

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 609 Petroleum Restoration

SPONSOR(S): Agriculture & Natural Resources Subcommittee, Agriculture & Natural Resources Appropriations Subcommittee, Perez

TIED BILLS: **IDEN./SIM. BILLS:** SB 702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 0 N, As CS	Mears	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N	White	Pigott
3) State Affairs Committee			

SUMMARY ANALYSIS

The Petroleum Restoration Program within the Department of Environmental Protection (DEP) establishes the requirements and procedures for cleaning up petroleum-contaminated land, as well as the circumstances under which the state will pay for the cleanup. To receive rehabilitation funding assistance, a site must qualify for one of the Petroleum Cleanup Eligibility Programs. The Petroleum Cleanup Participation Program (PCPP) is a cost-sharing cleanup program for property contaminated by discharges of petroleum or petroleum products from a petroleum storage system that occurred before January 1, 1995. As part of the PCPP application process, the owner or responsible party must prepare and provide DEP with a limited contamination assessment report sufficient to determine the extent of the contamination and cleanup and must agree to pay a 25 percent copayment. The copayment percentage may be reduced or eliminated if the owner or responsible party demonstrates an inability to pay.

The Advanced Cleanup Program (Advanced Cleanup) allows eligible sites to receive state rehabilitation funding in advance of the site's priority ranking to encourage redevelopment and facilitate property transactions or public works projects. Applications for Advanced Cleanup must include a cost-sharing commitment in addition to the 25-percent-copayment requirement. An applicant may demonstrate his or her cost-sharing commitment by proposing either a commitment to pay, a demonstrated cost savings to DEP, or both. The application must be accompanied by a \$250 nonrefundable review fee, a limited contamination assessment report, a proposed course of action, and a site access agreement.

For PCPP participation, the bill requires the limited contamination assessment report to be sufficient to support the proposed course of action and to estimate the cost. The bill allows an applicant for PCPP to provide for a 25 percent cost savings by using a co-payment by the owner, operator, or responsible party or by demonstrating a cost savings to DEP through reduced rates by the proposed agency term contractor or the difference in cost associated with the site closure. The bill also removes the provision that allows applicants to reduce or eliminate costs associated with the limited contamination assessment report and the copayment costs if the applicant demonstrates an inability to pay.

The bill revises the requirements for participation in Advanced Cleanup by removing the requirement that the property owner or responsible party submit a limited contamination assessment report as part of the application. Instead, the applicant must submit an agreement to continue to participate in Advanced Cleanup, if selected, upon the completion of the limited contamination assessment and finalization of the proposed course of action. Upon acceptance of an application, the property owner or responsible party's selected agency term contractor must submit a scope of work for the limited contamination assessment to DEP. The bill requires DEP to pay for the limited contamination assessment up to a certain amount.

The bill may have an indeterminate fiscal impact on the state that can be absorbed within existing resources but does not appear to have a fiscal impact on local governments. The bill may also have an indeterminate fiscal impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Petroleum Restoration Program

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices. These discharges pose a significant threat to groundwater quality,¹ the source of 90 percent of Florida's drinking water.² The identification and cleanup of petroleum contamination is particularly challenging due to Florida's diverse geology, diverse water systems, and the complex dynamics between contaminants and the environment.

In 1983, Florida began enacting legislation to regulate underground and aboveground storage tank systems in an effort to protect Florida's groundwater from past and future petroleum releases.³ The Department of Environmental Protection (DEP) regulates these storage tank systems.⁴ Further, DEP may establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of areas contaminated by leaking underground petroleum storage tanks.⁵ The Petroleum Restoration Program (PRP) establishes the requirements and procedures for cleaning up contaminated land, as well as the circumstances under which the state will pay for the cleanup.⁶

To fund the cleanup of contaminated petroleum sites, the Legislature created the Inland Protection Trust Fund (IPTF).⁷ The state levies an excise tax on each barrel of petroleum and petroleum products produced in or imported into the state to fund the IPTF.⁸ The state determines the amount of the excise tax for each barrel based on a formula that is dependent upon the unobligated balance of the IPTF.⁹ Each year, the Legislature deposits over \$200 million from the excise tax into the IPTF.¹⁰

The owner of contaminated land or the person who caused the discharge is responsible for rehabilitating the land, unless the site owner can show that the contamination resulted from the activities of a previous owner or other third party (responsible party), who is then responsible.¹¹ Over the years, DEP has implemented different programs to provide state financial assistance to certain eligible site owners and responsible parties for site rehabilitation.¹² To receive rehabilitation funding assistance, a site must qualify for one of the following Petroleum Cleanup Eligibility Programs:

- Abandoned Tank Restoration Program (ATRP), s. 376.305(6), F.S.
 - Innocent Victim Petroleum Storage System Restoration Program (IVPSSRP), s. 376.30715, F.S.
 - Indigent ATRP, s. 376.305(6), F.S.
- Early Detection Incentive Program (EDI), s. 376.3071(10), F.S.

