

1                                   A bill to be entitled  
2           An act relating to environmental protection; amending  
3           s. 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          381.0065, F.S., and repealing s. 51, chapter 2015-222,  
18          Laws of Florida; deleting the prohibition of the land  
19          application of septage from onsite sewage treatment  
20          and disposal systems and abrogating the scheduled  
21          reversion of amendments to s. 381.0065(6), F.S.;  
22          amending s. 287.0595, F.S.; conforming a cross-  
23          reference; providing effective dates.

24  
25   Be It Enacted by the Legislature of the State of Florida:  
26

27 Section 1. Subsections (4) through (22) and subsections  
 28 (23) through (48) of section 376.301, Florida Statutes, are  
 29 renumbered as subsections (5) through (23) and subsections (25)  
 30 through (50), respectively, and new subsections (4) and (24) are  
 31 added to that section, to read:

32 376.301 Definitions of terms used in ss. 376.30-376.317,  
 33 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and  
 34 376.75, unless the context clearly requires otherwise, the term:

35 (4) "Background concentration" means the concentration of  
 36 contaminants naturally occurring or resulting from anthropogenic  
 37 impacts unrelated to the discharge of pollutants or hazardous  
 38 substances at a contaminated site undergoing site  
 39 rehabilitation.

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

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

45 376.30701 Application of risk-based corrective action  
 46 principles to contaminated sites; applicability; legislative  
 47 intent; rulemaking authority; contamination cleanup criteria;  
 48 limitations; reopeners.—

49 (2) INTENT; RULEMAKING AUTHORITY; CLEANUP CRITERIA.—It is  
 50 the intent of the Legislature to protect the health of all  
 51 people under actual circumstances of exposure. By July 1, 2004,  
 52 the secretary of the department shall establish criteria by rule

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

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

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

105 person responsible for site rehabilitation to local governments  
106 and the owners of any property into which the point of  
107 compliance is allowed to extend and constructive notice to  
108 residents and business tenants of the property into which the  
109 point of compliance is allowed to extend. Persons receiving  
110 notice pursuant to this paragraph shall have the opportunity to  
111 comment within 30 days after receipt of the notice. Additional  
112 notice concerning the status of natural attenuation processes  
113 shall be similarly provided to persons receiving notice pursuant  
114 to this paragraph every 5 years.

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

129 (d) Allow the use of institutional or engineering controls  
130 at contaminated sites being cleaned up pursuant to this section,

131 where appropriate, to eliminate or control the potential  
132 exposure to contaminants of humans or the environment. The use  
133 of controls must be preapproved by the department and only after  
134 constructive notice and opportunity to comment within 30 days  
135 after receipt of notice is provided to local governments, owners  
136 of any property into which the point of compliance is allowed to  
137 extend, and residents on any property into which the point of  
138 compliance is allowed to extend. When institutional or  
139 engineering controls are implemented to control exposure, the  
140 removal of the controls must have prior department approval and  
141 must be accompanied by the resumption of active cleanup, or  
142 other approved controls, unless cleanup target levels under this  
143 section have been achieved.

144 (e) Consider the interactive ~~additive~~ effects of  
145 contaminants, including additive, synergistic, and antagonistic  
146 effects. ~~The synergistic and antagonistic effects shall also be~~  
147 ~~considered when the scientific data become available.~~

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

157 migration in relation to site property boundaries.

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

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

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

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

209 water resources. The Legislature recognizes the need for a  
210 protective yet flexible cleanup approach that risk-based  
211 corrective action provides. Only where it is appropriate on a  
212 site-specific basis, using the criteria in this paragraph and  
213 careful evaluation by the department, shall proposed alternative  
214 cleanup target levels be approved. If alternative cleanup target  
215 levels are used, institutional controls are not required if:

216 a. The only cleanup target levels exceeded are the  
217 groundwater cleanup target levels derived from nuisance,  
218 organoleptic, or aesthetic considerations;

219 b. Concentrations of all contaminants meet the state water  
220 quality standards or the minimum criteria, based on the  
221 protection of human health, public safety, and the environment,  
222 as provided in subparagraph 1.;

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

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

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

233 f. The property owner does not object to the "No Further  
234 Action" proposal to the department or the local pollution

235 control program.

