



The Florida Senate

Interim Project Report 2001-045

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Committee on Natural Resources

Senator Charlie Bronson, Chairman

REVIEW OF THE PREAPPROVED ADVANCED CLEANUP PROGRAM FOR PETROLEUM CONTAMINATED SITES

SUMMARY

The Preapproved Advanced Cleanup (PAC) Program authorized in s. 376.30713, F.S., has several important benefits. First, the PAC program allows owners of contaminated sites with a low priority ranking to cleanup those sites more quickly by paying at least 25 percent of the cleanup cost and avoiding potential offsite migration of contaminants. Second, it assists owners of low-ranking contaminated sites with the sale or lease of the property and facilitates the financing of these property transactions. Third, the PAC program achieves cleanup of more sites with the available Inland Protection Trust Fund money because successful applicants in the program pay on average more than half of the total cleanup costs. In addition, the program has not adversely impacted other priority cleanup activities. Therefore, it is recommended that the PAC program continue at its current funding level.

BACKGROUND

The Preapproved Advanced Cleanup (PAC) Program for petroleum contamination site rehabilitation is contained in s. 376.30713, F.S. This program provides an opportunity for site rehabilitation at a limited number of sites in advance of the site's priority ranking to assist with property transactions or public works projects. As provided in s. 376.30713, F.S., this section and thus the program is subject to legislative review prior to March 1, 2001. This report examines the current program and makes recommendations for the future of the statute.

The Legislature enacted s. 376.30713, F.S., in 1996 as part of a major revision of the underground petroleum storage tank cleanup program. At that time, reimbursement claims for cleaning up contaminated sites were being filed faster than program revenues could accommodate them. As a result of these claims, the reimbursement cleanup program was in arrears for

almost \$350 million. After establishing better financial controls to address the backlog of claims using a prior approval system for costs, the Legislature provided for the PAC program to assist owners, under certain conditions, with the cleanup of contaminated sites before those sites were eligible for cleanup funds on the state's priority list. Under s. 376.30713, F.S., owners are required to pay at least 25 percent of the cleanup costs along with certain other costs not reimbursable by the state. Cleanup for petroleum contaminated sites is funded through annual revenues from excise taxes on petroleum for the underground petroleum storage tank program which provides approximately \$160 million. From this amount, the Legislature has set aside \$10 million annually for the PAC program.

The PAC program was originally set to expire on October 1, 1999, with a legislative review prior to that date. A legislative review was conducted, and during the 1999 legislative session, ch. 99-376, L.O.F., amended s. 376.30713, F.S., to allow the Preapproved Advanced Cleanup Program to continue; however, ch. 99-376, L.O.F., provided that s. 376.30713, F.S., is to be reviewed by the Legislature prior to March 1, 2001.

METHODOLOGY

The staff of the Senate Natural Resources Committee sent questionnaires to various entities who were considered stakeholders in the Preapproved Advanced Cleanup Program. Those entities included the Department of Environmental Protection (DEP), Bank of America Corp., the Florida Petroleum Council, and the Florida Petroleum Marketers and Convenience Store Association, Inc. The responses were due no later than August 1, 2000. All of the entities responded timely to the questionnaire and their responses are reflected in the findings and recommendations below.

FINDINGS

As stated in s. 376.30713, F.S., the Legislature has declared that:

- (a) The inability to conduct site rehabilitation in advance of a state's priority ranking may substantially impede or prohibit property transactions or the proper completion of public works projects;
- (b) While the first priority of the state is to provide for protection of the water resources of the state, human health, and the environment, the viability of commerce is of equal importance to the state.
- (c) It is in the public interest and of substantial economic benefit to the state to provide an opportunity for site rehabilitation to be conducted on a limited basis at contaminated sites, in advance of the site's priority ranking to facilitate property transactions or public works projects.
- (d) It is appropriate for persons responsible for site rehabilitation to share the costs associated with managing and conducting preapproved advanced cleanup, to facilitate the opportunity for preapproved advanced cleanup, and to mitigate the additional costs that will be incurred by the state in conducting site rehabilitation in advance of the site's priority ranking.

