

By Senator Baker

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1 A bill to be entitled
2 An act relating to petroleum contamination site
3 cleanup; amending s. 376.3071, F.S.; revising
4 provisions relating to petroleum contamination site
5 selection and cleanup criteria; deleting obsolete
6 provisions relating to funding for limited interim
7 soil-source removals; requiring the Department of
8 Environmental Protection to utilize natural
9 attenuation monitoring strategies to transition sites
10 into long-term natural attenuation monitoring under
11 specified conditions; providing for natural
12 attenuation and active remediation of sites; requiring
13 the department to evaluate certain costs and
14 strategies; prohibiting local governments from denying
15 development orders and permits on the grounds that a
16 property is contaminated; providing an exception;
17 establishing a low-scored site initiative; providing
18 conditions for participation; requiring the department
19 to issue certain determinations and orders; providing
20 that certain sites are eligible for payment of
21 preapproved costs; requiring assessment work to be
22 completed within a certain timeframe; providing
23 payment and funding limitations; deleting provisions
24 relating to nonreimbursable voluntary cleanup;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Paragraph (c) of subsection (5) and paragraph

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30 (b) of subsection (11) of section 376.3071, Florida Statutes,
31 are amended to read:

32 376.3071 Inland Protection Trust Fund; creation; purposes;
33 funding.—

34 (5) SITE SELECTION AND CLEANUP CRITERIA.—

35 (c) The department shall require source removal, if
36 warranted and cost-effective, at each site eligible for
37 restoration funding from the Inland Protection Trust Fund.

38 1. Funding for free product recovery may be provided in
39 advance of the order established by the priority ranking system
40 under paragraph (a) for site cleanup activities. However, a
41 separate prioritization for free product recovery shall be
42 established consistent with paragraph (a). No more than \$5
43 million shall be encumbered from the Inland Protection Trust
44 Fund in any fiscal year for free product recovery conducted in
45 advance of the priority order under paragraph (a) established
46 for site cleanup activities.

47 ~~2. Funding for limited interim soil-source removals for~~
48 ~~sites that will become inaccessible for future remediation due~~
49 ~~to road infrastructure and right-of-way restrictions resulting~~
50 ~~from a pending Department of Transportation road construction~~
51 ~~project or for secondary containment upgrading of underground~~
52 ~~storage tanks required under chapter 62-761, Florida~~
53 ~~Administrative Code, may be provided in advance of the order~~
54 ~~established by the priority ranking system under paragraph (a)~~
55 ~~for site cleanup activities. The department shall provide~~
56 ~~written guidance on the limited source removal information and~~
57 ~~technical evaluation necessary to justify a request for a~~
58 ~~limited source removal in advance of the priority order pursuant~~

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59 ~~to paragraph (a) established for site cleanup activities.~~
60 ~~Prioritization for limited source removal projects associated~~
61 ~~with a secondary containment upgrade in any fiscal year shall be~~
62 ~~determined on a first-come, first-served basis according to the~~
63 ~~approval date issued under s. 376.30711 for the limited source~~
64 ~~removal. Funding for limited source removals associated with~~
65 ~~secondary containment upgrades shall be limited to 10 sites in~~
66 ~~each fiscal year for each facility owner and any related person.~~
67 ~~The limited source removal for secondary containment upgrades~~
68 ~~shall be completed no later than 6 months after the department~~
69 ~~issues its approval of the project, and the approval~~
70 ~~automatically expires at the end of the 6 months. Funding for~~
71 ~~Department of Transportation and secondary containment upgrade~~
72 ~~source removals may not exceed \$50,000 for a single facility~~
73 ~~unless the department makes a determination that it is cost-~~
74 ~~effective and environmentally beneficial to exceed this amount,~~
75 ~~but in no event shall the department authorize costs in excess~~
76 ~~of \$100,000 for a single facility. Department funding for~~
77 ~~limited interim soil-source removals associated with Department~~
78 ~~of Transportation projects and secondary containment upgrades~~
79 ~~shall be limited to supplemental soil assessment, soil~~
80 ~~screening, soil removal, backfill material, treatment or~~
81 ~~disposal of the contaminated soil, dewatering related to the~~
82 ~~contaminated soil removal in an amount of up to 10 percent of~~
83 ~~the total interim soil-source removal project costs, treatment,~~
84 ~~and disposal of the contaminated groundwater and preparation of~~
85 ~~the source removal report. No other costs associated with the~~
86 ~~facility upgrade may be paid with department funds. No more than~~
87 ~~\$1 million for Department of Transportation limited source~~

