'tl. Specialist, Solid Waste/Resource Recovery Group, Bur. of Waste Planning & Reg., Fla. Dep't of Env'tl. Reg. (Oct. 7, 1988) (memorandum on file, *Florida State University Law Review*).

110. See SENATE SELECT COMMITTEE REPORT, *supra* note 18, at 54.

111. Ch. 88-130, § 15, 1988 Fla. Laws 599, 631 (amending FLA. STAT. § 403.708 (1987)).

112. *Id.*

113. *Id.*

114. See SENATE SELECT COMMITTEE REPORT, *supra* note 18, at 69.

115. *Id.* at 69-70.

tires also present indirect hazards to public health and safety by creating ideal breeding conditions for mosquitoes,¹¹⁶ and by posing a serious fire threat in large accumulations.¹¹⁷ In response to these multiple threats, the Legislature included specific provisions within the Act which grant DER broad authority to enact sweeping rules aimed at reducing risks associated with such materials.¹¹⁸ After July 1, 1989, it is illegal to deposit any waste tire in a landfill as a method of ultimate disposal,¹¹⁹ or to maintain a waste tire site,¹²⁰ unless such site is an integral part of a person's permitted waste tire processing facility.¹²¹ Further, no person may dispose of waste tires unless the tires are disposed of for processing or collected for processing, at one of the following: "a permitted solid waste disposal facility, a waste tire site which is an integral part of a permitted waste tire processing facility, a permitted waste tire processing facility, or a waste tire collection center."¹²²

5. *White Goods*

"White goods" are defined to include "inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances."¹²³ The Act prohibits the disposal of white goods in landfills after January 1, 1990.¹²⁴

6. *Plastics*

The Act also addresses problems associated with the disposal of plastic bags, containers, and other similar materials. In recognition of the fact that efforts are underway within the plastics industry to develop products which are either photodegradable or biodegradable,¹²⁵

116. *Id.* at 69.

117. *Id.*

118. See ch. 88-130, § 41, 1988 Fla. Laws 599, 651 (codified at FLA. STAT. § 403.717 (Supp. 1988)).

119. *Id.*

120. "Waste tire site" is defined to mean "a site at which 1,000 or more whole tires are accumulated." *Id.*

121. *Id.* "Waste tire processing facility" is defined to mean "a site where equipment is used to cut, burn, or otherwise alter whole waste tires so that they are no longer whole." *Id.*

122. *Id.* "Waste tire collection center" is defined to mean "a site where used or waste tires are collected from the public prior to being offered for recycling and where fewer than 1,000 tires are kept on the site on any given day." *Id.*

123. *Id.* § 3, 1988 Fla. Laws at 606 (amending FLA. STAT. § 403.703 (1987)).

124. *Id.* § 15, 1988 Fla. Laws at 631 (amending FLA. STAT. § 403.708 (1987)).

125. Telephone conversation with Mike Levy, Manager, Legis. & Reg. Affairs, Mobil Chemical Co., Fairfax, Va. (Oct. 7, 1988) [hereinafter conversation with Mike Levy] (memorandum on file, *Florida State University Law Review*). Mr. Levy is also a member of the Society of Plastics Industry (SPI). Members of SPI have developed a wide variety of new products using degradable additives.

the Legislature imposed corresponding restrictions on plastic products here in Florida under certain deadlines. After July 1, 1989, no plastic holding devices used for connecting containers together, e.g., the "six-pack" ring, may be sold or offered for sale in Florida unless they are composed of material which is degradable¹²⁶ within 120 days.¹²⁷ This same degradability requirement is applicable after January 1, 1990, to plastic bags provided at any retail outlet to retail customers for use in carrying purchased items.¹²⁸ The Act provides that no person may distribute, sell, or offer for sale in Florida any products used in conjunction with food for human consumption which are composed of polystyrene foam or plastic-coated paper unless such products are capable of degrading within 12 months or less.¹²⁹ Although this requirement does not become effective until one year after the United States Food and Drug Administration has certified these products as safe, and until the products are available in commercial quantities,¹³⁰ businesses and industries are encouraged to achieve compliance with this requirement by January 1, 1992.¹³¹

The Act also attempts to foster the increased recycling of plastic containers by prohibiting any person from distributing, selling, or exposing for sale after July 1, 1990, any plastic container product unless such product has a molded label indicating the plastic resin used to produce the plastic container product.¹³² That label must appear on the bottom of the plastic container product and be clearly visible.¹³³ Since the recycling of different types of plastic containers will be facilitated by a method for segregating and separating these different plastic types,¹³⁴ such a standardized labeling system should foster and enhance recycling efforts. Finally, the Legislature also went on record as doing its part in response to the increased concern over the "greenhouse effect" by banning packaging materials containing chlorofluorocarbons, one of the primary constituents believed to have caused this phenomenon. After October 1, 1990, no person may distribute, sell or

126. "Degradable" is defined to refer to any material which "after being discarded, is capable of decomposing to components other than heavy metals or other toxic substances, after exposure to bacteria, light, or outdoor elements." Ch. 88-130, § 15, 1988 Fla. Laws 599, 631 (amending FLA. STAT. § 403.708 (1987)).

