

By Senator Evers

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1 A bill to be entitled
2 An act relating to contaminated sites; amending s.
3 376.301, F.S.; defining the terms "background
4 concentration" and "long-term natural attenuation";
5 amending s. 376.30701, F.S.; requiring the Department
6 of Environmental Protection to include protocols for
7 the use of long-term natural attenuation where site
8 conditions warrant; requiring specified interactive
9 effects of contaminants to be considered as cleanup
10 criteria; revising how cleanup target levels are
11 applied where surface waters are exposed to
12 contaminated groundwater; authorizing the use of
13 relevant data and information when assessing cleanup
14 target levels; providing that institutional controls
15 are not required under certain circumstances if using
16 alternative cleanup target levels; amending s.
17 287.0595, F.S.; conforming a cross-reference;
18 providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Present subsections (4) through (22) of section
23 376.301, Florida Statutes, are redesignated as subsections (5)
24 through (23), respectively, present subsections (23) through
25 (48) of that section are redesignated as subsections (25)
26 through (50), respectively, and new subsections (4) and (24) are
27 added to that section, to read:

28 376.301 Definitions of terms used in ss. 376.30-376.317,
29 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and

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30 376.75, unless the context clearly requires otherwise, the term:

31 (4) "Background concentration" means the concentration of
32 contaminants naturally occurring or resulting from the
33 anthropogenic impacts unrelated to the discharge of pollutants
34 or hazardous substances for which site rehabilitation is being
35 conducted.

36 (24) "Long-term natural attenuation" means natural
37 attenuation approved by the department as a site rehabilitation
38 program task for a period of more than 5 years.

39 Section 2. Subsection (2) of section 376.30701, Florida
40 Statutes, is amended to read:

41 376.30701 Application of risk-based corrective action
42 principles to contaminated sites; applicability; legislative
43 intent; rulemaking authority; contamination cleanup criteria;
44 limitations; reopeners.-

45 (2) INTENT; RULEMAKING AUTHORITY; CLEANUP CRITERIA.-It is
46 the intent of the Legislature to protect the health of all
47 people under actual circumstances of exposure. By July 1, 2004,
48 the secretary of the department shall establish criteria by rule
49 for the purpose of determining, on a site-specific basis, the
50 rehabilitation program tasks that comprise a site rehabilitation
51 program, including a voluntary site rehabilitation program, and
52 the level at which a rehabilitation program task and a site
53 rehabilitation program may be deemed completed. In establishing
54 these rules, the department shall apply, to the maximum extent
55 feasible, a risk-based corrective action process to achieve
56 protection of human health and safety and the environment in a
57 cost-effective manner based on the principles set forth in this
58 subsection. These rules shall prescribe a phased risk-based

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59 corrective action process that is iterative and that tailors
60 site rehabilitation tasks to site-specific conditions and risks.
61 The department and the person responsible for site
62 rehabilitation are encouraged to establish decision points at
63 which risk management decisions will be made. The department
64 shall provide an early decision, when requested, regarding
65 applicable exposure factors and a risk management approach based
66 on the current and future land use at the site. These rules must
67 ~~shall also~~ include protocols for the use of natural attenuation,
68 including long-term natural attenuation where site conditions
69 warrant, the use of institutional and engineering controls, and
70 the issuance of "No Further Action" orders. The criteria for
71 determining what constitutes a rehabilitation program task or
72 completion of a site rehabilitation program task or site
73 rehabilitation program, including a voluntary site
74 rehabilitation program, must:

75 (a) Consider the current exposure and potential risk of
76 exposure to humans and the environment, including multiple
77 pathways of exposure. The physical, chemical, and biological
78 characteristics of each contaminant must be considered in order
79 to determine the feasibility of a risk-based corrective action
80 assessment.