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88 ~~removal projects and \$10 million for secondary containment~~
89 ~~upgrade limited source removal projects conducted in advance of~~
90 ~~the priority order established under paragraph (a) for site~~
91 ~~cleanup activities shall be encumbered from the Inland~~
92 ~~Protection Trust Fund in any fiscal year. This subparagraph is~~
93 ~~repealed effective June 30, 2010.~~

94 ~~2.3.~~ Once free product removal and other source removal
95 identified in this paragraph are completed at a site, and
96 notwithstanding the order established by the priority ranking
97 system under paragraph (a) for site cleanup activities, the
98 department may reevaluate the site to determine the degree of
99 active cleanup needed to continue site rehabilitation. Further,
100 the department shall determine if the reevaluated site qualifies
101 for natural attenuation monitoring, long-term natural
102 attenuation monitoring, or no further action. If additional site
103 rehabilitation is necessary to reach no further action status,
104 the site rehabilitation shall be conducted in the order
105 established by the priority ranking system under paragraph (a).
106 ~~and~~ The department shall ~~is encouraged to~~ utilize natural
107 attenuation ~~and~~ monitoring strategies and, when cost-effective,
108 transition sites eligible for restoration funding assistance to
109 long-term natural attenuation monitoring where the plume is
110 shrinking or stable and confined to the source property
111 boundaries and the petroleum products' chemicals of concern meet
112 the natural attenuation default concentrations, as defined by
113 department rule. If the plume migrates beyond the source
114 property boundaries, natural attenuation monitoring may be
115 conducted in accordance with department rule, or if the site no
116 longer qualifies for natural attenuation monitoring, active

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117 remediation may be resumed. If the petroleum products' chemicals
118 of concern increase or are not significantly reduced after 42
119 months of monitoring, active remediation shall be resumed as
120 necessary. For sites undergoing active remediation, the
121 department shall evaluate the cost of natural attenuation
122 monitoring pursuant to s. 376.30711 to ensure that site
123 mobilizations are performed in a cost-effective manner. Sites
124 that are not eligible for state restoration funding may
125 transition to long-term natural attenuation monitoring using the
126 criteria in this subparagraph. Nothing in this subparagraph
127 precludes a site from pursuing a "No Further Action" order with
128 conditions where site conditions warrant.

129 3. The department shall evaluate whether higher natural
130 attenuation default concentrations for natural attenuation
131 monitoring or long-term natural attenuation monitoring are cost-
132 effective and would adequately protect public health and the
133 environment. The department shall also evaluate site-specific
134 characteristics that would allow for higher natural attenuation
135 or long-term natural attenuation concentration levels.

136 4. Unless institutional controls have been imposed by the
137 responsible party or property owner to restrict the uses of the
138 site, a local government may not deny a development order or
139 other permit on the grounds that petroleum contamination exists
140 onsite.

141 (11)

142 (b) Low-scored site initiative ~~Nonreimbursable voluntary~~
143 ~~cleanup.~~ Notwithstanding s. 376.30711, any site ~~For sites with~~
144 ~~releases reported prior to January 1, 1995, the department shall~~
145 ~~issue a determination of "No Further Action" at sites ranked~~

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146 with a ~~total~~ priority ranking score of 10 points or less may
147 voluntarily participate in the low-scored site initiative,
148 whether or not the site is eligible for state restoration
149 funding.

150 1. To participate in the low-scored site initiative, the
151 responsible party or property owner must affirmatively
152 demonstrate that, ~~which meet~~ the following conditions are met:

153 a.1. Upon reassessment pursuant to department rule, the
154 site retains a priority ranking score of 10 points or less ~~No~~
155 ~~free product exists in wells, boreholes, subsurface utility~~
156 ~~conduits, or vaults or buildings and no other fire or explosion~~
157 ~~hazard exists as a result of a release of petroleum products.~~

158 b.2. No excessively contaminated soil, as defined by
159 department rule, exists onsite as a result of a release of
160 petroleum products.

