

CHAPTER 2010-278

Council Substitute for Council Substitute for House Bill No. 1385

An act relating to petroleum contamination site cleanup; amending s. 376.3071, F.S.; revising provisions relating to petroleum contamination site selection and cleanup criteria; deleting obsolete provisions relating to funding for limited interim soil-source removals; requiring the Department of Environmental Protection to utilize natural attenuation monitoring strategies to transition sites into long-term natural attenuation monitoring under specified conditions; providing for natural attenuation and active remediation of sites; requiring the department to evaluate certain costs and strategies; prohibiting local governments from denying building permits under specified conditions; providing requirements for such permits and related construction, repairs, and renovations; establishing a low-scored site initiative; providing conditions for participation; requiring the department to issue certain determinations and orders; providing that certain sites are eligible for payment of preapproved costs; requiring assessment work to be completed within a certain timeframe; providing payment and funding limitations; deleting provisions relating to nonreimbursable voluntary cleanup; requiring the installation of fuel tank upgrades to secondary containment systems to be completed by specified deadlines; providing an exception; providing an effective date.

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

Section 1. Paragraph (c) of subsection (5) and paragraph (b) of subsection (11) of section 376.3071, Florida Statutes, are amended to read:

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

(5) SITE SELECTION AND CLEANUP CRITERIA.—

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

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

~~2. Funding for limited interim soil-source removals for sites that will become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from a pending Department of~~

~~Transportation road construction project or for secondary containment upgrading of underground storage tanks required under chapter 62-761, Florida Administrative Code, may be provided in advance of the order established by the priority ranking system under paragraph (a) for site cleanup activities. The department shall provide written guidance on the limited source removal information and technical evaluation necessary to justify a request for a limited source removal in advance of the priority order pursuant to paragraph (a) established for site cleanup activities. Prioritization for limited source removal projects associated with a secondary containment upgrade in any fiscal year shall be determined on a first-come, first-served basis according to the approval date issued under s. 376.30711 for the limited source removal. Funding for limited source removals associated with secondary containment upgrades shall be limited to 10 sites in each fiscal year for each facility owner and any related person. The limited source removal for secondary containment upgrades shall be completed no later than 6 months after the department issues its approval of the project, and the approval automatically expires at the end of the 6 months. Funding for Department of Transportation and secondary containment upgrade source removals may not exceed \$50,000 for a single facility unless the department makes a determination that it is cost-effective and environmentally beneficial to exceed this amount, but in no event shall the department authorize costs in excess of \$100,000 for a single facility. Department funding for limited interim soil source removals associated with Department of Transportation projects and secondary containment upgrades shall be limited to supplemental soil assessment, soil screening, soil removal, backfill material, treatment or disposal of the contaminated soil, dewatering related to the contaminated soil removal in an amount of up to 10 percent of the total interim soil source removal project costs, treatment, and disposal of the contaminated groundwater and preparation of the source removal report. No other costs associated with the facility upgrade may be paid with department funds. No more than \$1 million for Department of Transportation limited source removal projects and \$10 million for secondary containment upgrade limited source removal projects conducted in advance of the priority order established under paragraph (a) for site cleanup activities shall be encumbered from the Inland Protection Trust Fund in any fiscal year. This subparagraph is repealed effective June 30, 2010.~~

2.3. Once free product removal and other source removal identified in this paragraph are completed at a site, and notwithstanding the order established by the priority ranking system under paragraph (a) for site cleanup activities, the department may reevaluate the site to determine the degree of active cleanup needed to continue site rehabilitation. Further, the department shall determine if the reevaluated site qualifies for natural attenuation monitoring, long-term natural attenuation monitoring, or no further action. If additional site rehabilitation is necessary to reach no further action status, the site rehabilitation shall be conducted in the order established by the priority ranking system under paragraph (a), and The department shall ~~is encouraged to~~ utilize natural attenuation and monitoring strategies and, when cost-effective, transition sites eligible for

restoration funding assistance to long-term natural attenuation monitoring where 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. If the plume migrates beyond the source property boundaries, natural attenuation monitoring may be conducted in accordance with department rule, or if the site no longer qualifies for natural attenuation monitoring, active remediation may be resumed. For long-term natural attenuation monitoring, if the petroleum products' chemicals of concern increase or are not significantly reduced after 42 months of monitoring, or if the plume migrates beyond the property boundaries, active remediation shall be resumed as necessary. For sites undergoing active remediation, the department shall template the cost of natural attenuation monitoring pursuant to s. 376.30711 to ensure that site mobilizations are performed in a cost-effective manner. Sites that are not eligible for state restoration funding may transition to long-term natural attenuation monitoring using the criteria in this subparagraph. Nothing in this subparagraph precludes a site from pursuing a "No Further Action" order with conditions where site conditions warrant.

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

4. 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. All building permits and any construction, repairs, or renovations performed in conjunction with such permits must comply with the applicable provisions of chapters 489 and 553.

(11)

(b) ~~Low-scored site initiative Nonreimbursable voluntary cleanup.— Notwithstanding s. 376.30711, any site~~ For sites with releases reported prior to January 1, 1995, the department shall issue a determination of "No Further Action" at sites ranked with a total priority ranking score of 10 points or less may voluntarily participate in the low-scored site initiative, whether or not the site is eligible for state restoration funding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~9. A scientific evaluation that demonstrates that the boundary criteria in subparagraph 7. will not be exceeded and a 1-year site-specific groundwater monitoring plan approved in advance by the department validates the scientific evaluation. If the boundary criteria in subparagraph 7. are exceeded at any time, the department may order an extension of the monitoring period for up to 12 additional months from the time of the excess reading. The department shall determine the adequacy of the groundwater monitoring system at a site. All wells required by the department pursuant to this paragraph shall be installed before the monitoring period begins.~~

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

Section 2. The installation of fuel tank upgrades to secondary containment systems shall be completed by the deadlines specified in rule 62-761.510, Florida Administrative Code, Table UST. For fuel service station facilities that have orders issued by the Department of Environmental Protection before July 1, 2010, granting an extension to the deadline, the deadline shall be extended to September 30, 2011. Such facilities must be in compliance with all other state and federal regulations pertaining to petroleum storage systems.

Section 3. This act shall take effect July 1, 2010.

Vetoed by the Governor June 1, 2010.

Passed the House over the veto November 16, 2010.

Passed the Senate over the veto November 16, 2010.

Filed in Office Secretary of State November 16, 2010.