81 (b) Establish the point of compliance at the source of the
82 contamination. However, the department is authorized to
83 temporarily move the point of compliance to the boundary of the
84 property, or to the edge of the plume when the plume is within
85 the property boundary, while cleanup, including cleanup through
86 natural attenuation processes in conjunction with appropriate
87 monitoring, is proceeding. The department may also is

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88 ~~authorized~~, pursuant to criteria provided in this section, ~~to~~
89 temporarily extend the point of compliance beyond the property
90 boundary with appropriate monitoring, if such extension is
91 needed to facilitate natural attenuation or to address the
92 current conditions of the plume, provided human health, public
93 safety, and the environment are protected. When temporarily
94 extending the point of compliance beyond the property boundary,
95 it cannot be extended further than the lateral extent of the
96 plume, if known, at the time of execution of a cleanup
97 agreement, if required, or the lateral extent of the plume as
98 defined at the time of site assessment. Temporary extension of
99 the point of compliance beyond the property boundary, as
100 provided in this paragraph, must include actual notice by the
101 person responsible for site rehabilitation to local governments
102 and the owners of any property into which the point of
103 compliance is allowed to extend and constructive notice to
104 residents and business tenants of the property into which the
105 point of compliance is allowed to extend. Persons receiving
106 notice pursuant to this paragraph shall have the opportunity to
107 comment within 30 days after receipt of the notice. Additional
108 notice concerning the status of natural attenuation processes
109 shall be similarly provided to persons receiving notice pursuant
110 to this paragraph every 5 years.

111 (c) Ensure that the site-specific cleanup goal is that all
112 contaminated sites being cleaned up pursuant to this section
113 ultimately achieve the applicable cleanup target levels provided
114 in this subsection. In the circumstances provided in this
115 subsection, and after constructive notice and opportunity to
116 comment within 30 days after receipt of the notice to local

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117 government, owners of any property into which the point of
118 compliance is allowed to extend, and residents of any property
119 into which the point of compliance is allowed to extend, the
120 department may allow concentrations of contaminants to
121 temporarily exceed the applicable cleanup target levels while
122 cleanup, including cleanup through natural attenuation processes
123 in conjunction with appropriate monitoring, is proceeding, if
124 human health, public safety, and the environment are protected.

125 (d) Allow the use of institutional or engineering controls
126 at contaminated sites being cleaned up pursuant to this section,
127 where appropriate, to eliminate or control the potential
128 exposure to contaminants of humans or the environment. The use
129 of controls must be preapproved by the department and only after
130 constructive notice and opportunity to comment within 30 days
131 after receipt of notice is provided to local governments, owners
132 of any property into which the point of compliance is allowed to
133 extend, and residents on any property into which the point of
134 compliance is allowed to extend. When institutional or
135 engineering controls are implemented to control exposure, the
136 removal of the controls must have prior department approval and
137 must be accompanied by the resumption of active cleanup, or
138 other approved controls, unless cleanup target levels under this
139 section have been achieved.

140 (e) Consider the interactive ~~additive~~ effects of
141 contaminants, including additive, synergistic, and antagonistic
142 effects. ~~The synergistic and antagonistic effects shall also be~~
143 ~~considered when the scientific data become available.~~

144 (f) Take into consideration individual site
145 characteristics, which shall include, but not be limited to, the

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146 current and projected use of the affected groundwater and
147 surface water in the vicinity of the site, current and projected
148 land uses of the area affected by the contamination, the exposed
149 population, the degree and extent of contamination, the rate of
150 contaminant migration, the apparent or potential rate of
151 contaminant degradation through natural attenuation processes,
152 the location of the plume, and the potential for further
153 migration in relation to site property boundaries.