161 c.3. A minimum of 6 months of groundwater monitoring
162 indicates that the plume is shrinking or stable ~~Public supply~~
163 ~~wells for consumptive use of water expected to be affected by~~
164 ~~the site shall not be located within a 1/2-mile radius of the~~
165 ~~site; private supply wells for consumptive use of water expected~~
166 ~~to be affected by the site shall not be located within a 1/4-~~
167 ~~mile radius of the site; and there must be no current or~~
168 ~~projected consumptive use of the water affected by the site for~~
169 ~~at least the following 3 years. Where appropriate, institutional~~
170 ~~controls meeting the requirements of subparagraph (5)(b)4. may~~
171 ~~be required by the department to meet these criteria.~~

172 d.4. The release of petroleum products at the site does
173 ~~shall~~ not adversely affect adjacent surface waters, including
174 their effects on human health and the environment.

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175 ~~e.5.~~ The area of groundwater containing the petroleum
176 products' chemicals of concern ~~in concentrations greater than~~
177 ~~the boundary values defined in subparagraph 7.~~ is less than one-
178 quarter acre and is confined to the source property boundaries
179 of the real property on which the discharge originated.

180 ~~f.6.~~ Soils onsite that are subject to human exposure found
181 between land surface and 2 feet below land surface ~~shall~~ meet
182 the soil cleanup target levels ~~criteria~~ established by
183 department rule or human exposure is limited by ~~pursuant to sub-~~
184 ~~subparagraph (5)(b)9.a.~~ Where appropriate, institutional or
185 engineering controls ~~meeting the requirements of subparagraph~~
186 ~~(5)(b)4.~~ may be required by the department to meet these
187 ~~criteria.~~

188 2. Upon affirmative demonstration of the conditions under
189 subparagraph 1., the department shall issue a determination of
190 "No Further Action." Such determination acknowledges that
191 minimal contamination exists onsite and that such contamination
192 is not a threat to human health or the environment. If no
193 contamination is detected, the department may issue a site
194 rehabilitation completion order.

195 3. Sites that are eligible for state restoration funding
196 may receive payment of preapproved costs for the low-scored site
197 initiative as follows:

198 a. A responsible party or property owner may submit an
199 assessment plan designed to affirmatively demonstrate that the
200 site meets the conditions under subparagraph 1. Notwithstanding
201 the priority ranking score of the site, the department may
202 preapprove the cost of the assessment pursuant to s. 376.30711,
203 including 6 months of groundwater monitoring, not to exceed

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204 \$30,000 for each site. The department may not pay the costs
205 associated with the establishment of institutional or
206 engineering controls.

207 b. The assessment work shall be completed no later than 6
208 months after the department issues its approval.

209 c. No more than \$10 million for the low-scored site
210 initiative shall be encumbered from the Inland Protection Trust
211 Fund in any fiscal year. Funds shall be made available on a
212 first-come, first-served basis and shall be limited to 10 sites
213 in each fiscal year for each responsible party or property
214 owner.

215 ~~7. Concentrations of the petroleum products' chemicals of~~
216 ~~concern in groundwater at the property boundary of the real~~
217 ~~property on which the petroleum contamination originates shall~~
218 ~~not exceed the criteria established pursuant to sub-subparagraph~~
219 ~~(5) (b) 7.a. Where appropriate, institutional or engineering~~
220 ~~controls meeting the requirements of subparagraph (5) (b) 4. may~~
221 ~~be required by the department to meet these criteria.~~

222 ~~8. The department is authorized to establish alternate~~
223 ~~cleanup target levels for onsite nonboundary wells pursuant to~~
224 ~~the criteria in subparagraph (5) (b) 8.~~

225 ~~9. A scientific evaluation that demonstrates that the~~
226 ~~boundary criteria in subparagraph 7. will not be exceeded and a~~
227 ~~1-year site-specific groundwater monitoring plan approved in~~
228 ~~advance by the department validates the scientific evaluation.~~
229 ~~If the boundary criteria in subparagraph 7. are exceeded at any~~
230 ~~time, the department may order an extension of the monitoring~~
231 ~~period for up to 12 additional months from the time of the~~
232 ~~excess reading. The department shall determine the adequacy of~~

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233 ~~the groundwater monitoring system at a site. All wells required~~
234 ~~by the department pursuant to this paragraph shall be installed~~
235 ~~before the monitoring period begins.~~

236 ~~10. Costs associated with activities performed pursuant to~~
237 ~~this paragraph for sites which qualify for a determination of~~
238 ~~"No Further Action" under this paragraph shall not be~~
239 ~~reimbursable from the Inland Protection Trust Fund.~~

240 Section 2. This act shall take effect July 1, 2010.