¹ U.S. Environmental Protection Agency, *Underground Storage Tanks (USTs)*, available at <https://www.epa.gov/ust> (last visited Dec. 20, 2019).

² South Florida Water Management District, *Groundwater Modeling*, available at <https://www.sfwmd.gov/science-data/gw-modeling> (last visited Dec. 20, 2019).

³ Chapter 83-310, Laws of Fla.

⁴ Sections 376.30(3) and 376.303, F.S.

⁵ Section 376.3071(5), F.S.

⁶ DEP, *Petroleum Restoration Program*, available at <https://floridadep.gov/Waste/Petroleum-Restoration> (last visited Dec. 12, 2019).

⁷ Section 376.3071(3)-(4), F.S.

⁸ Sections 206.9935(3) and 376.3071(7), F.S.

⁹ The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between \$100 million and \$150 million; 60 cents if the unobligated balance is above \$50 million, but below \$100 million; and 80 cents if the unobligated balance is \$50 million or less. Section 206.9935(3), F.S.

¹⁰ DEP, *SOP – 1. Introduction*, available at <https://floridadep.gov/waste/petroleum-restoration/content/sop-1-introduction> (last visited Dec. 19, 2019).

¹¹ Section 376.308, F.S.

¹² Section 376.3071(12)(a), F.S.

- Petroleum Liability and Restoration Insurance Program (PLRIP), s. 376.3072, F.S.
- Petroleum Cleanup Participation Program (PCPP), s. 376.3071, F.S.

The ultimate goal for any contaminated site is for DEP to issue it a “No Further Action” (NFA) order. Upon discovery of a contaminant, DEP must be notified.¹³ Once a responsible party completes a site assessment, it has three Risk Management Options (RMOs) available to perform site rehabilitation to achieve a NFA order.¹⁴ Under the RMO options, the responsible party must either rehabilitate the site to the default cleanup target levels (CTLs)¹⁵ or to alternative CTLs established through a risk assessment.

Under RMO I, DEP will issue a NFA order without institutional controls or without institutional and engineering controls if the exposure point concentration (EPC) for all detected chemicals does not exceed the less stringent of their corresponding default residential CTLs, the background concentration, or the best achievable detection limits.¹⁶ Under RMO II and RMO III, DEP will grant a NFA order, subject to institutional controls,¹⁷ and if appropriate, engineering controls,¹⁸ if the EPCs for all detected chemicals do not exceed default commercial/industrial CTLs or alternative CTLs adjusted for site-specific geologic or hydrogeologic conditions.¹⁹ NFA orders usually result in reduced remediation costs and allow for contaminated site closures when remediation efforts have reached a diminishing return.

Petroleum Cleanup Participation Program

In 1996, the Legislature created PCPP to implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products from a petroleum storage system that occurred before January 1, 1995. Petroleum discharges from sources other than a petroleum storage system cannot receive funding under PCPP.²⁰ Further, the following sites are not eligible for PCPP:

- Sites where DEP has been denied access;
- Sites owned or operated by the federal government;
- Sites identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund; and
- Sites that are eligible under ATRP, EDI, or PLRIP.²¹

DEP ranks PCPP program sites based on human health and safety risks.²² When funds become available, DEP will notify the owner, operator, or person otherwise responsible for site rehabilitation (owner or responsible party) in writing, based on that priority ranking.²³ The owner or responsible party must then prepare and provide DEP with a limited contamination assessment report sufficient to determine the extent of the contamination and cleanup.²⁴ After approval from DEP, the owner or responsible party must enter into a PCPP agreement with DEP. The owner or responsible party may recommend a department term contractor to clean up the PCPP eligible discharge, but is not required to do so. Sites qualifying for the program are eligible for up to \$400,000 of site rehabilitation funding.²⁵ DEP may approve supplemental funding of up to \$100,000 for additional remediation and monitoring at PCPP sites if such remediation and monitoring is necessary to achieve a NFA order.²⁶ The owner or

¹³ Rule 62-780.210(1), F.A.C.

¹⁴ Rule 62-780.680(1)-(3), F.A.C.

¹⁵ Chapter 62-777, F.A.C.

¹⁶ Rule 62-780.680(1), F.A.C.

¹⁷ Institutional controls include restrictive covenants. For example, the closure may provide that the groundwater on the site may not be used.

¹⁸ Engineering controls include requirements such as paving over an area with contaminated soil.

¹⁹ Rule 62-780.680(2), F.A.C.

²⁰ Section 376.3071(13), F.S.

²¹ Section 376.3071(13)(h), F.S.

²² Rule 62-771.100(1), F.A.C.

²³ DEP, *Petroleum Cleanup Participation Program (PCPP)*, available at <https://floridadep.gov/waste/petroleum-restoration/content/petroleum-cleanup-participation-program-pcpp> (last visited Dec. 13, 2019).

²⁴ Section 376.3071(13)(d), F.S.