154 (g) Apply state water quality standards as follows:

155 1. Cleanup target levels for each contaminant found in
156 groundwater shall be the applicable state water quality
157 standards. Where such standards do not exist, the cleanup target
158 levels for groundwater shall be based on the minimum criteria
159 specified in department rule. The department shall apply the
160 following, as appropriate, in establishing the applicable
161 cleanup target levels: calculations using a lifetime cancer risk
162 level of 1.0E-6; a hazard index of 1 or less; the best
163 achievable detection limit; and nuisance, organoleptic, and
164 aesthetic considerations. However, the department may not ~~shall~~
165 ~~not~~ require site rehabilitation to achieve a cleanup target
166 level for any individual contaminant that is more stringent than
167 the site-specific, ~~naturally occurring~~ background concentration
168 for that contaminant.

169 2. Where surface waters are exposed to contaminated
170 groundwater, the cleanup target levels for the contaminants must
171 ~~shall~~ be based on the more protective of the groundwater or
172 surface water standards as established by department rule,
173 unless it has been demonstrated that the contaminants do not
174 cause or contribute to the exceedance of applicable surface

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175 water quality criteria. In such circumstance, the point of
176 measuring compliance with the surface water standards shall be
177 in the groundwater immediately adjacent to the surface water
178 body.

179 3. Using risk-based corrective action principles, the
180 department shall approve alternative cleanup target levels in
181 conjunction with institutional and engineering controls, if
182 needed, based upon an applicant's demonstration, using site-
183 specific or other relevant data and information, risk assessment
184 modeling results, including results from probabilistic risk
185 assessment modeling, risk assessment studies, risk reduction
186 techniques, or a combination thereof, that human health, public
187 safety, and the environment are protected to the same degree as
188 provided in subparagraphs 1. and 2. Where a state water quality
189 standard is applicable, a deviation may not result in the
190 application of cleanup target levels more stringent than the
191 standard. In determining whether it is appropriate to establish
192 alternative cleanup target levels at a site, the department must
193 consider the effectiveness of source removal, if any, that has
194 been completed at the site and the practical likelihood of the
195 use of low yield or poor quality groundwater, the use of
196 groundwater near marine surface water bodies, the current and
197 projected use of the affected groundwater in the vicinity of the
198 site, or the use of groundwater in the immediate vicinity of the
199 contaminated area, where it has been demonstrated that the
200 groundwater contamination is not migrating away from such
201 localized source, provided human health, public safety, and the
202 environment are protected. Groundwater resource protection
203 remains the ultimate goal of cleanup, particularly in light of

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204 the state's continued growth and consequent demands for drinking
205 water resources. The Legislature recognizes the need for a
206 protective yet flexible cleanup approach that risk-based
207 corrective action provides. Only where it is appropriate on a
208 site-specific basis, using the criteria in this paragraph and
209 careful evaluation by the department, shall proposed alternative
210 cleanup target levels be approved. If alternative cleanup target
211 levels are used, institutional controls are not required if:

212 a. The only cleanup target levels exceeded are the
213 groundwater cleanup target levels derived from nuisance,
214 organoleptic, or aesthetic considerations;

215 b. Concentrations of all contaminants meet the state water
216 quality standards or the minimum criteria, based on the
217 protection of human health, public safety, and the environment,
218 as provided in subparagraph 1.;

219 c. All of the groundwater cleanup target levels established
220 pursuant to subparagraph 1. are met at the property boundary;

221 d. The person responsible for site rehabilitation has
222 demonstrated that the contaminants will not migrate beyond the
223 property boundary at concentrations that exceed the groundwater
224 cleanup target levels established pursuant to subparagraph 1.;

225 e. The property has access to and is using an offsite water
226 supply, and an unplugged private well is not used for domestic
227 purposes; and

228 f. The property owner does not object to the "No Further
229 Action" proposal to the department or the local pollution
230 control program.

231 (h) Provide for the department to issue a "No Further
232 Action" order, with conditions, including, but not limited to,

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233 the use of institutional or engineering controls where
234 appropriate, when alternative cleanup target levels established
235 pursuant to subparagraph (g)3. have been achieved or when the
236 person responsible for site rehabilitation can demonstrate that
237 the cleanup target level is unachievable with the use of
238 available technologies. Before ~~Prior to~~ issuing such an order,
239 the department shall consider the feasibility of an alternative
240 site rehabilitation technology at the contaminated site.

