

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: Governmental Oversight and Productivity Committee

BILL: CS/CS/SB 330

SPONSOR: Governmental Oversight and Productivity Committee, Environmental Preservation Committee, and Senator Dockery

SUBJECT: Contamination Notification

DATE: April 7, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	<u>WM</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill 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 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 dry cleaning 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 bill 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 dry cleaning 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,² 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.

² Pertaining to or perceived by a sensory organ, *American Heritage Dictionary*, 2nd ed. 1985

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:

According to the DEP, direct private sector costs will include the costs associated with identifying the property owners and forwarding this information and all supporting documentation to the department. These costs, on a per-business level, would be expected to be relatively low, but not negligible, because of a comparatively low number of sites for which any single business may be responsible. Accumulated sector-wide costs would be higher. Additional costs would be incurred in providing any additional copies of data or reports requested, or in responding to inquiries from the notice recipients. Such costs could increase the per-business expense. The notices sent pursuant to this bill may have the secondary effect of making some properties less desirable for commercial use due to the documentation of offsite contamination.

C. Government Sector Impact:

State Agencies - According to the Department of Environmental Protection, the DEP and the Department of Health are incurring workload increases and costs associated with the implementation of the contamination notification provisions in the RBCA rules, which will be effective April 18, 2005, for the backlog of approximately 2,000 contaminated site files where contamination is known to be offsite but unknown whether notice has been sent to affected property owners. The DEP expects to have completed the notification process for the backlog of sites by the September 1, 2005, effective date of this bill. The DEP anticipates a significant increase in demand on the Water Supply Restoration Program to provide alternative water supply to residents who have been notified of contamination and whose private potable water wells are contaminated. The DEP anticipates the need for an additional appropriation of \$2,000,000 to meet this anticipated need in FY 2005-2006, and in subsequent years.

The Department of Management Services, in the course of its Workspace Management Initiative, has plans to sell some state-owned buildings in downtown Tallahassee, some of which may be on designated brownfield sites. Consequently, corrective action taken on any such sites may trigger the provisions of this bill and corresponding costs.

Local Governments - County Health Departments may experience a sudden and significant increase in activity as notices are sent, particularly as notices for the currently known offsite contamination sites are sent, due to the large number of these sites. The magnitude of this increase is currently indeterminate. Local environmental programs may also see a similar increase in assistance requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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