

**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 Environmental Preservation and Conservation Committee

BILL: CS/SB 114

INTRODUCER: Committee on Environmental Preservation and Senator Justice

SUBJECT: Environmental Cleanup

DATE: March 10, 2009      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Kiger	EP	Fav/CS
2.			ED	
3.			GA	
4.				
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) substantially amends Section 376.30702, F.S., and expands the notification requirements for the Department of Environmental Protection (DEP) and those responsible for site restoration when contamination is discovered beyond the property boundary of a site being assessed under one of DEP's clean up rules or court order. It expands notification requirements to include property owners within a 1,000 foot radius of a contaminated site who may be interested in the presence of contamination in their area, even if no data are available for their parcel. Additionally, notice of the presence of contamination, with specific information provided by department rule, would have to be sent to a specified list of health and state representatives. Further, it would expand DEP's current requirement to notify the school's superintendent, and, in turn, expand the school's requirements to notify teachers and parents or guardians of students attending a school that is within a one-mile radius of the discovered contamination. Finally, it creates the Petroleum Restoration Program Advisory Board that is charged with reviewing proposed program rules potentially impacting petroleum site owners, operators, or environmental contractors and methods of improvement.

The CS amends s. 376.30702, F.S.

The CS provides an effective date of July 1, 2009.

## II. Present Situation:

In 2005, the Legislature determined that it was necessary to provide notification of parties affected by contamination as soon as it was discovered to be beyond property boundaries rather than waiting until a cleanup plan was approved. Section 376.30702, F.S., requires that if during any site rehabilitation work done pursuant to any of the risk-based correction action (RBCA) statutes, contamination is discovered beyond the property boundaries of a site being investigated, the owners of the property where the contamination is discovered must be notified. However, this notification is only required to be provided for specific properties from which samples are collected and analyzed in a laboratory. Consequently, if samples are collected only from the property of the contaminated site under investigation, such as a road right-of-way rather than on private property, or if not all parcels in the vicinity of a contaminated site are sampled, then some people who may be affected by contamination may not be notified of its presence.

The contents of the notification include some of the following requirements:

- a listing of all record owners of any real property;
- separate tables that list the sampling location;
- sampling date, name of contaminate detected above cleanup target levels;
- the contaminant concentrations and whether clean up is based on health, nuisance, organoleptic, or aesthetic concerns;
- a vicinity map; and
- other specific requirements outlined in statute.

According to DEP, sections 376.30701, .3071, .3078, and .81, F.S., authorize the department and persons responsible for contaminated site rehabilitation to use RBCA when cleaning up such sites. Each of these statutes requires notification of affected parties when DEP approves a cleanup plan that allows contamination to remain beyond the boundaries of the source property while cleanup is underway. These provisions are designed to facilitate early notification of the discovery of contamination. Parties that fail to comply with the requirements are subject to penalties outlined in s. 376.302, and 403.161(1) (b) F.S., which may include fines and civil litigation if good faith efforts have not been followed.

Additionally, DEP has rules and provisions in place to address businesses and property owners that regularly deal with potentially harmful pollutants. For example, there are a large numbers of sites eligible for petroleum and dry-cleaning solvent cleanup programs. These businesses are taxed to fund this program, and are required to clean-up, when contamination occurs, on these sites. DEP closely monitors this program, including an approved standard operation of procedures manual and approved list of clean-up contractors, to ensure the environment and the public's health is protected.

### III. Effect of Proposed Changes:

**Section 1.** Amends section 376.30702, F.S., to expand the risk-based correction action provisions to include court ordered notification when contamination is discovered. The CS also expands the parties that need to be notified to include the following:

- appropriate department district office;
- appropriate county health department;
- Mayor, chair of the county commission, or the comparable senior elected official representing the affected area;
- City manager, county administrator, or the comparable senior elected official representing the affected are, both U.S. Senators and U.S. Representatives; and
- All property owners where site rehabilitation is being conducted, if different from the person responsible for site rehabilitation, all property owners, lessees, and tenants of any properties within 1,000 foot radius of each sampling point at which contamination is discovered.

#### Notice Requirements

The notice provided to local government officials by those responsible for site restoration must be mailed by certified mail return receipt requested and needs to include information advising local government of its responsibilities. So DEP can verify compliance of the expanded requirements, copies of the notices and receipts must be provided to the department. The notice provided by responsible parties to property owners, lessees, and tenants may be delivered by certified mail, return receipt requested, hand delivery, or door hanger. Copies of the notices and receipts, or a copy of a sample of the hand-delivered notice or door-hanger and a list of addresses to which the notice or door-hanger was distributed, must be provided to DEP so the department can verify compliance.

