

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1385 Petroleum Contamination Site Cleanup
SPONSOR(S): Natural Resources Appropriations Committee, Poppell
TIED BILLS: **IDEN./SIM. BILLS:** SB 2592

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|--|-----------------|----------------|-----------------------|
| 1) | Agriculture & Natural Resources Policy Committee | 10 Y, 0 N | Deslatte | Reese |
| 2) | Natural Resources Appropriations Committee | 9 Y, 0 N, As CS | Smith Brown | Dixon |
| 3) | General Government Policy Council | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

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 and, when cost-effective, transition sites eligible for restoration funding assistance to long-term natural attenuation monitoring where 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 also evaluate site-specific characteristics that will allow for higher natural attenuation or long-term natural attenuation concentration levels.

A local government may not deny a building permit based solely on the presence of petroleum contamination for any construction, repairs, or renovations performed in conjunction with tank upgrade activities to an existing retail fuel facility if the facility was fully operational before the building permit was requested and if the construction, repair, or renovation is performed by a licensed contractor.

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 (SRCO).

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 from the funds currently authorized from the Inland Protection Trust Fund in DEP 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.

There is no fiscal impact to state or local government.

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

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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 shall adopt rules to establish priorities for state-conducted cleanup at petroleum contamination sites based upon a scoring system and factors that include:

1. The degree to which human health, safety, or welfare may be affected by exposure to the contamination;
2. The size of the population or area affected by the contamination;
3. 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
4. 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.

Once the 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 levels³.

The DEP must issue a determination of “No Further Action” at sites ranked with a total priority score of 10 or less meeting certain conditions⁴. According to DEP’s analysis, DEP has 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 nonreimbursable voluntary cleanup.

Effect of Proposed Changes

The bill amends s. 376.3071(5)(c), F.S., deleting 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.

DEP is required 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.

A local government may not deny a building permit based solely on the presence of petroleum contamination for any construction, repairs, or renovations performed in conjunction with tank upgrade activities to an existing retail fuel facility if the facility was fully operational before the building permit was requested and if the construction, repair, or renovation is performed by a licensed contractor. All building permits and any construction, repairs, or renovations performed in conjunction with such permits must comply with the applicable provisions of chapters 489 and 553.

The bill amends s. 376.3071(11)(b), F.S., by establishing 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;

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 DEP analysis (on file)

⁴ See s. 376.3071 (11)(b), F.S.

- 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;
- 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 (SRCO).

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.

B. SECTION DIRECTORY:

Section 1. Amends s. 376.3071, F.S., revising provisions relating to petroleum contamination site selection and cleanup criteria; deleting provisions relating to funding for limited interim soil-source removals; requiring the Department of Environmental Protection to utilize natural attenuation monitoring strategies to transition sites into long-term natural attenuation monitoring under specified conditions; providing for natural attenuation and active remediation of sites; requiring the department to evaluate certain costs and strategies; prohibiting local governments from denying a building permit on the grounds that a property is contaminated; providing an exception; establishing a low-scored site initiative; providing conditions for participation; requiring the department to issue certain determinations and orders; providing that certain sites are eligible for payment of preapproved costs; requiring assessment work to be completed within a certain timeframe; providing payment and funding limitations; deleting provisions relating to nonreimbursable voluntary cleanup.

Section 2. Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See Fiscal Comments section

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 certain criteria, thereby eliminating these sites from the state funded cleanup backlog⁵.

D. FISCAL COMMENTS:

According to the DEP analysis, the proposed legislation will allow the department to use available appropriations for both active and passive remediation techniques and to assess low scored sites to minimize or eliminate contamination threats to public health and the environment in an improved, efficient and effective manner. In addition, state-funded contaminated sites that are in the backlog will become active sooner thereby reducing the backlog of over 8,800 sites that qualify for state funding.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 26, 2010, the Natural Resources Appropriations Committee adopted three amendments. The first amendment clarifies which type of natural attenuation monitoring (NAM) is to be used either the NAM per department rule or the long-term NAM as per this bill. The amendment also clarifies that active remediation will be resumed within the 42 month period if the plume migrates beyond the property

⁵ DEP analysis (on file)

boundaries. The second amendment changes the word “evaluate” to the word “template.” The word “template” is a specific term used in s. 376.3071(2)(e), F.S., that references how the department standardizes cleanup expenditures and therefore ensures a cost-effective approach to cleanup. The third amendment deletes the section that 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 and replaces it allowing any construction, repairs, or renovations to an existing retail facility be performed in conjunction with a tank upgrade. The bill was reported favorably as a committee substitute.