

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Environmental Preservation Committee

BILL: CS/SB 330

SPONSOR: Environmental Preservation Committee and Senator Dockery

SUBJECT: Contamination Notification

DATE: March 28, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute requires that a person provide notice to the Department of Environmental Protection (DEP) and the Department of Health when contamination is discovered as a result of site rehabilitation activities. The DEP is required to notify the record owners of real property at which contamination has been discovered. The DEP is authorized to collaborate with the Department of Health to establish procedures for responding to public inquiries.

This bill amends s. 376.301, and creates s. 376.30702, Florida Statutes.

II. Present Situation:

Chapter 376, F.S., is entitled Pollution Discharge Prevention and Removal. Under this chapter, the Department of Environmental Protection (DEP) regulates the activities regarding the handling, storing, discharging, and cleanup of various pollutants and contaminants for the coastal and inland areas of the state.

The Florida Coastal Protection Trust Fund, as created in s. 376.11, F.S., provides the mechanism to have financial resources immediately available for prevention of, and cleanup and rehabilitation after, a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages in the coastal areas.

For the inland areas, the Water Quality Assurance Trust Fund, s. 376.307, F.S., is intended to serve as a broad-based fund for use in responding to incidents of contamination that pose a serious danger to the quality of groundwater and surface water resources or otherwise pose a serious danger to the public health, safety, or welfare. The Inland Protection Trust Fund,

s. 376.3071(2), F.S., is intended to serve as a repository for funds which will enable the DEP to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products in order to protect the public health, safety, and welfare and to minimize environmental damage.

Under the various cleanup programs for inland contamination, there are four statutory provisions that authorize the use of risk-based corrective action principles, or RBCA. Section 376.3071(5), F.S., allows RBCA to be used for the cleanup of petroleum or petroleum contaminated sites; s. 376.3078(4), F.S., allows RBCA to be used to clean up drycleaning solvent contaminated sites; s. 376.81, F.S., allows RBCA to be used to clean up contamination at a designated brownfield site; and s. 376.30701(2), F.S., allows RBCA to be used for all other sites contaminated with pollutants or hazardous materials, otherwise known as Global RBCA.

Each of the sections allowing RBCA principles to be used requires the establishment of a point of compliance at the source of the contamination. The DEP may authorize that point of compliance to be temporarily moved to the boundary of the property, or beyond the property boundary with appropriate monitoring if the extension is needed to facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are protected. The temporary extension of the point of compliance beyond the property boundary must include notice to local governments and the owners of any property into which the point of compliance is allowed to extend.¹ However, none of these provisions expressly require either the responsible party or the DEP to provide early notice to persons who may be affected when contamination is found to have migrated from the property where it originated into other areas offsite.

Recently, the DEP published notices to amend the rules that implement the RBCA statutory provisions. The proposed rule amendments govern notice of contamination discovered beyond the property boundaries during the course of conducting site rehabilitation. The DEP's proposed rule language requires that the DEP be notified within 10 days of discovery of the contamination. However, there is no timeframe within which the DEP must notify affected property owners that contamination has been discovered on their property. Because of the number of potential sites in the state that may trigger the notice requirements, the DEP, in cooperation with the Department of Health, plans to use a phased notice process based on the level of risk at each site. For example, if the only affected medium is groundwater, many areas with affected groundwater contamination are connected to municipal water supplies and do not have private wells; therefore, there is no direct exposure to the groundwater.

III. Effect of Proposed Changes:

The committee substitute amends s. 376.301, F.S., to define the following: "cleanup target level," "contamination," "person responsible for site rehabilitation," and "temporary point of compliance."

¹ The RBCA provisions for drycleaning contaminated sites, designated brownfield sites, and global RBCA require actual notice must be made by the person responsible for site rehabilitation to local governments and the owners of property into which the point of compliance is allowed to extend and constructive notice to residents and business tenant of the property into which the point of compliance is allowed to extend.

Section 376.30702, F.S., is created to provide that whenever contamination has been discovered beyond the property boundaries of the site being cleaned up according to risk-based corrective-action provisions, the person responsible for site rehabilitation must give actual notice as soon as possible, but no later than 10 days following the discovery, to the Division of Waste Management of the Department of Environmental Protection (DEP). Also, the person responsible for site rehabilitation shall simultaneously mail a copy of such notice to the appropriate DEP district office and county health department.

The notice shall include:

- The location of the property at which site rehabilitation was initiated and contact information for the person responsible for site rehabilitation;
- A listing of all record owners of any real property, other than the property at which site rehabilitation was initiated, at which contamination has been discovered; the parcel identification number for any such real property; the owner's address listed in the current county property tax office records; and the owner's telephone number;
- Separate tables, by medium, including, groundwater, soil, surface water, or sediment, which list sampling locations; the sampling date; names of contaminants detected above cleanup target levels; their corresponding cleanup target levels; the contaminant concentrations; and whether the cleanup target level is based on health or nuisance, organoleptic, or aesthetic concerns; and
- A vicinity map that shows the sampling locations with corresponding laboratory analytical results and the date on which each sample was collected, and identifies the property boundaries of the property at which site rehabilitation was initiated., and any other property at which contamination has been discovered during such site rehabilitation.

Within 30 days of receiving the actual notice, or within 30 days after the effective date of this act, if the DEP already possesses information equivalent to that required by the notice, the DEP shall send a copy of the notice, or an equivalent notification, to all record owners of any real property, other than the property at which site rehabilitation was initiated at which contamination has been discovered. Along with the notice, the DEP shall include a letter identifying sources of additional information about the contamination and a telephone number to which further inquiries should be directed. The DEP may collaborate with the Department of Health to develop such sources of information and to establish procedures for responding to public inquiries about health risks associated with contaminated sites.

The DEP may adopt rules to administer these notice provisions and shall adopt any rules and forms that are necessary to administer the contamination-notification requirements.

The effective date of this committee substitute is September 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The surrounding property owners and businesses could benefit directly from this bill by having more timely and comprehensive information on the progress of the cleanup of nearby properties and if such contamination has migrated onto their properties. In addition, it will aid them in making better informed decisions regarding their potential risks of exposure and appropriate ways to reduce or eliminate risk.

C. Government Sector Impact:

The DEP may experience significant start up costs associated with the requirements of this bill. Additional staff resources may be necessary to oversee the implementation of a tracking system to effectively manage the noticing requirements.

The Department of Health may experience additional costs relating to an increase in public inquiry by persons who may have questions about health effects from contaminated sites. These costs are unknown due to the unknown nature of contaminated sites at this point in time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
