

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1123 Site Rehabilitation

SPONSOR(S): Clarke

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation (Sub)		McKinnon	Lotspeich
2) Natural Resources			
3) Finance & Tax			
4) Agriculture & Environmental App. (Sub)			
5) Appropriations			

SUMMARY ANALYSIS

HB 1123 provides the following:

- Extends application of risk-based corrective action principles to all contaminated sites resulting from a discharge of pollutants or hazardous substances;
- Provides for contamination cleanup criteria that incorporate risk-based corrective action principles to be adopted by rule;
- Provides clarification that cleanup criteria do not apply to offsite relocation or treatment; provides the conditions under which further rehabilitation may be required; creates the State-Owned Lands Cleanup Program to address site rehabilitation of contaminated state-owned lands;
- Directs the Department of Environmental Protection (DEP) to use existing site priority ranking and cleanup criteria and establishes liability protection;
- Describes conditions under which the DEP shall seek cost recovery and provides exclusions;
- Clarifies who may apply for tax credits; clarifies time period for use of tax credits; allows tax credit applicant to claim credit on a consolidated return up to the amount of the consolidated group's tax liability; and
- Converts tax credit application time period to calendar year and clarifies that placeholder applications are prohibited.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: March 11, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

HB 1123 provides for additional rule making by DEP.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

“Global RBCA”

In the past five years, the Florida Legislature adopted Risk-Based Corrective Action principles to apply to cleanups conducted at petroleum-contaminated sites, brownfield sites in designated brownfield areas, and drycleaning-solvent-contaminated sites (often referred to as “program” sites). [See ss. 376.3071(5), 376.81, and 376.3078(4), F.S., respectively.] Currently, sites that fall outside the three program areas in which RBCA has been adopted are subject to one of two cleanup processes. The most common of these is often referred to as the CAP/RAP (Contamination Assessment Plan/Remedial Action Plan) process, wherein site cleanups are generally completed by licensed environmental professionals in accordance with the DEP’s Model Corrective Actions for Contaminated Sites guidance document. This document provides recommended procedures for the development and approval of work plans and reports. The DEP’s cleanup criteria are based on applicable ground water and surface water standards, ground water guidance concentrations, contaminant leachability factors and soil exposure guidelines. The CAP/RAP process has always incorporated general notions of risk-based cleanup but without the clear direction and authority provided by the statute for the three true RBCA programs. The other cleanup process is included in the federal Resource Conservation and Recovery Act (RCRA) program, which the DEP has been authorized by the USEPA to administer in Florida. RCRA cleanups in Florida are governed by federal regulations adopted as Florida rules, where they are equivalent or more stringent, and federal program guidance.

In April 1998, when the Environmental Regulation Commission adopted the Brownfields Cleanup Criteria Rule, there was a request from both the regulated community and the environmental interest and health advocacy groups to have the DEP provide an on-going forum for interested parties to discuss evolving technical and scientific issues associated with contaminated site cleanup and the re-use of a variety of media using risk-based management principles. In response, the DEP hosted the first Contaminated Soils Forum (CSF) in July 1998, and the CSF has met seven times since then. During 1999 and 2000, the concept of applying RBCA to all sites contaminated with pollutants or hazardous substances regardless of program status was the subject of some discussion at the CSF meetings. This concept has been dubbed “Global RBCA” since it would apply RBCA principles to all cleanups. In general, application of RBCA principles has been embraced as a streamlined approach that offers a more cost-efficient cleanup process.

Proponents argue that if RBCA principles apply to the current program sites, then logically they should apply at non-program sites as well. The ultimate goal at any contaminated site is to conduct site rehabilitation to protect the public health and safety and the environment, and using a risk-based

approach to accomplish this has been the DEP's philosophy. The adoption of formal RBCA language by the Legislature for the three program areas simply gave the DEP the clear authority to adopt default Cleanup Target Levels (CTLs) and to allow Alternative Cleanup Target Levels (ACTLs), where appropriate as determined by a site-specific risk assessment. It also authorized the DEP to allow the use of institutional and engineering controls to eliminate or control exposure at sites with remaining contamination. These benefits of RBCA, proponents argue, should apply equally to program and non-program sites in Florida.

Also, there is ongoing debate with the United States Environmental Protection Agency (EPA) regarding the application of state ARARs (Applicable or Relevant and Appropriate Requirements) at Superfund sites in Florida. Currently, the EPA has opted to apply a cancer risk range from 10^{-4} (one in ten thousand) to 10^{-6} (one in one million) in establishing cleanup requirements at Superfund sites. If a state has adopted cleanup requirements that are different from the EPA's, the EPA must accept them as ARARs and apply them at sites being cleaned up under the federal Superfund program within that state. The EPA takes the position that Florida has not promulgated statewide ARARs since RBCA in Florida applies only to the three program areas (Petroleum, Brownfields and Drycleaning). The result is application of cleanup requirements at some Superfund sites that are less stringent than Florida's statutorily adopted standard of 10^{-6} cancer risk for contaminated sites.