236 (h) Provide for the department to issue a "No Further  
237 Action" order, with conditions, including, but not limited to,  
238 the use of institutional or engineering controls where  
239 appropriate, when alternative cleanup target levels established  
240 pursuant to subparagraph (g)3. have been achieved or when the  
241 person responsible for site rehabilitation can demonstrate that  
242 the cleanup target level is unachievable with the use of  
243 available technologies. Before ~~Prior to~~ issuing such an order,  
244 the department shall consider the feasibility of an alternative  
245 site rehabilitation technology at the contaminated site.

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

257 1. In establishing soil cleanup target levels for human  
258 exposure to each contaminant found in soils from the land  
259 surface to 2 feet below land surface, the department shall apply  
260 the following, as appropriate: calculations using a lifetime

261 cancer risk level of 1.0E-6; a hazard index of 1 or less; and  
262 the best achievable detection limit. However, the department may  
263 ~~shall~~ not require site rehabilitation to achieve a cleanup  
264 target level for an individual contaminant that is more  
265 stringent than the site-specific, ~~naturally occurring~~ background  
266 concentration for that contaminant. Institutional controls or  
267 other methods shall be used to prevent human exposure to  
268 contaminated soils more than 2 feet below the land surface. Any  
269 removal of such institutional controls shall require such  
270 contaminated soils to be remediated.

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

284 3. Using risk-based corrective action principles, the  
285 department shall approve alternative cleanup target levels in  
286 conjunction with institutional and engineering controls, if

287 needed, based upon an applicant's demonstration, using site-  
288 specific or other relevant data and information, risk assessment  
289 modeling results, including results from probabilistic risk  
290 assessment modeling, risk assessment studies, risk reduction  
291 techniques, or a combination thereof, that human health, public  
292 safety, and the environment are protected to the same degree as  
293 provided in subparagraphs 1. and 2.

294  
295 The department shall require source removal as a risk reduction  
296 measure if warranted and cost-effective. Once source removal at  
297 a site is complete, the department shall reevaluate the site to  
298 determine the degree of active cleanup needed to continue.

299 Further, the department shall determine if the reevaluated site  
300 qualifies for monitoring only or if no further action is  
301 required to rehabilitate the site. If additional site  
302 rehabilitation is necessary to reach "No Further Action" status,  
303 the department is encouraged to utilize natural attenuation  
304 monitoring, including long-term natural attenuation and  
305 monitoring, where site conditions warrant.

306 Section 3. Effective June 30, 2016, subsection (6) of  
307 section 381.0065, Florida Statutes, is amended to read:

308 ~~(6) LAND APPLICATION OF SEPTAGE PROHIBITED. Effective June~~  
309 ~~30, 2016, the land application of septage from onsite sewage~~  
310 ~~treatment and disposal systems is prohibited.~~

311 Section 4. Effective June 30, 2016, section 51 of chapter  
312 2015-222, Laws of Florida, is repealed.

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313 Section 4. Paragraph (a) of subsection (1) of section  
314 287.0595, Florida Statutes, is amended to read:

315 287.0595 Pollution response action contracts; department  
316 rules.—

317 (1) The Department of Environmental Protection shall  
318 establish, by adopting administrative rules as provided in  
319 chapter 120:

320 (a) Procedures for determining the qualifications of  
321 responsible potential vendors before ~~prior to~~ advertisement for  
322 and receipt of bids, proposals, or replies for pollution  
323 response action contracts, including procedures for the  
324 rejection of unqualified vendors. Response actions are those  
325 activities described in s. 376.301(39) ~~s. 376.301(37)~~.

326 Section 5. Except as otherwise expressly provided in this  
327 act and except for this section, which shall take effect upon  
328 this act becoming a law, this act shall take effect July 1,  
329 2016.