Within 30 days of receiving notice, the local government must mail a copy of the notice to the president or comparable executive officer of each homeowner's association or neighborhood association within the potentially affected area. DEP must verify within 30 days of receiving the notice from the local government that the person responsible for the site rehabilitation has complied with the notice requirements.

Additionally, if a property within a one-mile radius of the contamination is a school as defined in section 1003.01, F.S., DEP is also required to send a notice to the school district superintendent and to direct the superintendent to annually notify teachers and parents or the guardians of students attending the school. If the property at which contamination has been discovered is the site of a private k-12 school or a child care facility as defined in s. 402. 302, F.S., the department must mail a copy of the notice to the governing board, principal, or owner of the school or child care facility. Further it directs the governing board, principal, or owner to provide actual notice annually to teachers and parents or guardians of children attending the school or child care facility during the time the site is being rehabilitated. Entities participating in the risk-based corrective action programs are exempt from the one-mile radius notification for schools. These exempt entities are defined in statute and examples include: gas stations, dry-cleaning facilities, and Brownfield areas.

**Section 2.** This section creates a Petroleum Restoration Program Advisory Board. The Board will consist of seven members. The President of the Senate and the Speaker of the House of Representatives can appoint one member who possesses knowledge, skill, and experience in the area of geology or insurance. The secretary of DEP shall appoint five members, four of which will be nominated by the Florida Petroleum Marketers and Convenience Store Association and one member nominated by the Florida Petroleum Council. The members are appointed to staggered three year terms and may not be appointed for more than two consecutive terms. Board members may not be compensated for their service and are not entitled reimbursement for per diem and travel expenses.

The board will annually elect from among its members a chair and a vice chair and must meet four times a year. A majority of the members present constitute a quorum and is necessary for the board to take any official action. All meetings of the board must be open and available to the public. The main goals include reviewing proposed program rules potentially impacting petroleum site owners, operators, or environmental contractors and methods of improvement, among other issues.

Semiannually, the secretary, or a designee, will be required to meet with the board to review the Petroleum Restoration Program, statutory or rule hindrances to the program, funding strategies, program staffing hindrances to the program and other strategies to improve the quality and cost-effectiveness of the program. The board will also be examining program productivity and efficiency with the goal of increasing the number of site-completion orders issued by 10 percent annually. The board is required to annually report to the Secretary of the Department of Environmental Protection and the Legislature on their progress on meeting the Board's goals.

The CS provides an effective date of July 1, 2009.

**Other Potential Implications:**

DEP has indicated that they are supportive of contamination notification legislation; however, a 1,000 foot radius is not considered a workable distance in terms of accuracy and practicality. The basis for selecting an area around a contaminated site within which to notify the public should be based on empirical data about the size of a typical ground water contamination plume, including a safety factor to allow for an exceptionally large ground water plume.

**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:**

Owners of contaminated property may be more vulnerable to lawsuits simply because of increased public awareness of the presence of contamination. Property owners will benefit from more information about the extent of contamination in their vicinity. However, if contamination does exist, or is presumed to exist, this may adversely affect their property's value.

**C. Government Sector Impact:**

According to DEP, there will be manageable startup costs to establish procedures for identifying parcels that fall within a 1,000 foot radius of a contamination location. DEP will incur significant costs to identify a large number of property owners each year. The Department of Health may experience an increase in resident requests for information on public health impacts of contamination on or near their residences and drinking water supplies. As most local governments own contaminated property, they may experience indeterminate costs associated with responding to resident inquiries about notices they receive from DEP. School districts will also experience increased costs for creating and mailing letters to teachers, parents, and guardians of schools within a one-mile radius of a contaminated site. These state agencies will incur an indeterminate number of expenditures to contractors tasked with identifying parcel owners, and generating and mailing notice letters.

The creation of the Petroleum Restoration Program Advisory Board does not fiscally impact DEP. The CS prohibits the members from receiving compensation for their services or reimbursement for per diem and travel expenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

It is DEP's position that a Petroleum Restoration Program Advisory Board is not needed. DEP already has a program in place that has been thoroughly reviewed that monitors clean-up programs. Further, the members who would be eligible to sit on the board are from the same pool of experts that can participate and profit from the clean-up programs in place now.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

The bill expands the parties that need to be notified to include a list of state and health officials that represent the affected area and the state of Florida. It reduces the property radius range of persons that need to be notified when site rehabilitation is being conducted from one mile to 1,000 feet. Further, it exempts certain entities involved in existing clean-up programs from the noticing provisions. Finally, it creates a Petroleum Restoration Program Advisory Board that is charged with reducing costs and increasing site cleanups.

**B. Amendments:**

None.