State-Owned Lands Cleanup

The State of Florida and the Board of Trustees of the Internal Improvement Trust Fund (Trustees) own and are responsible for many parcels of property that are contaminated with hazardous substances. The contamination may be limited to soils or may extend to surface waters or groundwaters of the state. The threats to public health due to contact with contaminated soil or water may range from inconsequential to substantial. Environmental threats are primarily to plants and animals living in or drinking from surface waters.

In most cases, the contamination was not caused by intentional discharge, but was caused by equipment failures such as leaking underground storage tanks or by sloppy operating practices such as spillage of pesticides when mixing them prior to use. In some cases, the contamination was the responsibility of state employees and in others it was caused by private sector tenants leasing state-owned property. In other cases, the contamination occurred prior to state ownership; but the property was purchased before current environmental screening practices were incorporated into state acquisitions.

In the past, the DEP has generally worked cooperatively with sister agencies responsible for contaminated sites to require them to conduct appropriate investigations and cleanups. However, progress is often slow and difficult due to funding limitations of the responsible agencies. Consequently, many of these sites have remained contaminated for many years. Many are contaminating groundwater and surface waters, and some are threats to public health.

The full scope of the problem is unknown at this time. Some examples of what is known follow: The University of Florida Institute for Food and Agricultural Sciences (IFAS) has 28 facilities around the state with 132 known pesticide contamination sites. The IFAS had been working with the DEP on a multi-year plan to investigate and clean up these sites until 1998 when funding was eliminated. Over a period of 12 years, 132 sites were investigated and 88 were cleaned up and closed at a cost of \$7,840,000. Forty-four sites remain to be addressed at an estimated cost of \$8 – 10 million. The higher cost for the remaining sites is because they are more contaminated or larger than many of the sites addressed earlier.

There are approximately 85 petroleum sites on state-owned lands that require either full or partial funding for investigation and cleanup. Those requiring partial funding are eligible for funding assistance under the existing Petroleum Contamination Participation Program, but according to statute the participant must provide a 25% cost share. Costs per site for petroleum cleanup range from \$20,000 –

250,000. There are at least 31 cattle dipping vats on state-owned lands that are contaminated with pesticides or arsenic that require cleanup. A report on cattle dipping vats prepared for the DEP in 1995 estimated that total costs to investigate and clean up a cattle dipping vat site could range from \$130,000 – 800,000. Hundreds of acres of former railroad right-of-way have been acquired for conversion to greenways and trails. Only recently have environmental audits been required prior to acquisition. It is likely that some petroleum contamination is present along these corridors due to fuel and oil spillage from trains and that some pesticide or arsenic contamination is present due to weed control measures by the railroads. Other potential categories of sites include DOT maintenance yards and Department of Corrections/Pride of Florida vocational training facilities.

Voluntary Cleanup Tax Credits (VCTC)

In 1998, the legislature passed CS/SB 244 which included provisions authorizing the DEP to issue Voluntary Cleanup Tax Credits as an additional incentive to encourage site rehabilitation at brownfield sites in designated brownfield areas, at sites eligible for the Florida Drycleaning Solvent Cleanup Program (DSCP), and at drycleaning solvent contaminated sites (ineligible for the DSCP) at which voluntary cleanup is undertaken by the real property owner (RPO) provided the RPO is not also, and has never been, the owner or operator of the drycleaning facility where the contamination exists. This law allows an eligible applicant to receive up to 35% of the costs of voluntary cleanup activity that is integral to site rehabilitation, not to exceed \$250,000 per site per year in tax credits. The total amount of tax credits that may be granted by the DEP is \$2 million annually. These tax credits can be applied toward Corporate Income Tax or Intangible Personal Property Tax in Florida. Also, these tax credits are transferable; however, such transferred credits may not be transferred again, although they may succeed to a surviving or acquiring entity after merger or acquisition.

The DEP established interim application requirements and forms by September 1, 1998, and then adopted these as final in its Voluntary Cleanup Tax Credit Rule, Chapter 62-788, F.A.C., effective March 31, 1999. The DEP received one VCTC application in December 1998 and issued a tax credit in the amount of \$30,228.13. In December 1999, the DEP received three eligible applications and issued tax credits totaling \$118,438.25. The DEP received five eligible applications in December 2000, and issued a total of \$224,351.70 in tax credits.

Effect of Proposed Changes

Establishes "Global RBCA"

HB 1123 creates s. 376.30701, F.S., establishing risk based corrective principles to **all** contaminated sites throughout the State. The applies to a variety of site rehabilitation scenarios including voluntary site cleanup or state-managed cleanup by the DEP. The bill directs the Secretary of the DEP to adopt rules no later than July 1, 2004, to develop site rehabilitation program tasks that include applying RBCA principles. The RBCA principles shall include:

- Establishing cleanup target levels for groundwater, surface water, and soil to 10^{-6} ;
- Providing for alternative cleanup levels based on the applicant's risk assessment studies;
- Issuance of "No Further Action" by DEP based on the applicant meeting cleanup target levels using the best available technology.