²⁵ Section 376.3071(13)(b), F.S.

²⁶ Section 376.3071(13)(c), F.S.

responsible party must agree to pay a 25 percent copayment.²⁷ The copayment percentage may be reduced or eliminated if the owner or responsible party demonstrates an inability to pay.²⁸

Advanced Cleanup

The Legislature created the Advanced Cleanup Program (Advanced Cleanup) in 1996 to allow eligible sites to receive state rehabilitation funding in advance of the site's priority ranking to encourage redevelopment and facilitate property transactions or public works projects.²⁹ To participate in Advanced Cleanup, a site must be eligible for restoration funding under EDI, PLRIP, ATRP, IVPSSRP, or PCPP.³⁰

Applications for Advanced Cleanup must include a cost-sharing commitment in addition to the 25-percent-copayment requirement.³¹ An applicant may demonstrate his or her cost-sharing commitment by proposing either a commitment to pay, a demonstrated cost savings to DEP, or both. The application must be accompanied by a \$250 nonrefundable review fee, a limited contamination assessment report, a proposed course of action, and a site access agreement. The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting the limited contamination assessment report are not refundable from the IPTF.

DEP ranks the applications for Advanced Cleanup based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who proposes the highest percentage of cost sharing.

Effect of the Bill

PCPP

The bill requires the limited contamination assessment report, which must be submitted with the application for PCPP participation, to be sufficient to support the proposed course of action and estimate the cost of the proposed course of action. The bill specifies that the site rehabilitation agreement between DEP and the owner or responsible party must include a 25 percent cost savings. This requirement may be met by a copayment by the owner or responsible party or a demonstrated cost savings to DEP through reduced rates by the proposed agency term contractor or the difference in cost associated with RMO I³² closure versus RMO II³³ conditional closure, or both. The bill also eliminates the ability for the owner or responsible party to reduce or eliminate the copayment as well as costs associated with the limited contamination report if such party can demonstrate that they are financially unable to comply with the cost-share requirements.

Advanced Cleanup

The bill revises the requirements for participation in Advanced Cleanup by removing the requirement that the property owner or responsible party submit a limited contamination assessment report as part of the application. Instead, the applicant must submit an agreement to continue to participate in Advanced Cleanup, if selected, upon the completion of the limited contamination assessment and finalization of the proposed course of action. Upon acceptance of an application, the property owner or responsible party's selected agency term contractor must submit a scope of work for the limited

²⁷ Section 376.3071(13)(d), F.S.

²⁸ Section 376.3071(13)(d), F.S.

²⁹ Section 376.30713(1)(a), F.S.

³⁰ Section 376.3071(1)(d), F.S.

³¹ *Id.*

³² This option is used when concentrations of contaminants in soil, groundwater, and surface water are equal to or less than the residential CTLs and free product is not present. Concentrations of contaminants in soil must be less than leachability-based soil CTLs, or direct leachability testing results demonstrate that leachate concentrations do not exceed the appropriate groundwater CTLs. DEP, *SOP Site Manager Closure Guide*, available at <https://floridadep.gov/waste/petroleum-restoration/content/sop-site-manager-closure-guide> (last visited Dec. 18, 2019).

³³ Allows the use of alternative CTLs, which are higher than the residential CTLs. Institutional and, if necessary, engineering controls are required to ensure that contamination at the site poses no risk to people or the environment. An engineering control that prevents human exposure may be implemented, in which case the contaminant concentrations in the soil below the permanent cover or two or more feet below land surface may exceed the direct exposure soil CTLs. Risk Management Option II was developed specifically to streamline closures for small areas of contamination (less than ¼ acre). *Id.*

contamination assessment to DEP. Once the scope of work is agreed to by DEP and the parties involved, DEP must issue a purchase order(s) for the limited contamination assessment for no more than \$35,000 per purchase order.

B. SECTION DIRECTORY:

Section 1. Amends s. 376.3071, F.S., relating to PCPP.

Section 2. Amends s. 376.30713, F.S., relating to the Advanced Cleanup applications.

Section 3. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on the state because the bill removes the provision that allowed a PCPP applicant to reduce or eliminate costs associated with the limited contamination assessment report and the copayment costs if the applicant demonstrated that he or she could not financially comply.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on DEP because the bill requires DEP to pay for the limited contamination assessment for Advanced Cleanup applicants. The IPTF receives an appropriation of over \$100 million in the Petroleum Tanks Cleanup appropriation category each fiscal year. The fiscal impact of the bill can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill provides flexibility to PCPP participants in that such applicants can provide a cost savings to DEP by either providing a copayment or demonstrating a cost savings in the form of reduced rates. The bill, however, removes the provision that allowed such applicants to reduce or eliminate costs associated with the limited contamination assessment report and the copayment costs if the applicant demonstrated that he or she could not financially comply. In addition, the bill may have a positive fiscal impact on participants in Advanced Cleanup as the bill requires DEP to pay for the limited contamination assessment.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.