

CS/CS/HB 841

2015

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. Subsections (4) through (22) and subsections
23 (23) through (48) of section 376.301, Florida Statutes, are
24 renumbered as subsections (5) through (23) and subsections (25)
25 through (50), respectively, and new subsections (4) and (24) are
26 added to that section, to read:

27 376.301 Definitions of terms used in ss. 376.30-376.317,
28 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
29 376.75, unless the context clearly requires otherwise, the term:

30 (4) "Background concentration" means the concentration of
31 contaminants naturally occurring or resulting from anthropogenic
32 impacts unrelated to the discharge of pollutants or hazardous
33 substances at a contaminated site undergoing site
34 rehabilitation.

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

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

40 376.30701 Application of risk-based corrective action
41 principles to contaminated sites; applicability; legislative
42 intent; rulemaking authority; contamination cleanup criteria;
43 limitations; reopeners.—

44 (2) INTENT; RULEMAKING AUTHORITY; CLEANUP CRITERIA.—It is
45 the intent of the Legislature to protect the health of all
46 people under actual circumstances of exposure. By July 1, 2004,
47 the secretary of the department shall establish criteria by rule
48 for the purpose of determining, on a site-specific basis, the
49 rehabilitation program tasks that comprise a site rehabilitation
50 program, including a voluntary site rehabilitation program, and
51 the level at which a rehabilitation program task and a site
52 rehabilitation program may be deemed completed. In establishing

53 | these rules, the department shall apply, to the maximum extent
54 | feasible, a risk-based corrective action process to achieve
55 | protection of human health and safety and the environment in a
56 | cost-effective manner based on the principles set forth in this
57 | subsection. These rules shall prescribe a phased risk-based
58 | corrective action process that is iterative and that tailors
59 | site rehabilitation tasks to site-specific conditions and risks.
60 | The department and the person responsible for site
61 | rehabilitation are encouraged to establish decision points at
62 | which risk management decisions will be made. The department
63 | shall provide an early decision, when requested, regarding
64 | applicable exposure factors and a risk management approach based
65 | on the current and future land use at the site. These rules must
66 | ~~shall also~~ include protocols for the use of natural attenuation,
67 | including long-term natural attenuation where site conditions
68 | warrant, the use of institutional and engineering controls, and
69 | the issuance of "No Further Action" orders. The criteria for
70 | determining what constitutes a rehabilitation program task or
71 | completion of a site rehabilitation program task or site
72 | rehabilitation program, including a voluntary site
73 | rehabilitation program, must:

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

79 assessment.

80 (b) Establish the point of compliance at the source of the
81 contamination. However, the department is authorized to
82 temporarily move the point of compliance to the boundary of the
83 property, or to the edge of the plume when the plume is within
84 the property boundary, while cleanup, including cleanup through
85 natural attenuation processes in conjunction with appropriate
86 monitoring, is proceeding. The department may ~~also is~~
87 ~~authorized~~, pursuant to criteria provided in this section, ~~to~~
88 temporarily extend the point of compliance beyond the property
89 boundary with appropriate monitoring, if such extension is
90 needed to facilitate natural attenuation or to address the
91 current conditions of the plume, provided human health, public
92 safety, and the environment are protected. When temporarily
93 extending the point of compliance beyond the property boundary,
94 it cannot be extended further than the lateral extent of the
95 plume, if known, at the time of execution of a cleanup
96 agreement, if required, or the lateral extent of the plume as
97 defined at the time of site assessment. Temporary extension of
98 the point of compliance beyond the property boundary, as
99 provided in this paragraph, must include actual notice by the
100 person responsible for site rehabilitation to local governments
101 and the owners of any property into which the point of
102 compliance is allowed to extend and constructive notice to
103 residents and business tenants of the property into which the
104 point of compliance is allowed to extend. Persons receiving

105 notice pursuant to this paragraph shall have the opportunity to
106 comment within 30 days after receipt of the notice. Additional
107 notice concerning the status of natural attenuation processes
108 shall be similarly provided to persons receiving notice pursuant
109 to this paragraph every 5 years.

