

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 Community Affairs Committee

BILL: CS/SB 2592

INTRODUCER: Community Affairs Committee and Senator Baker

SUBJECT: Petroleum Contamination Site Cleanup

DATE: April 14, 2010 REVISED: 4/7/10

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Kiger	EP	Favorable
2.	Eichin	Meyer	TR	Fav/2 amendments
3.	Howes	Yeatman	CA	Fav/CS
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This committee substitute (CS) for Senate Bill 2592 requires that the Inland Protection Trust Fund be included in the list of funds from which the Legislature may not transfer unappropriated cash balances.

This CS also requires the Florida Department of Environmental Protection (DEP or department) to use natural attenuation monitoring. When cost-effective, the department is directed to reprioritize sites previously eligible for restoration funding assistance to long-term natural attenuation status if the sites meet certain criteria. Natural attenuation refers to natural processes which may contain the spread of contamination and reduce contamination in groundwater and soil to acceptable levels.

The CS also clarifies 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 also requires 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. DEP must 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 precludes local governments from denying development orders or permits on the grounds that petroleum contamination exists onsite.

The 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, 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, DEP may issue a site rehabilitation completion order.

Sites that are eligible will be initiated by the source property owner or responsible party for the contamination and are strictly voluntary. 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. 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 DEP issues its approval.

The CS authorizes DEP to spend no more than \$10 million per fiscal year 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 bill deletes the provisions relating to funding for limited interim soil-source removals, which sunsets June 30, 2010.

The 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.

The CS amends ss. 215.32 and 376.3071, F.S.

II. Present Situation:

The Petroleum Cleanup Program, within DEP's Division of Waste Management, encompasses the 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

Section 376.3071 (5), F.S., provides site selection and cleanup criteria. The statute directs DEP to adopt rules establishing 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.

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

Once source removal is completed, DEP may reevaluate the site to determine the degree of active cleanup needed to continue site rehabilitation. The DEP must also determine whether the reevaluated site qualifies for natural attenuation monitoring or requires 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 and the DEP is encouraged to utilize natural attenuation and monitoring where site conditions warrant. However, 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, DEP uses active remediation techniques, under Rule 62-770.700, F.A.C., to improve sites to cleanup target levels.

The department prioritizes sites for cleanup using a scoring system based upon the DEP's projections on how many sites can be funded for cleanup using available appropriations. There are approximately 3,292 sites eligible for state funding scored a 10 or less. When certain conditions are met, DEP issues a finding of NFA for these low-scored sites.³ However, DEP has no authority to expend appropriated dollars to assess sites below the established score range even though cleanup target levels may not have been achieved. Parties responsible for sites eligible for state funded cleanup are reluctant or unable to spend their own dollars to apply for the non-reimbursable voluntary cleanup. Therefore, low scored sites that could be reassessed and possibly removed from the list of sites yet to be activated remain in the backlog.

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>.

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 concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization.

³ S. 376.3071 (11) (b), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 215.32, F.S., to provide for the Inland Protection Trust Fund to be included in the list of funds from which the Legislature may not transfer unappropriated cash balances.

Section 2 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 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 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.

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. DEP must also evaluate site-specific characteristics that will allow for higher natural attenuation or long-term natural attenuation concentration levels.

Clarifies 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 requires the department to establish a low-scored site initiative for sites with a priority ranking score of 10 points or less. Cleanup of such sites would be voluntary providing conditions for voluntary participation, including:

- Upon reassessment pursuant to DEP rule, the site retains a priority ranking score of 10 points or less;
- No excessively contaminated soil, as defined by 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 DEP rule, or human exposure is limited by appropriate institutional or engineering controls.

If these conditions are met, 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, DEP may issue a site rehabilitation completion order.

Sites that are eligible will be initiated for cleanup by the source property owner or responsible party for the contamination and are strictly voluntary. For sites eligible for state restoration funding, 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. 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 DEP issues its approval.

The CS authorizes DEP to spend no more than \$10 million per fiscal year 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 3 provides the 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 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 party 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.

DEP has stated that the 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 more than off-set by the new site cleanups that can be initiated.

C. **Government Sector Impact:**

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. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**

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

CS by Community Affairs on April 14, 2010:

The CS provides for the Inland Protection Trust Fund to be included in the list of funds from which the Legislature may not transfer unappropriated cash balances. The CS also clarifies 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.

B. **Amendments**

None