As a result, the Preapproved Advanced Cleanup Program has several distinct benefits. First, the program allows faster cleanup of sites, preventing the potential offsite migration of contaminants. Because water resource protection is an important issue for the State of Florida, the DEP's criteria ranking system for priority sites considers the potential threat to certain water resources rather than the extent of contamination. However, some of the sites with a low priority ranking may have contamination moving offsite. This contamination creates the possibility of third party liability. Prior to the PAC program, the options for owners of low-ranking sites were limited to waiting 10 to 15 years in some cases for state funding or cleaning up the site at their own expense. Many owners of these sites do not have the financial resources to bear the entire cost of cleanup in order to prevent potential offsite migration. The PAC program allows the owners of contaminated sites with a low priority ranking to address offsite migration more quickly.

Secondly, the PAC program assists owners of low-ranking sites who may experience difficulty in selling or leasing their property. In its response to the questionnaire, Bank of America, Corp. indicated that the financing, transfer and sale of contaminated property have been impacted favorably by the ability to access the PAC program. However, since the program is still relatively new to the marketplace, its long-term positive effect has not yet been fully realized. The Florida Petroleum Marketers and Convenience Store Association in its response also stated that the PAC program provides a useful tool to facilitate property transactions where contamination provides a deterrent to the transaction or the financing of the transaction. Further, it was noted that recent court decisions may impose additional cleanup requirements on site owners whose state restoration funding assistance was delayed by the cancellation of the old reimbursement cleanup program. As a result, the PAC Program may provide a site owner with at least limited protection if cleanup is compelled by a federal court in advance of state funding.

Third, the PAC program achieves cleanup at more sites with the available Inland Protection Trust Fund (IPTF) money. Section 376.30713(2), F.S., provides that applicants to the program must pay at least 25 percent of the total cleanup cost deemed recoverable under s. 376.30713, F.S., along with proof of the ability to pay the cost share. In practice, applicants for the PAC program bid for their cost share. The DEP ranks applications based on what percentage of the total cleanup costs the applicant is willing to pay. There have been eight application periods since the inception of the program. According to the DEP's questionnaire response, matching funds from the applicants have totaled approximately \$27 million. The following table, as provided by the DEP in their questionnaire response, summarizes the data from the eight application periods that have been held to date.

APP. PERIOD	WINNING # OF APP.	DEP FUNDING	APPLICANT FUNDING	AVE. APP. COST SHARE %
11/1-12/31/96	63	\$4,063,853.54	\$7,371,481.47	62.90 %
5/1-6/30/97	69	\$4,262,593.40	\$6,575,902.70	60.02 %
11/1-12/3/97	20	\$1,709,636.58	\$2,006,055.30	53.33 %
5/1-6/30/98	38	\$5,658,372.35	\$7,088,115.90	53.76 %
11/1-12/31/98	30	\$1,300,329.57	\$1,494,862.04	44.81%
5/1-6/30/99	8	\$2,643,793.14	\$1,121,681.06	33.02%
11/1-12/31/99	14	\$1,260,041.80	\$ 583,616.20	37.59%
5/1-6/30/00	13	\$1,561,743.80	\$ 664,581.12	29.54%

As noted in the above table, the number of applicants for this program has decreased during the most recent application periods indicating that the interest in using this program may be declining. However, the DEP has indicated that interest may increase in the foreseeable future due to an increase in property transfers or third party liability law suits.

In addition to the cost-share for the cleanup costs, the applicant must pay a nonrefundable review fee of \$250 to cover the administrative costs associated with the DEP’s review of the application and provide a limited contamination assessment report and a proposed course of action.

Pursuant to s. 376.30713, F.S., the DEP is authorized to enter into contracts for a total of up to \$10 million of

preapproved advanced cleanup work in each fiscal year. The Legislature has annually set aside \$10 million from the approximately \$160 million of excise taxes that are generated annually for the underground petroleum storage tank cleanup program. If the full \$10 million is not used for the PAC program, the unused funds revert to other cleanup activities authorized in s. 376.30711, F.S. Neither the DEP nor those in the industry involved with cleanup activities support increasing the amount of funds that may be set aside and used for this program.

The program appears to be working as a means of maximizing the funds available for the cleanup of petroleum-contaminated sites. As a result, there is widespread support from the petroleum industry, the banking community and the DEP for continuation of this program.

RECOMMENDATIONS

Based on staff research and a review of the Preapproved Advanced Cleanup Program established under s. 376.30713, F.S., staff recommends that this program continue at its current funding level of \$10 million per year.

COMMITTEE(S) INVOLVED IN REPORT (Contact first committee for more information.)

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MEMBER OVERSIGHT

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