Establishes State-Owned Lands Cleanup

HB 1123 creates the State-Owned Lands Cleanup Program (SOLCP) to provide state-funded and state-managed site rehabilitation for all state-owned lands contaminated by discharges of pollutants or hazardous substances that are reported to the DEP. The bill prohibits the DEP from compelling any state agency that controls or manages state-owned lands (Liability Protection) that are contaminated with pollutants or hazardous substances to conduct site rehabilitation at such sites that are reported to the DEP.

VCTC

HB 1123 provides changes to the Voluntary Cleanup Tax Credit (VCTC) law that have the effect of making consistent the terminology used in the three existing sections of law that govern the VCTC (See ss. 199.1055, 220.1845 and 376.30781, F.S., wherein various inconsistent terms were used to describe the VCTC entity including “taxpayer,” “applicant,” and “owner, operator, or real property owner”.) the bill clarifies who may transfer a tax credit; and allows 5-year expiration period to begin anew following transfer. The bill converts the application process from a tax-year to a calendar-year system. The effect of this change will be to eliminate much of the confusion on these issues since the program’s inception in 1998. HB 1123 moves the current application deadline from December 31 to January 15 of the year following the calendar year for which they are claiming site rehabilitation costs to eliminate problems associated with completing site rehabilitation activities and application preparation by the end of the year. This change will allow more time for PE/PG and CPA review and final application preparation to avoid site rehabilitation from stopping in early December or the applicant being unable to claim December’s site rehabilitation costs. Additionally, HB 1123 language clarifies that applications must be complete by the deadline and that placeholder applications will not be accepted or secure a place in the first-come, first-served line.

C. SECTION DIRECTORY:

Section 1. Creates s. 376.30701, F.S.; establishing applicability of new “Global RBCA”; directs the DEP to establish cleanup criteria by rule; lists criteria which must be considered (which are similar to those criteria adopted by the Legislature in previous years for the Petroleum, Brownfields and Drycleaning Programs); and establishes limitations and reopeners.

Section 2. Creates s. 376.30702, F.S.; establishes findings and intent regarding contaminated state-owned lands; creates the Florida State-Owned Lands Cleanup Program to be administered by the DEP; establishes that continuation of program is subject to annual appropriation; describes the types of eligible cleanup activities and expenses; establishes site priority ranking and cleanup criteria; establishes limited liability protection for any state agency that controls or manages state-owned lands that are contaminated with pollutants or hazardous substances; authorizes the DEP to seek cost recovery from responsible parties other than state agencies; and provides exclusions for abatement of phosphorus pollution.

Section 3. Amends subsection (1) of section 199.1055, F.S.; clarifies existing requirements including reference to “taxpayer” to make it consistent with other governing provisions of law; clarifies who may transfer a tax credit; and allows 5-year expiration period to begin anew following transfer.

Section 4. Amends subsection (1) of section 220.1845, F.S.; clarifies existing requirements including reference to “taxpayer” to make it consistent with other governing provisions of law; clarifies who may transfer a tax credit; and allows 5-year expiration period to begin anew following transfer.

Section 5. Amends s. 376.30781, F.S.; clarifies existing requirements including reference to “taxpayer” and “applicant” to make it consistent with other governing provisions of law; converts VCTC application period from a tax year to a calendar year; changes application deadline from December 31 to January 15; requires complete applications and prohibits filing of placeholder applications; clarifies where applications are to be submitted; and deletes unnecessary language containing past deadline.

Section 6. Provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

1. Non-recurring Effects: There will be indeterminate non-recurring costs associated with the required rulemaking for cleanup criteria; i.e., the RBCA rule and the act requires the DEP to amend a rule necessary for the VCTC application process. These costs include the DEP's efforts to publicize proposed rules through mail-outs and public workshops around the state, as well as costs associated with publication and process requirements pursuant to chapter 120, F.S.

2. Recurring Effects: The bill has no determinable fiscal impact on DEP or other state agencies. Since the bill does not authorize any FTE's to implement the SOLCP, the DEP will have to absorb the workload associated with implementation and continued operation of the program with existing resources. The SOLCP workload includes site inventory and priority ranking, contractor procurement and oversight, and approval of technical aspects of site assessment and cleanup in accordance with RBCA.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See section D.

2. Expenditures:

See section D.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See section D.

D. FISCAL COMMENTS:

Because the bill will allow certain contaminated sites to be cleaned to less stringent levels, there will be a cost savings to site owners (which include both private sector and local government owners) in terms of funds expended for site cleanup.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Provides for additional rule making by DEP.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES