

The Florida Senate
VETO MESSAGE BILL ANALYSIS

(This document is based on the enrolled bill, as presented to the Governor.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/CS/HB 1385

INTRODUCER: General Government Policy Council; Natural Resources Appropriations Committee; and Rep. Poppell

SUBJECT: Petroleum Contamination Site Cleanup

DATE: June 29, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Kiger	EP	Withdrawn
2.	_____	_____	TR	Withdrawn
3.	_____	_____	CA	Withdrawn
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for the Committee Substitute (CS/CS) allows the Department of Environmental Protection (DEP) to establish a long-term natural attenuation monitoring category for sites in the Petroleum Cleanup Program. When cost-effective, the DEP is directed to reprioritize sites previously eligible for restoration funding assistance to long-term natural attenuation status if the sites meet certain criteria.

The CS/CS clarifies that a local government may not deny a building permit based solely on the presence of petroleum contamination for any construction, repairs, or renovations performed in conjunction with tank upgrade activities to an existing retail fuel facility if the facility was fully operational before the building permit was requested and if the construction, repair, or renovation is performed by a licensed contractor.

The CS/CS requires the DEP to evaluate whether higher natural attenuation default concentrations for natural attenuation monitoring or long-term natural attenuation monitoring are cost-effective and will adequately protect public health and the environment. The DEP must evaluate site-specific characteristics that will allow for higher natural attenuation or long-term natural attenuation concentration levels.

The CS/CS establishes a low-scored site initiative for sites with a priority ranking score of 10 points or less and provides conditions for voluntary participation. If these conditions are met, the DEP must issue a No Further Action (NFA) order, which means minimal contamination exists onsite and that contamination is not a threat to human health or the environment. If no contamination is detected, the DEP may issue a site rehabilitation completion order. However,

the CS/CS clarifies that active remediation will be resumed within the 42 month period if the plume migrates beyond the property boundaries.

Sites that are eligible will be enrolled by the source property owner or responsible party for the contamination and are strictly voluntary. The DEP may pre-approve the cost of the assessment pursuant to s. 376.30711, F.S., including 6 months of groundwater monitoring, not to exceed \$30,000 for each site. The DEP may not pay the costs associated with the establishment of institutional or engineering controls. Assessment work must be completed no later than 6 months after the DEP issues its approval.

Also, the CS/CS authorizes the DEP to spend no more than \$10 million per fiscal year from the funds currently authorized from the Inland Protection Trust Fund to assess low scored sites. Funds will be made available on a first-come, first-served basis and will be limited to 10 sites in each fiscal year for each responsible party or property owner. The CS/CS deletes the provisions relating to funding for limited interim soil-source removals, which sunsets June 30, 2010.

The CS/CS deletes obsolete provisions relating to funding soil-source removals for sites that would become inaccessible due to road construction projects that were pending at the time the statute was written. The existing provisions will sunset June 30, 2010.

Finally, for fuel service station facilities that have orders issued by the DEP, prior to July 1, 2010, concerning the installation new storage tank systems, the CS/CS provides an extension of the compliance deadline to September 30, 2011. The facilities must be in compliance with all other state and federal regulations pertaining to petroleum storage systems.

The CS/CS provides an effective date of July 1, 2010.

The CS/CS amends s. 376.3071, F.S.

II. Present Situation:

The Petroleum Cleanup Program, within the DEP's Division of Waste Management, encompasses technical oversight, management, and administrative activities necessary to prioritize, assess, and cleanup sites contaminated by discharges of petroleum and petroleum products from stationary petroleum storage systems. These sites include those determined eligible for state-funded cleanup using preapproval contractors designated by the property owner or responsible party and state lead contractors under direct contract with the DEP, as well as non-program or voluntary cleanup sites that are funded by responsible parties. In order to pay for the expedited cleanup of petroleum contaminated sites, the Florida Legislature created the Inland Protection Trust Fund (s. 376.3071, F.S.). The Trust Fund (Fund) is a non-lapsing revolving trust fund with revenues generated from an excise tax per barrel of petroleum products currently produced or imported into the state as defined by s. 206.9935, F.S.¹

¹ DEP's Petroleum Contamination Cleanup and Discharge Prevention Programs, December 2009.
<http://www.dep.state.fl.us/waste/quick+topics/publications/pss/pcp/geninfo/2009ProgramBriefingFinal120209.pdf>

Section 376.3071 (5), F.S., provides site selection and cleanup criteria. The statute states that the DEP adopt rules to establish priorities for state-conducted cleanup at petroleum contamination sites based upon a scoring system and factors that include:

- The degree to which human health, safety, or welfare may be affected by exposure to the contamination;
- The size of the population or area affected by the contamination;
- The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water; and
- The effect of the contamination on the environment.

Pursuant to s. 376.3071 (5) (c), F.S., the DEP must require source removal, if warranted and cost-effective, at each site eligible for restoration funding from the Fund. This includes funding for limited interim soil-source removals, which will sunset June 30, 2010.

Once source removal is completed, the DEP may reevaluate the site to determine the degree of active cleanup needed to continue site rehabilitation. The DEP must also determine if the reevaluated site qualifies for natural attenuation monitoring or no further action (NFA)². If additional site rehabilitation is necessary to reach the NFA status, the site rehabilitation must be conducted in the order established by the priority ranking system. The DEP is encouraged to utilize natural attenuation and monitoring where site conditions warrant. However, the DEP has no authority to establish a long-term natural attenuation monitoring category to determine whether natural processes can significantly degrade petroleum contamination to cleanup target levels established by rule. Therefore, the DEP uses active remediation techniques, pursuant to Rule 62-770.700, F.A.C., to improve sites to cleanup target levels.

The DEP must issue a determination of “No Further Action” at sites ranked with a total priority score of 10 or less meeting certain conditions³. The DEP has stated that they have no authority to expend appropriated dollars to assess sites below the established score range for expenditures, pursuant to statute. The score range for expenditures is established based upon the DEP’s projections on how many sites can be funded during a fiscal year with available appropriations. Low scored sites that could be assessed and possibly removed from the backlog of sites yet to be activated remain in the backlog. Responsible parties that have sites eligible for state funded cleanup are reluctant or unable to spend their own dollars to apply for the non-reimbursable voluntary cleanup.

III. Effect of Proposed Changes:

Section 1: Amends s. 376.3071, F.S., to delete provisions relating to funding for limited interim soil-source removals, which sunsets June 30, 2010. The CS/CS allows the DEP to establish a long-term natural attenuation monitoring category for sites. The DEP is required to utilize natural attenuation monitoring strategies and, when cost-effective, transition sites eligible for restoration

² As defined in Rule 62-782, Florida Administrative Code (F.A.C.), natural attenuation means an approach to contain the spread of contamination and reduce the concentration of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions and subsurface materials, diffusion, dispersion, and volatilization.

³ s. 376.3071 (11) (b), F.S.

funding assistance to long-term natural attenuation monitoring when the plume is shrinking or stable and confined to the source property boundaries and the petroleum products' chemicals of concern meet the natural attenuation default concentrations, as defined by department rule.

The CS/CS also provides additional conditions concerning site eligibility for the long-term monitoring program and other sites currently in the program, these include:

- If the plume has migrated beyond the source property boundary, natural attenuation monitoring may be utilized if the site qualifies.
- If the plume is not significantly reduced after 42 months of monitoring or has migrated beyond the property boundary, the DEP shall require active remediation as necessary.
- If the site is currently undergoing active remediation, the DEP shall determine if a monitoring plan would be more cost effective.
- Eligibility for long-term natural attenuation monitoring be extended to those sites that are not eligible for the current state program.

The CS/CS requires the DEP to evaluate whether higher natural attenuation default concentrations for natural attenuation monitoring or long-term natural attenuation monitoring are cost-effective and will adequately protect public health and the environment. The DEP must also evaluate site-specific characteristics that will allow for higher natural attenuation or long-term natural attenuation concentration levels.

