

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SB 2592

INTRODUCER: Senator Baker

SUBJECT: Petroleum Contamination Site Cleanup

DATE: March 20, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Kiger	EP	Favorable
2.			TR	
3.			CA	
4.			GA	
5.				
6.				

I. Summary:

The bill allows the Department of Environmental Protection (DEP) to establish a long-term natural attenuation monitoring category for sites in the Petroleum Cleanup Program. The DEP is required to utilize natural attenuation monitoring strategies. Further, if cost-effective, transition sites eligible for restoration funding assistance to long-term natural attenuation monitoring when a site meets certain criteria.

The bill requires DEP to evaluate whether higher natural attenuation default concentrations for natural attenuation monitoring or long-term natural attenuation monitoring are cost-effective and will adequately protect public health and the environment. DEP must evaluate site-specific characteristics that will allow for higher natural attenuation or long-term natural attenuation concentration levels.

Unless institutional controls have been imposed by the responsible party or property owner to restrict the uses of the site, the bill precludes local governments from denying development orders or permits on the grounds that petroleum contamination exists onsite.

The bill establishes a low-scored site initiative for sites with a priority ranking score of 10 points or less and provides conditions for voluntary participation. If these conditions are met, DEP must issue a No Further Action (NFA) order, which means minimal contamination exists onsite and that contamination is not a threat to human health or the environment. If no contamination is detected, DEP may issue a site rehabilitation completion order.

Sites that are eligible will be initiated by the source property owner or responsible party for the contamination and are strictly voluntarily. DEP may pre-approve the cost of the assessment

pursuant to s. 376.30711, F.S., including 6 months of groundwater monitoring, not to exceed \$30,000 for each site. DEP may not pay the costs associated with the establishment of institutional or engineering controls. Assessment work must be completed no later than 6 months after DEP issues its approval.

The bill authorizes DEP to spend no more than \$10 million per fiscal year to assess low scored sites. Funds will be made available on a first-come, first-served basis and will be limited to 10 sites in each fiscal year for each responsible party or property owner. The bill deletes the provisions relating to funding for limited interim soil-source removals, which sunsets June 30, 2010.

The bill provides an effective date of July 1, 2010.

The bill amends s. 376.3071, F.S.

II. Present Situation:

The Petroleum Cleanup Program, within DEP's Division of Waste Management, encompasses the technical oversight, management, and administrative activities necessary to prioritize, assess, and cleanup sites contaminated by discharges of petroleum and petroleum products from stationary petroleum storage systems. These sites include those determined eligible for state-funded cleanup using preapproval contractors designated by the property owner or responsible party and state lead contractors under direct contract with the DEP, as well as non-program or voluntary cleanup sites that are funded by responsible parties. In order to pay for the expedited cleanup of petroleum contaminated sites, the Florida Legislature created the Inland Protection Trust Fund (s. 376.3071, F.S.). The Trust Fund (Fund) is a non-lapsing revolving trust fund with revenues generated from an excise tax per barrel of petroleum products currently produced or imported into the state as defined by s. 206.9935, F.S.¹

Section 376.3071 (5), F.S., provides site selection and cleanup criteria. The statute states that DEP adopt rules to establish priorities for state-conducted cleanup at petroleum contamination sites based upon a scoring system and factors that include:

- The degree to which human health, safety, or welfare may be affected by exposure to the contamination;
- The size of the population or area affected by the contamination;
- The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water; and
- The effect of the contamination on the environment.

Pursuant to s. 376.3071 (5) (c), F.S., DEP must require source removal, if warranted and cost-effective, at each site eligible for restoration funding from the Fund. This includes funding for limited interim soil-source removals, which will sunset June 30, 2010.

¹ DEP's Petroleum Contamination Cleanup and Discharge Prevention Programs, December 2009.
<http://www.dep.state.fl.us/waste/quick+topics/publications/pss/pcp/geninfo/2009ProgramBriefingFinal120209.pdf>

Once source removal is completed, DEP may reevaluate the site to determine the degree of active cleanup needed to continue site rehabilitation. The DEP must also determine if the reevaluated site qualifies for natural attenuation monitoring or no further action (NFA)². If additional site rehabilitation is necessary to reach the NFA status, the site rehabilitation must be conducted in the order established by the priority ranking system and the DEP is encouraged to utilize natural attenuation and monitoring where site conditions warrant. However, DEP has no authority to establish a long-term natural attenuation monitoring category to determine whether natural processes can significantly degrade petroleum contamination to cleanup target levels established by rule. Therefore, DEP uses active remediation techniques, pursuant to Rule 62-770.700, F.A.C., to improve sites to cleanup target levels.

