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CS/CS/HB 1385

2010 Legislature

1 A bill to be entitled
2 An act relating to petroleum contamination site cleanup;
3 amending s. 376.3071, F.S.; revising provisions relating
4 to petroleum contamination site selection and cleanup
5 criteria; deleting obsolete provisions relating to funding
6 for limited interim soil-source removals; requiring the
7 Department of Environmental Protection to utilize natural
8 attenuation monitoring strategies to transition sites into
9 long-term natural attenuation monitoring under specified
10 conditions; providing for natural attenuation and active
11 remediation of sites; requiring the department to evaluate
12 certain costs and strategies; prohibiting local
13 governments from denying building permits under specified
14 conditions; providing requirements for such permits and
15 related construction, repairs, and renovations;
16 establishing a low-scored site initiative; providing
17 conditions for participation; requiring the department to
18 issue certain determinations and orders; providing that
19 certain sites are eligible for payment of preapproved
20 costs; requiring assessment work to be completed within a
21 certain timeframe; providing payment and funding
22 limitations; deleting provisions relating to
23 nonreimbursable voluntary cleanup; requiring the
24 installation of fuel tank upgrades to secondary
25 containment systems to be completed by specified
26 deadlines; providing an exception; providing an effective
27 date.

28

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 Be It Enacted by the Legislature of the State of Florida:

30
31 Section 1. Paragraph (c) of subsection (5) and paragraph
32 (b) of subsection (11) of section 376.3071, Florida Statutes,
33 are amended to read:

34 376.3071 Inland Protection Trust Fund; creation; purposes;
35 funding.—

36 (5) SITE SELECTION AND CLEANUP CRITERIA.—

37 (c) The department shall require source removal, if
38 warranted and cost-effective, at each site eligible for
39 restoration funding from the Inland Protection Trust Fund.

40 1. Funding for free product recovery may be provided in
41 advance of the order established by the priority ranking system
42 under paragraph (a) for site cleanup activities. However, a
43 separate prioritization for free product recovery shall be
44 established consistent with paragraph (a). No more than \$5
45 million shall be encumbered from the Inland Protection Trust
46 Fund in any fiscal year for free product recovery conducted in
47 advance of the priority order under paragraph (a) established
48 for site cleanup activities.

49 ~~2. Funding for limited interim soil-source removals for~~
50 ~~sites that will become inaccessible for future remediation due~~
51 ~~to road infrastructure and right-of-way restrictions resulting~~
52 ~~from a pending Department of Transportation road construction~~
53 ~~project or for secondary containment upgrading of underground~~
54 ~~storage tanks required under chapter 62-761, Florida~~
55 ~~Administrative Code, may be provided in advance of the order~~
56 ~~established by the priority ranking system under paragraph (a)~~

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57 ~~for site cleanup activities. The department shall provide~~
58 ~~written guidance on the limited source removal information and~~
59 ~~technical evaluation necessary to justify a request for a~~
60 ~~limited source removal in advance of the priority order pursuant~~
61 ~~to paragraph (a) established for site cleanup activities.~~
62 ~~Prioritization for limited source removal projects associated~~
63 ~~with a secondary containment upgrade in any fiscal year shall be~~
64 ~~determined on a first-come, first-served basis according to the~~
65 ~~approval date issued under s. 376.30711 for the limited source~~
66 ~~removal. Funding for limited source removals associated with~~
67 ~~secondary containment upgrades shall be limited to 10 sites in~~
68 ~~each fiscal year for each facility owner and any related person.~~
69 ~~The limited source removal for secondary containment upgrades~~
70 ~~shall be completed no later than 6 months after the department~~
71 ~~issues its approval of the project, and the approval~~
72 ~~automatically expires at the end of the 6 months. Funding for~~
73 ~~Department of Transportation and secondary containment upgrade~~
74 ~~source removals may not exceed \$50,000 for a single facility~~
75 ~~unless the department makes a determination that it is cost-~~
76 ~~effective and environmentally beneficial to exceed this amount,~~
77 ~~but in no event shall the department authorize costs in excess~~
78 ~~of \$100,000 for a single facility. Department funding for~~
79 ~~limited interim soil source removals associated with Department~~
80 ~~of Transportation projects and secondary containment upgrades~~
81 ~~shall be limited to supplemental soil assessment, soil~~
82 ~~screening, soil removal, backfill material, treatment or~~
83 ~~disposal of the contaminated soil, dewatering related to the~~
84 ~~contaminated soil removal in an amount of up to 10 percent of~~

