

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: SB 702

INTRODUCER: Senator Albritton

SUBJECT: Petroleum Cleanup

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Rogers	EN	Pre-meeting
2.			AEG	
3.			AP	

I. Summary:

SB 702 revises provisions relating to the Petroleum Cleanup Participation Program to authorize a demonstration of cost savings to replace or supplement the existing cost-share requirement.

The bill deletes the authorization that the limited contamination assessment report and the copayment costs may be reduced or eliminated, if the owner and all operators responsible for restoration, demonstrate that they cannot financially comply with the copayment and limited contamination assessment report requirements.

The bill deletes the 120-day time limitation for negotiations for the cost-share aspect of the Petroleum Cleanup Participation Program.

The bill deletes a prohibition in the Advance Cleanup Program for the state to pay for limited contamination assessments and replaces it with a requirement that the state issue purchase orders for such assessments.

The bill makes the following revisions to the individual application for the Advance Cleanup Program:

- It deletes the requirement that the limited contamination assessment report be included in the application.
- It adds the requirement that the property owner or responsible party must commit to continue to participate in the advanced cleanup program upon completion of the limited contamination assessment and finalization of the proposed course of action.
- It revises the requirement that the application include a proposed course of action to make it a “conceptual” proposed course of action.
- It deletes the statement that site eligibility is not an entitlement to advanced cleanup or continued restoration funding.

II. Present Situation:

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.³

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.⁴ The Department of Environmental Protection (DEP) regulates these storage tank systems.⁵

To fund the cleanup of contaminated petroleum sites, the Legislature created the Inland Protection Trust Fund (IPTF).⁶ 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.⁷ 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.⁸ Each year, the Legislature deposits approximately \$200 million from the excise tax into the IPTF.⁹

DEP may establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of areas contaminated by leaking underground petroleum storage tanks.¹⁰ 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.¹¹ To receive rehabilitation funding assistance, a site must qualify under one of several programs, which are outlined in the table on the following page.

¹ U.S. Environmental Protection Agency, *Underground Storage Tanks (USTs)*, <https://www.epa.gov/ust> (last visited Jan. 20, 2020).

² South Florida Water Management District, *Groundwater Modeling*, <https://www.sfwmd.gov/science-data/gw-modeling> (last visited Jan. 20, 2020).

³ Florida Department of Environmental Protection, Division of Waste Management, *Petroleum Contamination Cleanup and Discharge Prevention Programs* (2012) (on file with Senate Environment and Natural Resources Committee).

⁴ Chapter 83-310, Laws of Fla.

⁵ Sections 376.30(3) and 376.303, F.S.

⁶ Section 376.3071(3)-(4), F.S.

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

⁸ 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.

⁹ DEP, *SOP – 1. Introduction*, <https://floridadep.gov/waste/petroleum-restoration/content/sop-1-introduction> (last visited Jan. 20, 2020).

¹⁰ Section 376.3071(5), F.S.

¹¹ DEP, *Petroleum Restoration Program*, <https://floridadep.gov/Waste/Petroleum-Restoration> (last visited Jan. 20, 2020).

Table 1: State Assisted Petroleum Cleanup Eligibility Programs		
Program Name	Program Dates	Program Description
Early Detection Incentive Program (EDI) (s. 376.3071(10), F.S.)	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	<ul style="list-style-type: none"> • First state-assisted cleanup program • 100 percent state funding for cleanup if site owners reported releases • Originally gave site owners the option of conducting cleanup themselves and receiving reimbursement from the state or having the state conduct the cleanup in priority order • Reimbursement option was phased out, so all cleanups are now conducted by the state
Petroleum Liability and Restoration Insurance Program (PLRIP) (s. 376.3072, F.S.)	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	<ul style="list-style-type: none"> • Required facilities to purchase third party liability insurance to be eligible • Provides varying amounts of state-funded site restoration coverage
Abandoned Tank Restoration Program (ATRP) (s. 376.305(6), F.S.)	For petroleum storage systems that have not stored petroleum since March 1, 1990 ¹²	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990
Innocent Victim Petroleum Storage System Restoration Program (IVPSSRP) (s. 376.30715, F.S.)	The application period began on July 1, 2005, and remains open	Provides 100 percent state funding for a site acquired before July 1, 1990, that ceased operating as a petroleum storage or retail business before January 1, 1985

¹² The ATRP originally had a one-year application period, but the deadline was extended. The deadline is now waived indefinitely for site owners who are financially unable to pay for the closure of abandoned tanks. Section 376.305(6)(b), F.S.

