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1 A bill to be entitled
2 An act relating to petroleum contamination site
3 cleanup; requiring the installation of fuel tank
4 upgrades to secondary containment systems to be
5 completed by specified deadlines; amending s.
6 376.3071, F.S.; revising provisions relating to
7 petroleum contamination site selection and cleanup
8 criteria; deleting obsolete provisions relating to
9 funding for limited interim soil-source removals;
10 requiring the Department of Environmental Protection
11 to utilize natural attenuation monitoring strategies
12 to transition sites into long-term natural attenuation
13 monitoring under specified conditions; providing for
14 natural attenuation and active remediation of sites;
15 requiring the department to evaluate certain costs and
16 strategies; prohibiting a local government from
17 denying any development permit based solely on the
18 presence of petroleum contamination for any
19 construction, repairs, or renovations performed in
20 conjunction with tank upgrade activity in an existing
21 retail fuel facility; requiring that such facility be
22 fully operational before the request for the building
23 permit; requiring that the construction, repairs, or
24 renovations be performed by a licensed contractor;
25 requiring that the construction, repairs, or
26 renovations performed in conjunction with such permit
27 comply with the applicable provisions of chs. 489 and
28 553, F.S.; providing an exception; establishing a low-
29 scored site initiative; providing conditions for

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30 participation; requiring the department to issue
31 certain determinations and orders; providing that
32 certain sites are eligible for payment of preapproved
33 costs; requiring assessment work to be completed
34 within a certain timeframe; providing payment and
35 funding limitations; deleting provisions relating to
36 nonreimbursable voluntary cleanup; providing an
37 effective date.

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. The installation of fuel tank upgrades to
42 secondary containment systems shall be completed by the
43 deadlines specified in rule 62-761.510, Florida Administrative
44 Code, Table UST. For fuel service station facilities that have
45 orders issued by the Department of Environmental Protection
46 before July 1, 2010, granting an extension to the deadline, the
47 deadline shall be extended to September 30, 2011. Such
48 facilities must be in compliance with all other state and
49 federal regulations pertaining to petroleum storage systems.

50 Section 2. Paragraph (c) of subsection (5) and paragraph
51 (b) of subsection (11) of section 376.3071, Florida Statutes,
52 are amended to read:

53 376.3071 Inland Protection Trust Fund; creation; purposes;
54 funding.—

55 (5) SITE SELECTION AND CLEANUP CRITERIA.—

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

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59 1. Funding for free product recovery may be provided in
60 advance of the order established by the priority ranking system
61 under paragraph (a) for site cleanup activities. However, a
62 separate prioritization for free product recovery shall be
63 established consistent with paragraph (a). No more than \$5
64 million shall be encumbered from the Inland Protection Trust
65 Fund in any fiscal year for free product recovery conducted in
66 advance of the priority order under paragraph (a) established
67 for site cleanup activities.

68 ~~2. Funding for limited interim soil-source removals for
69 sites that will become inaccessible for future remediation due
70 to road infrastructure and right-of-way restrictions resulting
71 from a pending Department of Transportation road construction
72 project or for secondary containment upgrading of underground
73 storage tanks required under chapter 62-761, Florida
74 Administrative Code, may be provided in advance of the order
75 established by the priority ranking system under paragraph (a)
76 for site cleanup activities. The department shall provide
77 written guidance on the limited source removal information and
78 technical evaluation necessary to justify a request for a
79 limited source removal in advance of the priority order pursuant
80 to paragraph (a) established for site cleanup activities.
81 Prioritization for limited source removal projects associated
82 with a secondary containment upgrade in any fiscal year shall be
83 determined on a first-come, first-served basis according to the
84 approval date issued under s. 376.30711 for the limited source
85 removal. Funding for limited source removals associated with
86 secondary containment upgrades shall be limited to 10 sites in
87 each fiscal year for each facility owner and any related person.~~