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. See conversation with Mike Levy, *supra* note 125.

expose for sale any product packaged in a container or packing material manufactured with those substances.¹³⁵

7. *Recovered Materials and Containers*

As noted above, the Act contains a heavy emphasis on legally and practically removing as many materials from the typical solid waste stream as possible. For that reason, the Act broadly defines the term "recovered materials"¹³⁶ and specifically exempts such substances from any regulation under the Act if the following conditions are met:

1. A majority of the recovered materials at a facility are demonstrated to be sold, used, or reused within one year;
2. The recovered materials or the products or byproducts of operations that process recovered materials are not discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water so that such products or byproducts 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 or pose a threat to public health and safety; and
3. The recovered materials are not hazardous wastes and have not been recovered from solid wastes, which are defined as hazardous wastes under [Florida law].¹³⁷

Since the specific types of materials which may qualify as "recovered materials" and be subject to the corresponding exemption from regulation are not limited by the Act, this provision of the new law may provide great opportunities for particular businesses or industries to explore alternative means of handling or managing what otherwise would be typical solid wastes subject to full regulatory and permitting requirements.

Another area of legislative attention dealt with the disposal of bottles and containers. For a number of years, the Florida Legislature has considered "bottle bills" patterned after enactments in other states which mandate the use of returnable deposit glass containers.¹³⁸ This Act creates an "Advance Disposal Fee" (ADF) program which will not take effect for four years or longer, contingent upon the recycling

135. Ch. 88-130, § 15, 1988 Fla. Laws 599, 631 (amending FLA. STAT. § 403.708 (1987)).

136. For the definition of "recovered materials," see *supra* note 78.

137. Ch. 88-130, § 8, 1988 Fla. Laws 599, 616 (amending FLA. STAT. § 403.7045 (1987)).

138. See FLA. CONTAINER DEPOSIT, LITTER CONTROL AND RECYCLING STUDY COMM., REPORT TO THE FLA. LEGISLATURE (Mar. 17, 1986) (on file with H.R. Comm. on Envtl. Reg.).

rates for containers being attained in the interim.¹³⁹ The program would apply to all containers which are made from plastic, glass, plastic coated paper, or other metals.¹⁴⁰ If DER finds by October 1, 1992 that containers made of such substances are not being recycled at a sustained rate of fifty percent of the quantities sold in Florida, then a fee of one cent per container will become effective. The fee will be imposed by retail establishments on all containers sold in this state.¹⁴¹ Containers on which an ADF is charged may be returned to recycling centers for a refund of the fee, plus a payment equal to the market value of the product from which the container is made. Unclaimed moneys which remain in the trust fund created to receive the fee proceeds will be allocated to support container recycling programs.¹⁴² If DER determines by October 1, 1995 that the type of containers specified still are not being recycled at a sustained rate of fifty percent of the quantities sold within the state, the Act requires that the ADF be increased to two cents per container and that a mandatory container "refund value" deposit program be instituted.¹⁴³

III. FUNDING AND EXPENDITURES

The Act will substantially alter funding and expenditures related to waste disposal in Florida. Governmental activity to carry out the purposes of the Act is centered around the Solid Waste Management Trust Fund.¹⁴⁴ The Department of Environmental Regulation is charged with administering the proceeds of this new fund.¹⁴⁵ One of the most substantial grant programs ever administered by DER is authorized under the Act¹⁴⁶ and will result in the distribution of millions of dollars in grant moneys to local governments throughout the state.¹⁴⁷ The initial first-year funding and expenditures will be modified in future years as subsequent provisions of the Act begin to take effect.¹⁴⁸

The primary financial effect of the Act on the general public is likely to be an increase in the cost of waste disposal services. More

139. See ch. 88-130, § 72, 1988 Fla. Laws 599, 685 (codified at FLA. STAT. § 403.7197 (Supp. 1988)).

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* The "refund value" is set forth in section 73 of the Act. See *id.* § 73, 1988 Fla. Laws at 687 (codified at FLA. STAT. § 403.7198 (Supp. 1988)).

144. See *id.* § 17, 1988 Fla. Laws at 634 (amending FLA. STAT. § 403.709 (1987)).

145. *Id.*

146. See *id.* § 18, 1988 Fla. Laws at 635 (codified at FLA. STAT. § 403.7095 (Supp. 1988)).

147. See *id.*

148. See *id.*

precise cost calculations necessitated by the requirement to set fees at an amount which will closely match receipts with actual expenses will force local governments to raise fees.¹⁴⁹ The private sector will be required to help fund the increased recycling efforts and new disposal provisions through the increased cost of solid waste collection, disposal, and management services.¹⁵⁰ Although some of these increased costs may be offset by moneys from the Trust Fund, it is clear that some solid waste-related costs will inevitably be passed on to the consumer. In addition, some industries such as the beverage industry, the container manufacturing industry, and the packaging industry will probably experience cost increases due to more stringent disposal requirements.¹⁵¹