241 (i) Establish appropriate cleanup target levels for soils.
242 Although there are existing state water quality standards, there
243 are no existing state soil quality standards. The Legislature
244 does not intend, through the adoption of this section, to create
245 such soil quality standards. The specific rulemaking authority
246 granted pursuant to this section merely authorizes the
247 department to establish appropriate soil cleanup target levels.
248 These soil cleanup target levels shall be applicable at sites
249 only after a determination as to legal responsibility for site
250 rehabilitation has been made pursuant to other provisions of
251 this chapter or chapter 403.

252 1. In establishing soil cleanup target levels for human
253 exposure to each contaminant found in soils from the land
254 surface to 2 feet below land surface, the department shall apply
255 the following, as appropriate: calculations using a lifetime
256 cancer risk level of 1.0E-6; a hazard index of 1 or less; and
257 the best achievable detection limit. However, the department may
258 ~~shall~~ not require site rehabilitation to achieve a cleanup
259 target level for an individual contaminant that is more
260 stringent than the site-specific, ~~naturally occurring~~ background
261 concentration for that contaminant. Institutional controls or

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262 other methods shall be used to prevent human exposure to
263 contaminated soils more than 2 feet below the land surface. Any
264 removal of such institutional controls shall require such
265 contaminated soils to be remediated.

266 2. Leachability-based soil cleanup target levels shall be
267 based on protection of the groundwater cleanup target levels or
268 the alternate cleanup target levels for groundwater established
269 pursuant to this paragraph, as appropriate. Source removal and
270 other cost-effective alternatives that are technologically
271 feasible shall be considered in achieving the leachability soil
272 cleanup target levels established by the department. The
273 leachability goals are ~~shall~~ not be applicable if the department
274 determines, based upon individual site characteristics, and in
275 conjunction with institutional and engineering controls, if
276 needed, that contaminants will not leach into the groundwater at
277 levels that pose a threat to human health, public safety, and
278 the environment.

279 3. Using risk-based corrective action principles, the
280 department shall approve alternative cleanup target levels in
281 conjunction with institutional and engineering controls, if
282 needed, based upon an applicant's demonstration, using site-
283 specific or other relevant data and information, risk assessment
284 modeling results, including results from probabilistic risk
285 assessment modeling, risk assessment studies, risk reduction
286 techniques, or a combination thereof, that human health, public
287 safety, and the environment are protected to the same degree as
288 provided in subparagraphs 1. and 2.

289
290 The department shall require source removal as a risk reduction

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291 measure if warranted and cost-effective. Once source removal at
292 a site is complete, the department shall reevaluate the site to
293 determine the degree of active cleanup needed to continue.
294 Further, the department shall determine if the reevaluated site
295 qualifies for monitoring only or if no further action is
296 required to rehabilitate the site. If additional site
297 rehabilitation is necessary to reach "No Further Action" status,
298 the department is encouraged to utilize natural attenuation
299 monitoring, including long-term natural attenuation and
300 monitoring, where site conditions warrant.

301 Section 3. Paragraph (a) of subsection (1) of section
302 287.0595, Florida Statutes, is amended to read:

303 287.0595 Pollution response action contracts; department
304 rules.—

305 (1) The Department of Environmental Protection shall
306 establish, by adopting administrative rules as provided in
307 chapter 120:

308 (a) Procedures for determining the qualifications of
309 responsible potential vendors before ~~prior to~~ advertisement for
310 and receipt of bids, proposals, or replies for pollution
311 response action contracts, including procedures for the
312 rejection of unqualified vendors. Response actions are those
313 activities described in s. 376.301(41) ~~s. 376.301(39)~~.

314 Section 4. This act shall take effect July 1, 2015.