Unless institutional controls have been imposed by the responsible party or property owner to restrict the uses of the site, the CS/CS precludes local governments from denying development orders or permits on the grounds that petroleum contamination exists onsite.

The CS/CS establishes a low-scored voluntary site initiative for sites with a priority ranking score of 10 points or less and provided conditions for voluntary participation, including:

- Upon reassessment pursuant to the DEP rule, the site retains a priority ranking score of 10 points or less;
- No excessively contaminated soil, as defined by the DEP rule, exists onsite as a result of a release of petroleum products;
- A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable;
- The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment;
- The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated; and
- Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by the DEP rule, or human exposure is limited by appropriate institutional or engineering controls.

If these conditions are met, the DEP must issue a NFA, which means minimal contamination exists onsite and that contamination is not a threat to human health or the environment. If no contamination is detected, the DEP may issue a site rehabilitation completion order.

Sites that are eligible will be enrolled by the source property owner or responsible party for the contamination and are strictly voluntary. For sites eligible for state restoration funding, the DEP may pre-approve the cost of the assessment pursuant to s. 376.30711, F.S., including 6 months of groundwater monitoring, not to exceed \$30,000 for each site. The DEP may not pay the costs associated with the establishment of institutional or engineering controls.

Assessment work must be completed no later than 6 months after the DEP issues its approval.

The CS/CS authorizes the DEP to spend no more than \$10 million per fiscal year from the Inland Protection Trust Fund to assess low scored sites. Funds will be made available on a first-come, first-served basis and will be limited to 10 sites in each fiscal year for each responsible party or property owner.

Section 2: Creates a chapter law provision establishing September 30, 2011 as a new deadline for compliance for those fuel service station facilities that have orders issued by the DEP before July 1, 2010, which granted an extension to the original December 31, 2009, deadline pertaining to fuel tank upgrades to secondary containment systems.⁴ The facilities must be in compliance with all other state and federal regulations pertaining to petroleum storage systems in order to be eligible for the deadline extension.

Section 3: Provides the CS/CS shall take effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the DEP, the establishment of the long-term natural attenuation monitoring category will provide entities responsible for cleaning up non-state funded sites the option to cease active remediation if the contamination meets the proposed criteria. The

⁴ Rule 62-761.501, Florida Administrative Code.

person responsible for site rehabilitation must also monitor the plume for 42 months to determine whether natural processes are further degrading the contamination.

Costs normally consumed by active remediation can be either avoided or spread out over a longer period of time. Sites scored 10 points or less can qualify for either a Site Rehabilitation Completion Order or a No Further Action if they meet criteria, thereby eliminating these sites from the state funded cleanup backlog.

The DEP has stated that the CS/CS will provide work for environmental consulting firms, geologists, laboratories, well drillers, remediation equipment suppliers, subcontractors, general contractors, and construction firms as the assessments are conducted. Additional employment opportunities will also be evident as new site cleanups are able to be initiated. It will also provide revenue for material suppliers. There may be some contractors who do not favor this option to transition into long term natural attenuation monitoring for fear of stopping work on a particular site. These situations are anticipated to be more than off-set by the new site cleanups that can be initiated.

C. Government Sector Impact:

The DEP has stated that no additional appropriation dollars will be required to implement the proposed changes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Veto:

A. Governor's Stated Reason for Veto:

The veto message raised concerns about legislative acts that limit the ability of local government to address issues and policy questions that affect the health and safety of their citizens. The Governor stated that cities and counties have a vital interest in preventing human exposure to petroleum contamination and further detrimental impacts to the environment and that this legislation needlessly ties their hands in this regard.

The Governor also stated that the Legislature was directing the DEP to set less protective standards for petroleum concentration on sites without providing them any funding to assess whether this would put the public at greater risk. The Governor also objected that the CS/CS was taking \$10 million each year from cleaning up the most dangerous sites and diverting it to clean up the least dangerous sites.

B. Professional Staff Comments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