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85 ~~the total interim soil source removal project costs, treatment,~~
 86 ~~and disposal of the contaminated groundwater and preparation of~~
 87 ~~the source removal report. No other costs associated with the~~
 88 ~~facility upgrade may be paid with department funds. No more than~~
 89 ~~\$1 million for Department of Transportation limited source~~
 90 ~~removal projects and \$10 million for secondary containment~~
 91 ~~upgrade limited source removal projects conducted in advance of~~
 92 ~~the priority order established under paragraph (a) for site~~
 93 ~~cleanup activities shall be encumbered from the Inland~~
 94 ~~Protection Trust Fund in any fiscal year. This subparagraph is~~
 95 ~~repealed effective June 30, 2010.~~

96 ~~2.3.~~ Once free product removal and other source removal
 97 identified in this paragraph are completed at a site, and
 98 notwithstanding the order established by the priority ranking
 99 system under paragraph (a) for site cleanup activities, the
 100 department may reevaluate the site to determine the degree of
 101 active cleanup needed to continue site rehabilitation. Further,
 102 the department shall determine if the reevaluated site qualifies
 103 for natural attenuation monitoring, long-term natural
 104 attenuation monitoring, or no further action. If additional site
 105 rehabilitation is necessary to reach no further action status,
 106 the site rehabilitation shall be conducted in the order
 107 established by the priority ranking system under paragraph (a).
 108 ~~and~~ The department shall ~~is encouraged to~~ utilize natural
 109 attenuation ~~and~~ monitoring strategies and, when cost-effective,
 110 transition sites eligible for restoration funding assistance to
 111 long-term natural attenuation monitoring where the plume is
 112 shrinking or stable and confined to the source property

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113 boundaries and the petroleum products' chemicals of concern meet
114 the natural attenuation default concentrations, as defined by
115 department rule. If the plume migrates beyond the source
116 property boundaries, natural attenuation monitoring may be
117 conducted in accordance with department rule, or if the site no
118 longer qualifies for natural attenuation monitoring, active
119 remediation may be resumed. For long-term natural attenuation
120 monitoring, if the petroleum products' chemicals of concern
121 increase or are not significantly reduced after 42 months of
122 monitoring, or if the plume migrates beyond the property
123 boundaries, active remediation shall be resumed as necessary.
124 For sites undergoing active remediation, the department shall
125 template the cost of natural attenuation monitoring pursuant to
126 s. 376.30711 to ensure that site mobilizations are performed in
127 a cost-effective manner. Sites that are not eligible for state
128 restoration funding may transition to long-term natural
129 attenuation monitoring using the criteria in this subparagraph.
130 Nothing in this subparagraph precludes a site from pursuing a
131 "No Further Action" order with conditions ~~where site conditions~~
132 ~~warrant.~~

133 3. The department shall evaluate whether higher natural
134 attenuation default concentrations for natural attenuation
135 monitoring or long-term natural attenuation monitoring are cost-
136 effective and would adequately protect public health and the
137 environment. The department shall also evaluate site-specific
138 characteristics that would allow for higher natural attenuation
139 or long-term natural attenuation concentration levels.

140 4. A local government may not deny a building permit based

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141 solely on the presence of petroleum contamination for any
 142 construction, repairs, or renovations performed in conjunction
 143 with tank upgrade activities to an existing retail fuel facility
 144 if the facility was fully operational before the building permit
 145 was requested and if the construction, repair, or renovation is
 146 performed by a licensed contractor. All building permits and any
 147 construction, repairs, or renovations performed in conjunction
 148 with such permits must comply with the applicable provisions of
 149 chapters 489 and 553.

150 (11)

151 (b) Low-scored site initiative ~~Nonreimbursable voluntary~~
 152 ~~cleanup.~~ Notwithstanding s. 376.30711, any site ~~For sites with~~
 153 ~~releases reported prior to January 1, 1995, the department shall~~
 154 ~~issue a determination of "No Further Action" at sites ranked~~
 155 ~~with a total priority ranking score of 10 points or less may~~
 156 voluntarily participate in the low-scored site initiative,
 157 whether or not the site is eligible for state restoration
 158 funding.

159 1. To participate in the low-scored site initiative, the
 160 responsible party or property owner must affirmatively
 161 demonstrate that, ~~which meet~~ the following conditions are met:

162 a.1. Upon reassessment pursuant to department rule, the
 163 site retains a priority ranking score of 10 points or less ~~No~~
 164 ~~free product exists in wells, boreholes, subsurface utility~~
 165 ~~conduits, or vaults or buildings and no other fire or explosion~~
 166 ~~hazard exists as a result of a release of petroleum products.~~

167 b.2. No excessively contaminated soil, as defined by
 168 department rule, exists onsite as a result of a release of

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169 petroleum products.