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88 ~~The limited source removal for secondary containment upgrades~~
89 ~~shall be completed no later than 6 months after the department~~
90 ~~issues its approval of the project, and the approval~~
91 ~~automatically expires at the end of the 6 months. Funding for~~
92 ~~Department of Transportation and secondary containment upgrade~~
93 ~~source removals may not exceed \$50,000 for a single facility~~
94 ~~unless the department makes a determination that it is cost-~~
95 ~~effective and environmentally beneficial to exceed this amount,~~
96 ~~but in no event shall the department authorize costs in excess~~
97 ~~of \$100,000 for a single facility. Department funding for~~
98 ~~limited interim soil source removals associated with Department~~
99 ~~of Transportation projects and secondary containment upgrades~~
100 ~~shall be limited to supplemental soil assessment, soil~~
101 ~~screening, soil removal, backfill material, treatment or~~
102 ~~disposal of the contaminated soil, dewatering related to the~~
103 ~~contaminated soil removal in an amount of up to 10 percent of~~
104 ~~the total interim soil source removal project costs, treatment,~~
105 ~~and disposal of the contaminated groundwater and preparation of~~
106 ~~the source removal report. No other costs associated with the~~
107 ~~facility upgrade may be paid with department funds. No more than~~
108 ~~\$1 million for Department of Transportation limited source~~
109 ~~removal projects and \$10 million for secondary containment~~
110 ~~upgrade limited source removal projects conducted in advance of~~
111 ~~the priority order established under paragraph (a) for site~~
112 ~~cleanup activities shall be encumbered from the Inland~~
113 ~~Protection Trust Fund in any fiscal year. This subparagraph is~~
114 ~~repealed effective June 30, 2010.~~

115 2.3. Once free product removal and other source removal
116 identified in this paragraph are completed at a site, and

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117 notwithstanding the order established by the priority ranking
118 system under paragraph (a) for site cleanup activities, the
119 department may reevaluate the site to determine the degree of
120 active cleanup needed to continue site rehabilitation. Further,
121 the department shall determine if the reevaluated site qualifies
122 for natural attenuation monitoring, long-term natural
123 attenuation monitoring, or no further action. If additional site
124 rehabilitation is necessary to reach no further action status,
125 the site rehabilitation shall be conducted in the order
126 established by the priority ranking system under paragraph (a).
127 ~~and~~ The department shall ~~is encouraged to~~ utilize natural
128 attenuation ~~and~~ monitoring strategies and, when cost-effective,
129 transition sites eligible for restoration funding assistance to
130 long-term natural attenuation monitoring where the plume is
131 shrinking or stable and confined to the source property
132 boundaries and the petroleum products' chemicals of concern meet
133 the natural attenuation default concentrations, as defined by
134 department rule. If the plume migrates beyond the source
135 property boundaries, natural attenuation monitoring may be
136 conducted in accordance with department rule, or if the site no
137 longer qualifies for natural attenuation monitoring, active
138 remediation may be resumed. For long-term natural attenuation
139 monitoring, if the petroleum products' chemicals of concern
140 increase or are not significantly reduced after 42 months of
141 monitoring, or if the plume migrates beyond the property
142 boundaries, active remediation shall be resumed as necessary.
143 For sites undergoing active remediation, the department shall
144 template the cost of natural attenuation monitoring pursuant to
145 s. 376.30711 to ensure that site mobilizations are performed in

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146 a cost-effective manner. Sites that are not eligible for state
147 restoration funding may transition to long-term natural
148 attenuation monitoring using the criteria in this subparagraph.
149 Nothing in this subparagraph precludes a site from pursuing a
150 "No Further Action" order with conditions ~~where site conditions~~
151 ~~warrant.~~

152 3. The department shall evaluate whether higher natural
153 attenuation default concentrations for natural attenuation
154 monitoring or long-term natural attenuation monitoring are cost-
155 effective and would adequately protect public health and the
156 environment. The department shall also evaluate site-specific
157 characteristics that would allow for higher natural attenuation
158 or long-term natural attenuation concentration levels.

159 4. A local government may not deny a building permit based
160 solely on the presence of petroleum contamination for any
161 construction, repairs, or renovations performed in conjunction
162 with tank upgrade activity in an existing retail fuel facility.
163 Such facility must have been fully operational prior to the
164 request for the building permit and any construction, repairs,
165 or renovations must be performed by a licensed contractor. All
166 building permits and any construction, repairs, or renovations
167 performed in conjunction with such permits must comply with the
168 applicable provisions of chapters 489 and 553.