<p>Petroleum Cleanup Participation Program (PCPP) (s. 376.3071(13), F.S.)</p>	<p>Remains open</p>	<ul style="list-style-type: none"> • Created to provide financial assistance for sites that had missed all previous opportunities • Only discharges that occurred before 1995 were eligible • Site owner or responsible party must pay 25 percent of cleanup costs¹³ • Originally had a \$300,000 cap on the amount of coverage, which was raised to \$400,000 beginning July 1, 2008
<p>Consent Order (aka “Hardship” or “Indigent”) (s. 376.305(6)(b), F.S.)¹⁴</p>	<p>The program began in 1986 and remains open</p>	<ul style="list-style-type: none"> • Created to provide financial assistance under certain circumstances for sites that the Department initiates an enforcement action to clean up • An agreement is formed whereby the Department conducts the cleanup and the site owner or responsible party pays for a portion of the costs

Petroleum Cleanup Participation Program (PCPP)

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.¹⁵ 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.¹⁶

DEP ranks PCPP program sites based on human health and safety risks.¹⁷ 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.¹⁸

Limited Contamination Assessment

After approval from DEP, the owner or responsible party must enter into a PCPP agreement with DEP and submit a limited contamination assessment report sufficient to determine the extent of the contamination and cleanup.¹⁹ A limited contamination assessment must be conducted by an engineer or geologist and must address:

¹³ The 25 percent copay requirement can be reduced or eliminated if the site owner and all responsible parties demonstrate that they are financially unable to comply. Section 376.3071(13)(c), F.S.

¹⁴ The titles for this program is a title set out by the agency and not a statutory title.

¹⁵ Section 376.3071(13), F.S.

¹⁶ Section 376.3071(13)(h), F.S.

¹⁷ Fla. Admin Code R. 62-771.100(1).

¹⁸ DEP, *Petroleum Cleanup Participation Program (PCPP)*, <https://floridadep.gov/waste/petroleum-restoration/content/petroleum-cleanup-participation-program-pcpp> (last visited Jan. 20, 2020).

¹⁹ Section 376.3071(13)(d), F.S.

- The site history which describes all current and past petroleum storage systems and the type of products stored in them, as well as the type and volume of products that were discharged at the source property.
- Results of a well survey conducted to locate all private water supply wells within a certain distance of the contamination.
- Results of a soil assessment conducted in and around each potential source area (fuel storage tanks, fuel dispensers, and fuel piping) to determine if there is any contaminated soil present in the unsaturated zone.
- Results of groundwater sampling and analyses from at least one properly constructed monitoring well installed in each source area. If groundwater contamination is detected, the direction of groundwater flow must be determined and additional monitoring wells are required to determine the extent of the groundwater contamination.
- Water level measurements.
- Soil and groundwater samples collected must be analyzed by an FDEP approved laboratory and quality assurance samples must be collected/prepared and analyzed.²⁰
- A reasonable, economical, and attainable course of action that is proposed to achieve site rehabilitation.²¹

Costs

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.²² 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.²³ The owner or responsible party must agree to pay a 25 percent copayment.²⁴ The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner or responsible party demonstrates an inability to pay.²⁵ If the negotiation of the cost-sharing agreement cannot be completed within 120-days after beginning negotiations, DEP must terminate negotiations and the site becomes ineligible for state funding and for any liability protections under the PCPP.²⁶

No Further Action

The ultimate goal for any contaminated site is for DEP to issue it a “No Further Action” (NFA) closure.²⁷ NFA closures usually result in reduced remediation costs and allow for contaminated site closures when remediation efforts have reached a diminishing return. An NFA order may require institutional or engineering controls be put in place to prevent or reduce exposure to contamination.²⁸ An institutional control is a restriction on the use of or access to a site to

²⁰ Fla. Admin. Code R. 62-780.300 and Ch. 62-160.