The majority of the funding necessary to implement the new legislation will come from an initial one-time transfer of \$19 million from the Grants and Donations Trust Fund in the Governor's Energy Office into the Solid Waste Management Trust Fund.¹⁵² Another major source of revenue for the Trust Fund will be generated from the reduction of the dealers' sales tax collection allowance.¹⁵³ Dealers will be required to pay a registration fee as well as a percentage of their collection allowance.¹⁵⁴ These fees are expected to generate approximately \$15 million annually.¹⁵⁵ In addition, a fifty-cent fee on the sale of each new tire at the retail level, upon being increased to one dollar beginning January 1, 1990, will raise approximately \$7.5 million annually.¹⁵⁶ Finally, a ten cent per ton disposal fee on newsprint will add approximately another \$350,000 annually.¹⁵⁷ Of course, many other funding options proposed and discussed as the House and Senate bills evolved were not included in the legislation as finally enacted. Some of these were: the complex and immediately effective "bottle bill,"¹⁵⁸ specified solid waste disposal fees,¹⁵⁹ a commercial solid waste collection sales tax,¹⁶⁰ and a beverage container fee.¹⁶¹

149. See *id.* § 9, 1988 Fla. Laws at 618 (codified at FLA. STAT. § 403.7049 (Supp. 1988)).

150. See *id.*

151. CS for CS for HB 1487 Staff Analysis, *supra* note 2, at 34.

152. See ch. 88-130, § 83, 1988 Fla. Laws 599, 696.

153. See *id.* § 74, 1988 Fla. Laws at 689 (amending FLA. STAT. § 212.12 (1987)).

154. See *id.* § 76, 1988 Fla. Laws at 692 (amending FLA. STAT. § 212.18 (1987)).

155. See Conference Committee Report, *supra* note 23, at 947.

156. See *id.*

157. See *id.*

158. Staff of Fla. S. Comm. on Fin., Tax. & Claims, Funding Options for Solid Waste Management (May 3, 1988) (internal committee memorandum) (on file with committee).

159. *Id.*

160. *Id.*

161. *Id.*

The complement to the new Trust Fund is the Solid Waste Management Grant Program.¹⁶² In obvious recognition of the need for local governments to respond to local solid waste-related needs and demands, DER is directed to allocate funds to enable counties and municipalities to operate solid waste management recycling and education programs.¹⁶³ Twenty-five percent of the available funds will be allocated equally as base grants among eligible, applying local governments with populations over 50,000.¹⁶⁴ Additionally, a small county assistance program was created to provide \$25,000 each year for five years to counties with populations under 30,000.¹⁶⁵ Before the funds can be spent for other needs, the small counties must apply the funds to the purchase and/or maintenance of scales for measuring solid waste that is to be disposed.¹⁶⁶

The remaining seventy-five percent of the available Grant Program funds are to be distributed as "incentive" portions of grants.¹⁶⁷ The Legislature went to great lengths in attempting to entice as many local governments as possible to participate in achieving the solid waste management goals set forth in the Act.¹⁶⁸ Grants for recycling will provide funding to applicants for capital costs and, if justified, temporary operating subsidies to assist local governments in their recycling efforts.¹⁶⁹ Grant applicants must provide specific information to ensure the adequacy and organization of their proposed programs.¹⁷⁰ Although general requirements for eligibility are listed in the Act,¹⁷¹ some, such as "likelihood of project success," "demonstrated interest," and "level of commitment"¹⁷² are difficult to quantify and have little predictive value. Finally, \$750,000 has been set aside to provide

162. See ch. 88-130, § 18, 1988 Fla. Laws 599, 635 (codified at FLA. STAT. § 403.7095 (Supp. 1988)).

163. *Id.*

164. *Id.*

165. *Id.* The Legislature recognized that compliance with DER solid waste regulatory requirements and the provisions of the Act would most likely be particularly difficult for many of Florida's smaller counties with a narrow, and sometimes dwindling, tax base.

166. *Id.* The Legislature recognized that one of the most basic devices necessary for a determination of solid waste disposal volume and corresponding costs at sanitary landfills is a set of weighing scales. DER Secretary Twachtmann has called this component of the Solid Waste Management Act the "cash register" for the site. The Act makes the purchase or maintenance of such a device a high priority for small counties. Conversation with William H. Hinkley, *supra* note 49.

167. Ch. 88-130, § 18, 1988 Fla. Laws 599, 635 (codified at FLA. STAT. § 403.7095 (Supp. 1988)).

168. *See id.*

169. *Id.*

170. *Id.*

171. *See id.*

172. *See id.*

one-time awards to local governments which had implemented recycling programs prior to the effective date of the Act.¹⁷³

It should be noted that as the various provisions of the Act begin to take effect, the initial financial structure as set forth above will likely be modified. For example, the controversial Advance Disposal Fee (ADF) on containers discussed above will likely account for increased revenues of \$8.1 million annually if the program ever "kicks in" during 1992 or 1995.¹⁷⁴ Furthermore, one year after implementation of the Act (late in 1989), industrial equipment and machinery used for recycling will be eligible for tax exempt status, accounting for a *decrease* in revenue of \$9.5 million annually.¹⁷⁵

IV. AGENCY RULEMAKING AND IMPLEMENTATION OF THE ACT

Immediately upon passage of the Act, DER began to identify those specific provisions which require implementation through rulemaking, those for which a statutory deadline for promulgation or implementation is established, and those which DER, as a discretionary matter, *may* determine to require implementation through rulemaking. Additionally, DER began to draft proposed rules to implement the new Act. This section identifies those provisions of the Act which DER is statutorily required to implement through rulemaking, those it later may decide, as a discretionary matter, to address through rulemaking, and other responsibilities not requiring rulemaking which DER must implement. Use of the verb "will propose" in this section indicates that DER has announced its intent to propose a rule on a particular subject.