169 (11)

170 (b) Low-scored site initiative ~~Nonreimbursable voluntary~~
171 ~~cleanup.~~ Notwithstanding s. 376.30711, any site ~~For sites with~~
172 ~~releases reported prior to January 1, 1995, the department shall~~
173 ~~issue a determination of "No Further Action" at sites ranked~~
174 ~~with a total~~ priority ranking score of 10 points or less may

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175 voluntarily participate in the low-scored site initiative,
176 whether or not the site is eligible for state restoration
177 funding.

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

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

186 b.2. No excessively contaminated soil, as defined by
187 department rule, exists onsite as a result of a release of
188 petroleum products.

189 c.3. A minimum of 6 months of groundwater monitoring
190 indicates that the plume is shrinking or stable ~~Public supply~~
191 ~~wells for consumptive use of water expected to be affected by~~
192 ~~the site shall not be located within a 1/2-mile radius of the~~
193 ~~site; private supply wells for consumptive use of water expected~~
194 ~~to be affected by the site shall not be located within a 1/4-~~
195 ~~mile radius of the site; and there must be no current or~~
196 ~~projected consumptive use of the water affected by the site for~~
197 ~~at least the following 3 years. Where appropriate, institutional~~
198 ~~controls meeting the requirements of subparagraph (5) (b) 4. may~~
199 ~~be required by the department to meet these criteria.~~

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

203 e.5. The area of groundwater containing the petroleum

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204 products' chemicals of concern ~~in concentrations greater than~~
205 ~~the boundary values defined in subparagraph 7.~~ is less than one-
206 quarter acre and is confined to the source property boundaries
207 of the real property on which the discharge originated.

208 ~~f.6.~~ Soils onsite that are subject to human exposure found
209 between land surface and 2 feet below land surface ~~shall~~ meet
210 the soil cleanup target levels ~~criteria~~ established by
211 department rule or human exposure is limited by pursuant to sub-
212 subparagraph (5)(b)9.a. Where appropriate, institutional or
213 engineering controls ~~meeting the requirements of subparagraph~~
214 ~~(5)(b)4.~~ may be required by the department to meet these
215 ~~criteria.~~

216 2. Upon affirmative demonstration of the conditions under
217 subparagraph 1., the department shall issue a determination of
218 "No Further Action." Such determination acknowledges that
219 minimal contamination exists onsite and that such contamination
220 is not a threat to human health or the environment. If no
221 contamination is detected, the department may issue a site
222 rehabilitation completion order.

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

226 a. A responsible party or property owner may submit an
227 assessment plan designed to affirmatively demonstrate that the
228 site meets the conditions under subparagraph 1. Notwithstanding
229 the priority ranking score of the site, the department may
230 preapprove the cost of the assessment pursuant to s. 376.30711,
231 including 6 months of groundwater monitoring, not to exceed
232 \$30,000 for each site. The department may not pay the costs

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233 associated with the establishment of institutional or
234 engineering controls.

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

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

243 ~~7. Concentrations of the petroleum products' chemicals of~~
244 ~~concern in groundwater at the property boundary of the real~~
245 ~~property on which the petroleum contamination originates shall~~
246 ~~not exceed the criteria established pursuant to sub-subparagraph~~
247 ~~(5)(b)7.a. Where appropriate, institutional or engineering~~
248 ~~controls meeting the requirements of subparagraph (5)(b)4. may~~
249 ~~be required by the department to meet these criteria.~~

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

253 ~~9. A scientific evaluation that demonstrates that the~~
254 ~~boundary criteria in subparagraph 7. will not be exceeded and a~~
255 ~~1-year site-specific groundwater monitoring plan approved in~~
256 ~~advance by the department validates the scientific evaluation.~~
257 ~~If the boundary criteria in subparagraph 7. are exceeded at any~~
258 ~~time, the department may order an extension of the monitoring~~
259 ~~period for up to 12 additional months from the time of the~~
260 ~~excess reading. The department shall determine the adequacy of~~
261 ~~the groundwater monitoring system at a site. All wells required~~

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262 ~~by the department pursuant to this paragraph shall be installed~~
263 ~~before the monitoring period begins.~~

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

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