170 ~~c.3.~~ A minimum of 6 months of groundwater monitoring
171 indicates that the plume is shrinking or stable ~~Public supply~~
172 ~~wells for consumptive use of water expected to be affected by~~
173 ~~the site shall not be located within a 1/2-mile radius of the~~
174 ~~site; private supply wells for consumptive use of water expected~~
175 ~~to be affected by the site shall not be located within a 1/4-~~
176 ~~mile radius of the site; and there must be no current or~~
177 ~~projected consumptive use of the water affected by the site for~~
178 ~~at least the following 3 years. Where appropriate, institutional~~
179 ~~controls meeting the requirements of subparagraph (5)(b)4. may~~
180 ~~be required by the department to meet these criteria.~~

181 d.4. The release of petroleum products at the site does
182 ~~shall~~ not adversely affect adjacent surface waters, including
183 their effects on human health and the environment.

184 e.5. The area of groundwater containing the petroleum
185 products' chemicals of concern ~~in concentrations greater than~~
186 ~~the boundary values defined in subparagraph 7.~~ is less than one-
187 quarter acre and is confined to the source property boundaries
188 of the real property on which the discharge originated.

189 f.6. Soils onsite that are subject to human exposure found
190 between land surface and 2 feet below land surface ~~shall~~ meet
191 the soil cleanup target levels ~~eriteria~~ established by
192 department rule or human exposure is limited by ~~pursuant to sub-~~
193 ~~subparagraph (5)(b)9.a.~~ Where appropriate, institutional or
194 engineering controls ~~meeting the requirements of subparagraph~~
195 ~~(5)(b)4. may be required by the department to meet these~~
196 ~~eriteria.~~

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197 2. Upon affirmative demonstration of the conditions under
198 subparagraph 1., the department shall issue a determination of
199 "No Further Action." Such determination acknowledges that
200 minimal contamination exists onsite and that such contamination
201 is not a threat to human health or the environment. If no
202 contamination is detected, the department may issue a site
203 rehabilitation completion order.

204 3. Sites that are eligible for state restoration funding
205 may receive payment of preapproved costs for the low-scored site
206 initiative as follows:

207 a. A responsible party or property owner may submit an
208 assessment plan designed to affirmatively demonstrate that the
209 site meets the conditions under subparagraph 1. Notwithstanding
210 the priority ranking score of the site, the department may
211 preapprove the cost of the assessment pursuant to s. 376.30711,
212 including 6 months of groundwater monitoring, not to exceed
213 \$30,000 for each site. The department may not pay the costs
214 associated with the establishment of institutional or
215 engineering controls.

216 b. The assessment work shall be completed no later than 6
217 months after the department issues its approval.

218 c. No more than \$10 million for the low-scored site
219 initiative shall be encumbered from the Inland Protection Trust
220 Fund in any fiscal year. Funds shall be made available on a
221 first-come, first-served basis and shall be limited to 10 sites
222 in each fiscal year for each responsible party or property
223 owner.

224 ~~7. Concentrations of the petroleum products' chemicals of~~

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225 ~~concern in groundwater at the property boundary of the real~~
226 ~~property on which the petroleum contamination originates shall~~
227 ~~not exceed the criteria established pursuant to sub-subparagraph~~
228 ~~(5) (b) 7.a. Where appropriate, institutional or engineering~~
229 ~~controls meeting the requirements of subparagraph (5) (b) 4. may~~
230 ~~be required by the department to meet these criteria.~~

231 ~~8. The department is authorized to establish alternate~~
232 ~~cleanup target levels for onsite nonboundary wells pursuant to~~
233 ~~the criteria in subparagraph (5) (b) 8.~~

234 ~~9. A scientific evaluation that demonstrates that the~~
235 ~~boundary criteria in subparagraph 7. will not be exceeded and a~~
236 ~~1-year site-specific groundwater monitoring plan approved in~~
237 ~~advance by the department validates the scientific evaluation.~~
238 ~~If the boundary criteria in subparagraph 7. are exceeded at any~~
239 ~~time, the department may order an extension of the monitoring~~
240 ~~period for up to 12 additional months from the time of the~~
241 ~~excess reading. The department shall determine the adequacy of~~
242 ~~the groundwater monitoring system at a site. All wells required~~
243 ~~by the department pursuant to this paragraph shall be installed~~
244 ~~before the monitoring period begins.~~

245 ~~10. Costs associated with activities performed pursuant to~~
246 ~~this paragraph for sites which qualify for a determination of~~
247 ~~"No Further Action" under this paragraph shall not be~~
248 ~~reimbursable from the Inland Protection Trust Fund.~~

249 Section 2. The installation of fuel tank upgrades to
250 secondary containment systems shall be completed by the
251 deadlines specified in rule 62-761.510, Florida Administrative
252 Code, Table UST. For fuel service station facilities that have

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253 orders issued by the Department of Environmental Protection
254 before July 1, 2010, granting an extension to the deadline, the
255 deadline shall be extended to September 30, 2011. Such
256 facilities must be in compliance with all other state and
257 federal regulations pertaining to petroleum storage systems.

258 Section 3. This act shall take effect July 1, 2010.