The DEP must issue a determination of “No Further Action” at sites ranked with a total priority score of 10 or less meeting certain conditions³. DEP has stated that they have no authority to expend appropriated dollars to assess sites below the established score range for expenditures, pursuant to statute. The score range for expenditures is established based upon the DEP’s projections on how many sites can be funded during a fiscal year with available appropriations. Low scored sites that could be assessed and possibly removed from the backlog of sites yet to be activated remain in the backlog. Responsible parties that have sites eligible for state funded cleanup are reluctant or unable to spend their own dollars to apply for the non-reimbursable voluntary cleanup.

III. Effect of Proposed Changes:

Section 1: Amends s. 376.3071, F.S., to delete provisions relating to funding for limited interim soil-source removals, which sunsets June 30, 2010. The bill allows the DEP to establish a long-term natural attenuation monitoring category for sites. The DEP is required to utilize natural attenuation monitoring strategies and, when cost-effective, transition sites eligible for restoration funding assistance to long-term natural attenuation monitoring when the plume is shrinking or stable and confined to the source property boundaries and the petroleum products’ chemicals of concern meet the natural attenuation default concentrations, as defined by department rule.

Requires the DEP to evaluate whether higher natural attenuation default concentrations for natural attenuation monitoring or long-term natural attenuation monitoring are cost-effective and will adequately protect public health and the environment. DEP must also evaluate site-specific characteristics that will allow for higher natural attenuation or long-term natural attenuation concentration levels.

Unless institutional controls have been imposed by the responsible party or property owner to restrict the uses of the site, the bill precludes local governments from denying development orders or permits on the grounds that petroleum contamination exists onsite.

² As defined in Rule 62-782, Florida Administrative Code (F.A.C.), natural attenuation means an approach to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization

³ S. 376.3071 (11) (b). F.S.

To establish a low-scored site initiative for sites with a priority ranking score of 10 points or less and providing conditions for voluntary participation, including:

- Upon reassessment pursuant to DEP rule, the site retains a priority ranking score of 10 points or less;
- No excessively contaminated soil, as defined by DEP rule, exists onsite as a result of a release of petroleum products;
- A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable;
- The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment;
- The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated; and
- Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by DEP rule, or human exposure is limited by appropriate institutional or engineering controls.

If these conditions are met, DEP must issue a NFA, which means minimal contamination exists onsite and that contamination is not a threat to human health or the environment. If no contamination is detected, DEP may issue a site rehabilitation completion order.

Sites that are eligible will be initiated by the source property owner or responsible party for the contamination and are strictly voluntary. For sites eligible for state restoration funding, DEP may pre-approve the cost of the assessment pursuant to s. 376.30711, F.S., including 6 months of groundwater monitoring, not to exceed \$30,000 for each site. DEP may not pay the costs associated with the establishment of institutional or engineering controls.

Assessment work must be completed no later than 6 months after DEP issues its approval.

The bill authorizes DEP to spend no more than \$10 million per fiscal year to assess low scored sites. Funds will be made available on a first-come, first-served basis and will be limited to 10 sites in each fiscal year for each responsible party or property owner.

Section 2: Provides the bill shall take effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

According to DEP, the establishment of the long-term natural attenuation monitoring category will provide entities responsible for cleaning up non-state funded sites the option to cease active remediation if the contamination meets the proposed criteria. The person responsible for site rehabilitation must also monitor the plume for 42 months to determine whether natural processes are further degrading the contamination.

Costs normally consumed by active remediation can be either avoided or spread out over a longer period of time. Sites scored 10 points or less can qualify for either a Site Rehabilitation Completion Order or a No Further Action if they meet criteria thereby eliminating these sites from the state funded cleanup backlog.

DEP has stated that the bill will provide work for environmental consulting firms, geologists, laboratories, well drillers, remediation equipment suppliers, subcontractors, general contractors, and construction firms as the assessments are conducted. Additional employment opportunities will also be evident as new site cleanups are able to be initiated. It will also provide revenue for material suppliers. There may be some contractors who do not favor this option to transition into long term natural attenuation monitoring for fear of stopping work on a particular site. These situations are more than off-set by the new site cleanups that can be initiated.

C. Government Sector Impact:

DEP has stated that no additional appropriation dollars will be required to implement the proposed changes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