²¹ DEP, *Petroleum Restoration Program, Limited Contamination Assessment Report (LCAR) Preparation Guidance* (Oct. 1, 2019), available at https://floridadep.gov/sites/default/files/LCAR%20Guidance%20Final%2001Oct2019_0.pdf.

²² Section 376.3071(13)(b), F.S.

²³ Section 376.3071(13)(c), F.S.

²⁴ Section 376.3071(13)(d), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Fla. Admin. Code R. 62-780.680.

²⁸ *Id.*

eliminate or minimize exposure to contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements.²⁹ Engineering controls are modifications to a site to reduce or eliminate the potential for exposure to contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls.³⁰

Risk Management Level Options (RMOs)

Once a responsible party completes a site assessment, it has three Risk Management Level Options (RMOs) available to perform site rehabilitation to achieve an NFA order.³¹ Under the RMO options, the responsible party must either rehabilitate the site to the default cleanup target levels (CTLs)³² or to alternative CTLs established through a risk assessment. Under RMO I, DEP will issue a NFA closure without institutional and engineering controls.³³ This option is used when concentrations of contaminants in both soil, groundwater, and surface water are equal to or less than the residential CTLs.³⁴ Additionally, concentrations of contaminants in soil must indicate that contaminants will not leach into the groundwater in violation of the groundwater CTL.³⁵ Under RMO II and RMO III, DEP will grant an NFA order, subject to institutional controls and/or engineering controls and other conditions determined by DEP.³⁶

Advanced Cleanup

The Legislature created the Advanced Cleanup Program 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.³⁷ To participate in Advanced Cleanup Program, a site must be eligible for restoration funding under EDI, PLRIP, ATRP, IVPSSRP, or PCPP.³⁸

Applications for the Advanced Cleanup Program must include a cost-sharing commitment in addition to the 25-percent-copayment requirement.³⁹ 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.⁴⁰ Costs

²⁹ Section 376.301(22), F.S.

³⁰ Section 376.301(17), F.S.

³¹ Fla. Admin Code R. 62-780.680(1)-(3).

³² Fla. Admin Code R. 62-777.

³³ Fla. Admin. Code R. 62-780.680(1).

³⁴ The rule also requires that no free product be present. Fla. Admin. Code R. 62-780.680(1). "Free product" means the presence of a non-aqueous phase liquid in the environment in excess of 0.01 foot in thickness, measured at its thickest point. Fla. Admin Code R. 62-780.200.

³⁵ Fla. Admin. Code R. 62-780.680(1).

³⁶ Fla. Admin Code R. 62-780.680(2).

³⁷ Section 376.30713(1)(a), F.S.

³⁸ Section 376.30713(1)(d), F.S.

³⁹ *Id.*

⁴⁰ *Id.*

incurred related to conducting the limited contamination assessment report are not refundable from the IPTF.⁴¹

DEP ranks the applications for the Advanced Cleanup Program 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.⁴²

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 376.3071(13), F.S., relating to the Petroleum Cleanup Participation Program (PCPP). The bill specifies that 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.

The bill revises the 25-percent cost-share requirement to require the agreement with DEP to include:

- A 25-percent cost savings to the department;
- A copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation; or
- A combination of both.

Demonstrated savings includes reduced rates by the proposed agency term contractor or the difference in cost associated with an RMO-I closure versus an RMO-II closure, or both the copayment and demonstrated cost savings.

The bill **deletes** the following:

- The requirement that the owner, operator, or person otherwise responsible for conducting site rehabilitation demonstrate the ability to meet the copayment obligation.
- The authorization that the limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration demonstrate that they cannot financially comply with the requirements.
- Direction to DEP to take into consideration the owner's and operator's net worth in making the determination of financial ability.
- The 120-day time limit on negotiations after which DEP is required to terminate negotiations and the site shall be ineligible for state funding under the PCPP and all liability protections provided for under the PCPP shall be revoked.