110 (c) Ensure that the site-specific cleanup goal is that all
111 contaminated sites being cleaned up pursuant to this section
112 ultimately achieve the applicable cleanup target levels provided
113 in this subsection. In the circumstances provided in this
114 subsection, and after constructive notice and opportunity to
115 comment within 30 days after receipt of the notice to local
116 government, owners of any property into which the point of
117 compliance is allowed to extend, and residents of any property
118 into which the point of compliance is allowed to extend, the
119 department may allow concentrations of contaminants to
120 temporarily exceed the applicable cleanup target levels while
121 cleanup, including cleanup through natural attenuation processes
122 in conjunction with appropriate monitoring, is proceeding, if
123 human health, public safety, and the environment are protected.

124 (d) Allow the use of institutional or engineering controls
125 at contaminated sites being cleaned up pursuant to this section,
126 where appropriate, to eliminate or control the potential
127 exposure to contaminants of humans or the environment. The use
128 of controls must be preapproved by the department and only after
129 constructive notice and opportunity to comment within 30 days
130 after receipt of notice is provided to local governments, owners

131 of any property into which the point of compliance is allowed to
 132 extend, and residents on any property into which the point of
 133 compliance is allowed to extend. When institutional or
 134 engineering controls are implemented to control exposure, the
 135 removal of the controls must have prior department approval and
 136 must be accompanied by the resumption of active cleanup, or
 137 other approved controls, unless cleanup target levels under this
 138 section have been achieved.

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

143 (f) Take into consideration individual site
 144 characteristics, which shall include, but not be limited to, the
 145 current and projected use of the affected groundwater and
 146 surface water in the vicinity of the site, current and projected
 147 land uses of the area affected by the contamination, the exposed
 148 population, the degree and extent of contamination, the rate of
 149 contaminant migration, the apparent or potential rate of
 150 contaminant degradation through natural attenuation processes,
 151 the location of the plume, and the potential for further
 152 migration in relation to site property boundaries.

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

- 154 1. Cleanup target levels for each contaminant found in
 155 groundwater shall be the applicable state water quality
 156 standards. Where such standards do not exist, the cleanup target

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

168 2. Where surface waters are exposed to contaminated
169 groundwater, the cleanup target levels for the contaminants must
170 ~~shall~~ be based on the more protective of the groundwater or
171 surface water standards as established by department rule,
172 unless it has been demonstrated that the contaminants do not
173 cause or contribute to the exceedance of applicable surface
174 water quality criteria. In such circumstance, the point of
175 measuring compliance with the surface water standards shall be
176 in the groundwater immediately adjacent to the surface water
177 body.

178 3. Using risk-based corrective action principles, the
179 department shall approve alternative cleanup target levels in
180 conjunction with institutional and engineering controls, if
181 needed, based upon an applicant's demonstration, using site-
182 specific or other relevant data and information, risk assessment

183 modeling results, including results from probabilistic risk
184 assessment modeling, risk assessment studies, risk reduction
185 techniques, or a combination thereof, that human health, public
186 safety, and the environment are protected to the same degree as
187 provided in subparagraphs 1. and 2. Where a state water quality
188 standard is applicable, a deviation may not result in the
189 application of cleanup target levels more stringent than the
190 standard. In determining whether it is appropriate to establish
191 alternative cleanup target levels at a site, the department must
192 consider the effectiveness of source removal, if any, that has
193 been completed at the site and the practical likelihood of the
194 use of low yield or poor quality groundwater, the use of
195 groundwater near marine surface water bodies, the current and
196 projected use of the affected groundwater in the vicinity of the
197 site, or the use of groundwater in the immediate vicinity of the
198 contaminated area, where it has been demonstrated that the
199 groundwater contamination is not migrating away from such
200 localized source, provided human health, public safety, and the
201 environment are protected. Groundwater resource protection
202 remains the ultimate goal of cleanup, particularly in light of
203 the state's continued growth and consequent demands for drinking
204 water resources. The Legislature recognizes the need for a
205 protective yet flexible cleanup approach that risk-based
206 corrective action provides. Only where it is appropriate on a
207 site-specific basis, using the criteria in this paragraph and
208 careful evaluation by the department, shall proposed alternative

209 cleanup target levels be approved. If alternative cleanup target
210 levels are used, institutional controls are not required if:

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

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

218 c. All of the groundwater cleanup target levels
219 established pursuant to subparagraph 1. are met at the property
220 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
226 water supply, and an unplugged private well is not used for
227 domestic 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,
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
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.

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290 The department shall require source removal as a risk reduction
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

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313 | activities described in s. 376.301(41) ~~s. 376.301(39)~~.

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