The Department's first responsibility under the Act is the promulgation of rules necessary to implement the statewide solid waste management program discussed above.¹⁷⁶ That program must be updated every three years.¹⁷⁷ The rules to be developed under the state program will establish a blueprint for development of names of the regulatory programs addressed by the Act and will better define coordination of cooperative efforts among counties and municipalities in the following areas: recycling, solid waste management, solid waste reduction and alternative disposal programs, establishment of planning guidelines, provision of technical assistance, and public education.¹⁷⁸ The Depart-

173. *Id.* § 83, 1988 Fla. Laws at 696; *id.* § 18, 1988 Fla. Laws at 635.

174. CS for CS for SB 1192 Staff Analysis, *supra* note 3, at 18.

175. *Id.* at 17.

176. *See supra* notes 28-31 and accompanying text.

177. Ch. 88-130, § 10, 1988 Fla. Laws 599, 619 (amending FLA. STAT. § 403.705 (1987)).

178. *Id.*

ment will develop descriptive literature about the responsibilities, programs and opportunities created by the Act.¹⁷⁹

Additionally, DER must prepare an annual report, beginning in October, 1989, on the effectiveness of solid waste management, recycling, and waste reduction programs in the state.¹⁸⁰ Each year the report must provide comprehensive evaluation and analysis of the types and quantities of solid waste generated and disposed of and of the markets for recycled goods.¹⁸¹ The report also must provide recommendations to the Governor and Legislature for refinements or new directions.¹⁸² The Act authorizes DER to adopt new rules and to repeal or amend existing rules in establishing "requirements for the classification, construction, operation, maintenance, and closure of solid waste management facilities."¹⁸³ In classifying solid waste management facilities, DER must consider the hydrogeology of the site and the type of waste to be handled at the site, and it must seek to minimize adverse effects on the environment.¹⁸⁴ Over the next year, DER will renumber its existing solid waste-related rules and will propose a series of revisions to the provisions dealing with "solid waste facilities"¹⁸⁵ in order to incorporate the changes provided for under the Act along with recent revisions to federal regulations.¹⁸⁶ In developing new proposals relating to solid waste management facilities, DER may specify requirements for the disposal of dead or diseased animals and will specify requirements for the disposal of ash generated by such facilities by burning solid waste.¹⁸⁷ No statutory deadline is established in the Act for rules relating to solid waste management facilities, except that rulemaking to set standards for disposal of ash from burning solid waste must be initiated and at least one public hearing held by February 1, 1989.¹⁸⁸

Since the Act creates several new grant programs,¹⁸⁹ DER will propose rules establishing general standards for their management and

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.* § 6, 1988 Fla. Laws at 612 (amending FLA. STAT. § 403.704 (1987)).

184. *Id.*

185. See FLA. ADMIN. CODE R. 17-7.001 to .130 (Sept. 1988).

186. Conversation with William H. Hinkley, *supra* note 49.

187. See Fla. Dep't of Env'tl. Reg. Memorandum, *Rules Required in 1988 Legislation 1* [hereinafter *Rules Required in 1988 Legislation*] (on file, *Florida State University Law Review*). See also ch. 88-130, § 8, 1988 Fla. Laws 599, 616 (amending FLA. STAT. § 403.7045 (1987)) (authority for rulemaking).

188. Ch. 88-130, § 8, 1988 Fla. Laws 599, 616 (amending FLA. STAT. § 403.7045 (1987)).

189. See *id.* § 18, 1988 Fla. Laws at 635 (codified at FLA. STAT. § 403.7095 (Supp. 1988)).

administration.¹⁹⁰ In addition, DER is required to establish rules regulating the distribution and use of annual grants to small counties for purchase or repair of weight scales, costs of operation and management of local solid waste management and recycling programs and facilities, and education.¹⁹¹ These rules must be adopted by July 1, 1989.¹⁹² By January 1, 1989, DER must propose rules regulating distribution and use of local government grants promoting collection, reuse and proper disposal of used oil,¹⁹³ and must adopt rules for the administration of grants to counties for the purposes of waste tire collection, processing, recycling and disposal.¹⁹⁴ The waste tire grant program must be established by July 1, 1989.¹⁹⁵

By September 1, 1989, each state agency, including DER, must establish programs, in cooperation with DER and the Department of General Services, for waste reduction and recycling in state offices.¹⁹⁶ The Department of Environmental Regulation has not yet determined what role it must play in the adoption of such programs by other state agencies.¹⁹⁷ Also, by September 1, 1989, DER must develop a form for use by local governments in applying for one-time recycling awards, rewarding those local governments which have taken the initiative in solid waste reduction and recycling.¹⁹⁸

The Department will propose amendments to chapter 17-7 of the Florida Administrative Code,¹⁹⁹ which will establish standards for certifications by certified public accountants or professional engineers, certifying that recycling equipment qualifies for a tax exemption.²⁰⁰ The Act does not specify a deadline for implementation. At some point, DER will propose rules revising those definitions pertaining to solid waste management and used oil now codified in chapter 17-7 of the Code²⁰¹ to incorporate the Act's new definitions of these terms

190. See *Rules Required in 1988 Legislation*, *supra* note 187, at 2.

191. Ch. 88-130, § 18, 1988 Fla. Laws 599, 635 (codified at FLA. STAT. § 403.7095(7)(c) (Supp. 1988)).

192. See *id.*

193. Ch. 88-130, § 35, 1988 Fla. Laws 599, 648 (codified at FLA. STAT. § 403.763 (Supp. 1988)).

194. *Id.* § 41, 1988 Fla. Laws at 651 (codified at FLA. STAT. § 403.717 (Supp. 1988)).

195. *Id.* § 43, 1988 Fla. Laws at 654 (codified at FLA. STAT. § 403.719 (Supp. 1988)).

196. *Id.* § 21, 1988 Fla. Laws at 641 (amending FLA. STAT. § 403.714 (1987)).

197. DER memorandum from Rick Wilkins, *supra* note 35.

198. See ch. 88-130, § 18, 1988 Fla. Laws 599, 635 (codified at FLA. STAT. § 403.7095 (Supp. 1988)).

199. See FLA. ADMIN. CODE R. 17-7.400 to .440 (Sept. 1988).

200. See *Rules Required in 1988 Legislation*, *supra* note 187, at 3. See also ch. 88-130, § 23, 1988 Fla. Laws 599, 643 (amending FLA. STAT. § 403.715 (1987)) (authority for rulemaking).

201. See FLA. ADMIN. CODE R. 17-7.410, .510, .610 (Sept. 1988).

into that chapter.²⁰² Although not required by the Act, such rulemaking is viewed by DER as necessary "cleanup" of its existing rules.

By March 1, 1989, DER must initiate rulemaking and hold at least one public hearing to establish the method to be used by local governments in calculating and accounting for the full costs of solid waste management in that local area.²⁰³ In developing these rules, DER must consider "the feasibility of the use of an enterprise fund process by local governments in operating their solid waste management systems."²⁰⁴ While no deadline is specified, DER also must adopt rules governing the creation, management, and annual auditing of landfill management escrow accounts (funded by disposal fees or surcharges sufficient to ensure the proper closure of the landfill).²⁰⁵ The Department must also provide standards for establishing financial responsibility for closure costs in lieu of creating an escrow account and fees.²⁰⁶

By February 1, 1989, DER must propose rules establishing standards for the management, storage, transportation, treatment, incineration and disposal of biohazardous waste after it leaves the generator's hands.²⁰⁷ The proposed rules must include a procedure for registration of transporters of biohazardous wastes.²⁰⁸ By March 1, 1989, the Department of Health and Rehabilitative Services must adopt rules for the packaging, segregation, storage, treatment and disposal of biohazardous waste at the generator's facility prior to transfer of the waste to a transporter.²⁰⁹

By April 1, 1989, DER is required to propose rules establishing standards for the production, classification, content, and use and application rate of compost by solid waste management facilities in the state.²¹⁰ The rules must be adopted within one year of their proposal.²¹¹ The rules must exempt for ten years compost produced under preexisting contracts with local government authorities.²¹²

202. See *Rules Required in 1988 Legislation*, *supra* note 187, at 3. See also ch. 88-130, § 3, 1988 Fla. Laws 599, 606 (amending FLA. STAT. § 403.703 (1987)) (authority for rulemaking); *id.* § 25, 1988 Fla. Laws at 643 (amending FLA. STAT. § 403.75 (1987)) (authority for rulemaking).

203. Ch. 88-130, § 9, 1988 Fla. Laws 599, 618 (codified at FLA. STAT. § 403.7049 (Supp. 1988)).

204. *Id.*

205. *Id.* § 40, 1988 Fla. Laws 599, 650 (codified at FLA. STAT. § 403.7125 (Supp. 1988)).

206. *Id.*

207. *Id.* § 6, 1988 Fla. Laws at 612 (amending FLA. STAT. § 403.704 (1987)).

208. *Id.*

209. *Id.* § 51, 1988 Fla. Laws at 661 (codified at FLA. STAT. § 381.80 (Supp. 1988)).

210. See *id.* § 7, 1988 Fla. Laws at 615 (codified at FLA. STAT. § 403.7043 (Supp. 1988)).

211. *Id.*

212. *Id.*

The Act requires DER to adopt rules establishing minimum qualifications for operators of landfills, recycling programs, and other solid waste management facilities and for training programs for such operators.²¹³ These rules may include various classifications for operators based on different levels of training achieved.²¹⁴ While no deadline for promulgation of these rules is provided in the Act, operators may not perform their duties after January 1, 1990, unless they have completed a DER-approved training course.²¹⁵

The Department will amend chapter 17-7 of the Code²¹⁶ to incorporate the Act's prohibitions on disposal in landfills of used oil, lead-acid batteries, yard trash, white goods, vegetable oils, and animal parts, fats, by-products or waste products.²¹⁷ These rules will establish standards for alternative disposal, processing, or recycling of used oil, lead acid batteries, yard trash and white goods.²¹⁸ They will also address the prohibitions on the mixing or commingling of used oil with other solid waste or hazardous waste, on disposal of used oil in septic tanks, and on use of used oil for road oiling, dust control, weed abatement, and similar uses.²¹⁹ Additionally, the rules will establish thresholds for animal parts, fats, by-products, waste products, and vegetable oils to quantify what is subject to the disposal prohibition and what is exempt from the prohibition.²²⁰ No deadline is specified for rules establishing thresholds or exemptions of animal parts, fats, by-products, waste products or vegetable oils or for the disposal prohibitions on the other items. However, DER is required to establish the standards for such alternative disposal prior to the effective dates of the prohibitions: October 1, 1988 for used oil; January 1, 1989 for lead-acid batteries; January 1, 1990 for white goods; and January 1, 1992 for yard trash.²²¹ These rules most likely will incorporate statutory requirements for used oil collection centers,²²² used oil collection incentives programs,²²³ the registration exemption for on-site burners of used oil,²²⁴ and certification, registration, annual reporting, insur-

213. *Id.* § 39, 1988 Fla. Laws at 649 (codified at FLA. STAT. § 403.716 (Supp. 1988)).

214. *Id.*

215. *Id.*

216. FLA. ADMIN. CODE R. 17-7 (Sept. 1988).

217. *See Rules Required in 1988 Legislation, supra* note 187, at 2. *See also* ch. 88-130, § 15, 1988 Fla. Laws 599, 631 (amending FLA. STAT. § 403.708 (1987)) (authority for rulemaking).

218. Ch. 88-130, § 15, 1988 Fla. Laws 599, 631 (amending FLA. STAT. § 403.708 (1987)).

219. *Id.* § 26, 1988 Fla. Laws at 644 (amending FLA. STAT. § 403.751 (1987)).

220. *Id.* § 16, 1988 Fla. Laws at 634 (codified at FLA. STAT. § 403.7085 (Supp. 1988)).

221. *Id.* § 15, 1988 Fla. Laws at 631 (amending FLA. STAT. § 403.708 (1987)).

222. *See id.* § 33, 1988 Fla. Laws at 646 (codified at FLA. STAT. § 403.760 (Supp. 1988)).

223. *See id.* § 34, 1988 Fla. Laws at 647 (codified at FLA. STAT. § 403.761 (Supp. 1988)).

224. *See id.* § 28, 1988 Fla. Laws at 645 (amending FLA. STAT. § 403.754 (1987)).

ance, and financial responsibility requirements for transporters of used oil.²²⁵ No deadline is established for adoption of rules implementing these requirements.

The Act provides DER with enhanced permitting authority over solid waste management facilities, which will become the subject of DER rulemaking. The Department will propose rules to implement its authority to include in permits conditions necessary to effectuate recycling goals and requiring designation of temporary backup disposal capacity prior to issuance of a construction permit.²²⁶ The Department will also propose rules codifying the statutory exemptions for storage or disposal on the generator's own property of solid waste resulting from the generator's activities on that property under specified conditions (residential waste, debris from land clearing for development, and activities which are otherwise permitted), and for areas used solely for disposal of construction and demolition debris. No deadline is specified for rules implementing the recycling goals authority or the permit exemptions; however, by December 31, 1988, DER must initiate rulemaking, to the extent that it determines necessary, to establish standards for regulation by general permit of off-site disposal of construction and demolition debris.

By January 1, 1990, DER will propose rules specifying procedures and standards for the issuance of permits to used oil recycling facilities and for the exemption of a facility from the permitting requirement if it burns used oil in compliance with a federal permit and a DER air permit or if it uses used oil for the beneficiation or flotation of phosphate rock.²²⁷ By January 1, 1989, DER will propose standards, procedures and fees for the issuance of permits to waste tire collection, processing, recycling, and disposal facilities, including authorization of disposal at permitted solid waste disposal facilities on specified conditions, as well as exemptions from those permitting requirements.²²⁸ The Department will also propose rules specifying procedures and standards for a permit denial to an applicant who is

225. See *id.* § 36, 1988 Fla. Laws at 648 (codified at FLA. STAT. § 403.767 (Supp. 1988)).

226. See *Rules Required in 1988 Legislation*, *supra* note 187, at 2. See also ch. 88-130, § 13, 1988 Fla. Laws 599, 628 (amending FLA. STAT. § 403.707 (1987)) (authority for rulemaking).

227. See *Rules Required in 1988 Legislation*, *supra* note 187, at 3. See also ch. 88-130, § 37, 1988 Fla. Laws 599, 649 (codified at FLA. STAT. § 403.769 (Supp. 1988)) (authority for rulemaking).

228. See *Rules Required in 1988 Legislation*, *supra* note 187, at 3. See also ch. 88-130, § 41, 1988 Fla. Laws 599, 651 (codified at FLA. STAT. § 403.707 (Supp. 1988)) (authority for rulemaking). The "waste tire" rules will be codified at Rule 17-711 of the Florida Administrative Code. See 14 Fla. Admin. W. 4338 (Nov. 4, 1988).

responsible for repeated violations of regulatory requirements,²²⁹ and codifying its expanded authority to issue research, development, and demonstration (R & D) permits to solid waste management facilities.²³⁰ No deadline is specified for adoption of rules relating to permit denials or R & D permits.

As discussed above, the Act also significantly expands DER's authority and responsibility to regulate recovered materials and recycling. Since the Act exempts from regulation recovered materials meeting specified criteria,²³¹ DER may propose rules specifying standards for determining whether a particular recovered material is exempt. Since such a rule is not required, there is no established deadline.

The Department will propose rules establishing recordkeeping and reporting requirements pertaining to sales and recycling of newsprint²³² and containers made of glass, plastic, aluminum, plastic-coated paper or other materials,²³³ including cans, bottles and jars with a capacity of five ounces or more.²³⁴ These rules will also establish procedures and criteria for determining the rate at which those products actually are being recycled and for DER registration of recycling centers accepting those products.²³⁵ No deadlines are established for implementation of these provisions. However, DER must adopt a rule requiring the inclusion in all state informational material printed after December 31, 1988 (such as road maps and travel pamphlets), of information alerting travelers to the recycling requirements of the Act and urging them to avoid littering.²³⁶ *Please note* that while the Act requires adoption of rules addressing materials printed after *Decem-*

229. See *Rules Required in 1988 Legislation*, *supra* note 187, at 2. See also ch. 88-130, § 13, 1988 Fla. Laws 599, 628 (amending FLA. STAT. § 403.707 (1987)) (authority for rulemaking).

230. See *Rules Required in 1988 Legislation*, *supra* note 187, at 4. See also ch. 88-130, § 80, 1988 Fla. Laws 599, 695 (amending FLA. STAT. § 403.7221(1) (1987)) (authority for rulemaking).

231. Ch. 88-130, § 8, 1988 Fla. Laws 599, 616 (amending FLA. STAT. § 403.745 (1987)).

232. See *Rules Required in 1988 Legislation*, *supra* note 187, at 3. See also ch. 88-130, § 71, 1988 Fla. Laws 599, 683 (codified at FLA. STAT. § 403.7195 (Supp. 1988)) (authority for rulemaking).

233. See *Rules Required in 1988 Legislation*, *supra* note 187, at 3. See also ch. 88-130, § 72, 1988 Fla. Laws 599, 685 (codified at FLA. STAT. § 403.7197 (Supp. 1988)) (authority for rulemaking).

234. See *Rules Required in 1988 Legislation*, *supra* note 187, at 3. See also ch. 88-130, § 73, 1988 Fla. Laws 599, 687 (codified at FLA. STAT. § 403.7198 (Supp. 1988)) (authority for rulemaking).

235. See *Rules Required in 1988 Legislation*, *supra* note 187, at 3. See also ch. 88-130, § 72, 1988 Fla. Laws 599, 685 (codified at FLA. STAT. § 403.7197(4)(a) (Supp. 1988)) (authority for rulemaking).

236. Ch. 88-130, § 73, 1988 Fla. Laws 599, 687 (codified at FLA. STAT. § 403.7198 (Supp. 1988)).

ber 31, 1988, the section of the Act requiring those rules does not become effective until *October 1, 1995*.²³⁷

In addition to promulgation of new rules, DER has been given responsibility for implementing the Act through a number of non-rule-making programs. The Act requires DER to conduct research to develop alternative solid waste management techniques and to determine the effectiveness of landfill closure requirements.²³⁸ The Department is also required to develop information on existing markets for recovered materials and to assist in developing new markets, as well as to establish a directory of recycling businesses.²³⁹ Additionally, the Act requires DER to develop programs of public education designed to increase awareness of solid waste management issues and to promote litter control, recycling, volume reduction, and proper management techniques.²⁴⁰ The Department must also conduct or participate in various demonstration projects, including one designed to solve problems associated with disposal of seafood processing by-products.²⁴¹ The Department is required to provide planning, technical and financial assistance to state agencies and local governments for waste reduction, recycling, reuse, and the proper management and disposal of solid waste.²⁴² The Act also requires DER to initiate programs to encourage voluntary establishment of waste tire collection centers and authorizes the Department to develop incentives programs to reward people who return tires to collection centers.²⁴³

Other governmental bodies have responsibilities for implementing the Act as well. The Florida High Technology Innovation Research and Development Board is charged with responsibility for promoting technological developments in recycling.²⁴⁴ The Florida High Technology and Industry Council must direct and coordinate the scientific and technological resources of the state to alleviate problems of solid waste disposal.²⁴⁵ One or more of the state's colleges and universities will study the effects of commercial product packaging on the management of solid waste in Florida.²⁴⁶ The Department of Education

237. *Id.*

238. *Id.* § 6, 1988 Fla. Laws at 612 (amending FLA. STAT. § 403.704 (1987)).

239. *Id.*

240. *Id.*

241. *Id.* § 60, 1988 Fla. Laws at 673.

242. *Id.* § 10, 1988 Fla. Laws at 619 (amending FLA. STAT. § 403.705 (1987)).