Section 2 of the bill amends s. 376.30713, F.S., relating to the Advanced Cleanup Program. The bill revises the requirements of an individual application for the program as follows:

- It deletes the requirement that the limited contamination assessment report be included in the application.
- It adds the requirement that the property owner or responsible party must commit to continue to participate in the advanced cleanup program upon completion of the limited contamination assessment and finalization of the proposed course of action.

⁴¹ Section 376.30713(2)(a), F.S.

⁴² Section 376.30713(2)(b), F.S.

- It revises the requirement that the application include a proposed course of action to make it a “conceptual” proposed course of action.

The bill **deletes** the following from the requirements for an individual application:

- The requirement that the limited contamination assessment report be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Although this provision is deleted from the application requirements, the bill adds it as a requirement for limited contamination assessments that receive state funding (see below).
- The prohibition on refunding costs incurred related to conducting the limited contamination assessment report from the Inland Protection Trust Fund.
- The statement that site eligibility is not an entitlement to advanced cleanup or continued restoration funding.

Upon acceptance of an advanced cleanup application, the bill requires the applicant’s contractor to submit to DEP a scope of work for a limited contamination assessment. When the scope of work is negotiated and agreed upon, DEP must issue one or more purchase orders of up to \$35,000 each for the limited contamination assessment. 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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may provide cost savings under the PCPP for owners, operators, or persons otherwise responsible for conducting site rehabilitation by allowing them to demonstrate cost savings in lieu of or in addition to the copayment requirement. 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.

The bill may have a positive fiscal impact on participants in the Advanced Cleanup Program as the bill requires DEP to pay for the limited contamination assessment.

C. Government Sector Impact:

There would be a negative fiscal impact to the state of paying for limited contamination assessments that the state is currently prohibited from paying for. There are multiple variables associated with each contaminated site and each site requires extensive assessment to determine the depth.⁴³ Project costs and the cost of limited contamination assessments could vary widely. However, a report by DEP indicates that site assessments (funded by DEP through other petroleum restoration programs) cost \$37,303,020 for 1,056 sites in fiscal year 2018-2019.⁴⁴ This averages out to approximately \$35,000, which is the amount of the purchase order authorization in the bill. Note, however, that limited contamination assessment reports do not need to have the same scope as a site assessment report.⁴⁵

VI. Technical Deficiencies:

On line 76 there is a misspelled word: “statues” instead of “statutes.”

The bill uses the terms RMO-I and RMO-II. The acronyms are not defined in the chapter nor are the terms Risk Management Level Option-I or Risk Management Level Option-II. These terms are defined by rule 62-780.680, F.A.C. The bill should provide some statutory basis to understand what these acronyms mean. Below are some potential definitions based on the rule definitions. Note, however, that the rule definitions are highly technical, such that it may be best for DEP to continue to be able to regulate these technical issues by rule rather than placed into statute.

Risk Management Options Level-I means a No Further Action closure without institutional controls or without institutional and engineering controls. This closure applies subject to conditions in department rules and agreements.

⁴³ Florida Department of Environmental Protection, Division of Waste Management, *Petroleum Contamination Cleanup and Discharge Prevention Programs* (2012) (on file with Senate Environment and Natural Resources Committee).

⁴⁴ DEP, *Petroleum Restoration Program Dashboard* (June 2019), available at https://floridadep.gov/sites/default/files/PRP_Dashboard_Jun2019_v2.pdf.

⁴⁵ DEP, *Petroleum Restoration Program, Limited Contamination Assessment Report (LCAR) Preparation Guidance* (Jan 19, 2020), available at https://floridadep.gov/sites/default/files/LCAR%20Guidance%20Final%2001Oct2019_0.pdf.

Risk Management Options Level-II means a No Further Action closure where institutional controls, and, if appropriate, engineering controls shall apply if the controls are protective of human health, public safety, and the environment. This closure applies subject to conditions in department rules and agreements.

Alternatively, the bill could refer to “Risk Management Options Level-I closure versus a Risk Management Options Level-II closure, as defined by department rule.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 376.3071 and 376.30713 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.