243. *Id.* § 41, 1988 Fla. Laws at 651 (codified at FLA. STAT. § 403.717 (Supp. 1988)).

244. *Id.* § 44, 1988 Fla. Laws at 654 (amending FLA. STAT. § 159.945 (1987)).

245. *Id.* § 45, 1988 Fla. Laws at 655 (amending FLA. STAT. § 240.539 (1987)).

246. *Id.* § 50, 1988 Fla. Laws at 660 (codified at FLA. STAT. § 240.5325 (Supp. 1988)). This research project and others will be coordinated by the new Florida Center for Solid and Hazardous Waste Management, located at the University of Florida in Gainesville, Florida. Telephone

must incorporate information regarding the bottle and container recycling and deposit requirements into materials distributed to primary and secondary schools, urging an end to litter.²⁴⁷ The Department of Transportation (DOT) must coordinate a variety of programs designed to prevent litter,²⁴⁸ and is also directed to expand the use of recovered materials in its construction projects²⁴⁹ and to undertake demonstration projects to determine the feasibility of using a variety of specified recycled materials as paving materials.²⁵⁰ The Department of Agriculture and Consumer Services must conduct a demonstration project in Alachua County to determine the feasibility of composting yard trash derived from a typical municipal solid waste stream.²⁵¹ The Act also creates the Applications Demonstration Center for Resource Recovery from Solid Organic Materials to evaluate and demonstrate low-cost treatment technologies.²⁵² Finally, the Florida Division of Purchasing must revise existing procurement procedures for the state to maximize utilization of recycled materials.²⁵³ It is likely that some of these agencies will propose new rules or modify some existing rules to implement these provisions of the Act.

V. CONCLUSION

It is clear that passage of the 1988 Solid Waste Management Act will lead to a substantial increase in private and public sector efforts to address Florida's waste handling and disposal needs. Consideration and passage of this significant legislation has enhanced the public's perception that there really is a solid waste management "problem" in Florida that cries out for attention. Somewhat ironically, however, this perception could ultimately complicate efforts on the part of government and the citizenry aimed at resolving the issues raised. If there is an Achilles' heel in Florida's efforts to satisfy its solid waste-related needs, it can be found in the heightened environmental consciousness of her citizenry, the ready availability of Florida's Administrative Procedures Act²⁵⁴ to challenge or dispute controversial agency actions,

conversation with Dr. James O. Bryant, Jr., Dir., Fla. Center for Solid and Hazardous Waste Mgt., Gainesville, Fla. (Dec. 13, 1988) (memorandum on file, *Florida State University Law Review*).

247. *Id.* § 73, 1988 Fla. Laws at 687 (codified at FLA. STAT. § 403.7198 (Supp. 1988)).

248. *Id.* § 55, 1988 Fla. Laws at 666 (codified at FLA. STAT. § 403.4131 (Supp. 1988)); *id.* § 56, 1988 Fla. Laws at 417 (amending FLA. STAT. § 403.413 (1987)).

249. *Id.* § 49, 1988 Fla. Laws at 659 (codified at FLA. STAT. § 336.044 (Supp. 1988)).

250. *Id.*

251. *Id.* § 59, 1988 Fla. Laws at 673.

252. *Id.* § 61, 1988 Fla. Laws at 673 (codified at FLA. STAT. § 403.7165 (Supp. 1988)).

253. *Id.* § 48, 1988 Fla. Laws at 657 (codified at FLA. STAT. § 287.045 (Supp. 1988)).

254. FLA. STAT. ch. 120 (1987).

and in the still prevalent feeling that it is all well and good to solve solid waste-related problems so long as the solution does not impact "my back yard." The combination of these factors could result in a roadblock of administrative litigation that is all too easy to erect.

Probably the most significant gap in the new law is the lack of attention given to the key issue of siting and permitting a solid waste management facility.²⁵⁵ There is a marked lack of statutory guidance or assistance under existing law or the 1988 legislation on this issue. The Florida Legislature is always reluctant to authorize a state agency to override local government control, even for the welfare of the general citizenry of the state. In order to truly establish a workable mechanism for meaningful resolution of Florida's waste management problems, however, those Senators and Representatives who labored so long in drafting this otherwise well-balanced legislation may yet have to address this issue head-on.

At this point, the Florida DER is hard at work drafting versions of the innumerable rules necessary to be developed under the Act and scheduling public workshops/hearings on these proposed rules. A series of public hearings to be held around the state has also commenced, which will likely lead to suggestions for amending this past session's enactments. In the meantime, Florida's population continues to grow daily while the state's solid waste disposal options continue to become more limited. Whether the purported solutions to the solid waste-related problems which are envisioned in the Act eventually prove viable in resolving this double-barrelled threat awaits judgment.

255. Although this topic was addressed by the Senate Committee on Natural Resources & Conservation in an early draft of a predecessor to the bill ultimately under consideration, *see* Fla. S. Comm. on Nat. Resources & Conser., Draft 8, § 40 (Feb. 26, 1988), this topic is not addressed in the bill as finally enacted. *See* Fla. CS for CS for SB 1192 (1988) (Enrolled).

