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1 A bill to be entitled
2 An act relating to contaminated sites; amending s.
3 376.301, F.S.; defining the terms "background
4 concentration" and "long-term natural attenuation";
5 amending s. 376.30701, F.S.; requiring the Department
6 of Environmental Protection to include protocols for
7 the use of long-term natural attenuation where site
8 conditions warrant; requiring specified interactive
9 effects of contaminants to be considered as cleanup
10 criteria; revising how cleanup target levels are
11 applied where surface waters are exposed to
12 contaminated groundwater; authorizing the use of
13 relevant data and information when assessing cleanup
14 target levels; providing that institutional controls
15 are not required under certain circumstances if using
16 alternative cleanup target levels; amending s.
17 287.0595, F.S.; conforming a cross-reference;
18 providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

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22 Section 1. Present subsections (4) through (22) of section
23 376.301, Florida Statutes, are redesignated as subsections (5)
24 through (23), respectively, present subsections (23) through
25 (48) of that section are redesignated as subsections (25)
26 through (50), respectively, and new subsections (4) and (24) are

27 added to that section, to read:

28 376.301 Definitions of terms used in ss. 376.30-376.317,
 29 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
 30 376.75, unless the context clearly requires otherwise, the term:

31 (4) "Background concentration" means the concentration of
 32 contaminants naturally occurring or resulting from the
 33 anthropogenic impacts unrelated to the discharge of pollutants
 34 or hazardous substances for which site rehabilitation is being
 35 conducted.

36 (24) "Long-term natural attenuation" means natural
 37 attenuation approved by the department as a site rehabilitation
 38 program task for a period of more than 5 years.

39 Section 2. Subsection (2) of section 376.30701, Florida
 40 Statutes, is amended to read:

41 376.30701 Application of risk-based corrective action
 42 principles to contaminated sites; applicability; legislative
 43 intent; rulemaking authority; contamination cleanup criteria;
 44 limitations; reopeners.—

45 (2) INTENT; RULEMAKING AUTHORITY; CLEANUP CRITERIA.—It is
 46 the intent of the Legislature to protect the health of all
 47 people under actual circumstances of exposure. By July 1, 2004,
 48 the secretary of the department shall establish criteria by rule
 49 for the purpose of determining, on a site-specific basis, the
 50 rehabilitation program tasks that comprise a site rehabilitation
 51 program, including a voluntary site rehabilitation program, and
 52 the level at which a rehabilitation program task and a site

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53 rehabilitation program may be deemed completed. In establishing
54 these rules, the department shall apply, to the maximum extent
55 feasible, a risk-based corrective action process to achieve
56 protection of human health and safety and the environment in a
57 cost-effective manner based on the principles set forth in this
58 subsection. These rules shall prescribe a phased risk-based
59 corrective action process that is iterative and that tailors
60 site rehabilitation tasks to site-specific conditions and risks.
61 The department and the person responsible for site
62 rehabilitation are encouraged to establish decision points at
63 which risk management decisions will be made. The department
64 shall provide an early decision, when requested, regarding
65 applicable exposure factors and a risk management approach based
66 on the current and future land use at the site. These rules must
67 ~~shall also~~ include protocols for the use of natural attenuation,
68 including long-term natural attenuation where site conditions
69 warrant, the use of institutional and engineering controls, and
70 the issuance of "No Further Action" orders. The criteria for
71 determining what constitutes a rehabilitation program task or
72 completion of a site rehabilitation program task or site
73 rehabilitation program, including a voluntary site
74 rehabilitation program, must:

75 (a) Consider the current exposure and potential risk of
76 exposure to humans and the environment, including multiple
77 pathways of exposure. The physical, chemical, and biological
78 characteristics of each contaminant must be considered in order

79 | to determine the feasibility of a risk-based corrective action
80 | assessment.

81 | (b) Establish the point of compliance at the source of the
82 | contamination. However, the department is authorized to
83 | temporarily move the point of compliance to the boundary of the
84 | property, or to the edge of the plume when the plume is within
85 | the property boundary, while cleanup, including cleanup through
86 | natural attenuation processes in conjunction with appropriate
87 | monitoring, is proceeding. The department may ~~also is~~
88 | ~~authorized~~, pursuant to criteria provided in this section, ~~to~~
89 | temporarily extend the point of compliance beyond the property
90 | boundary with appropriate monitoring, if such extension is
91 | needed to facilitate natural attenuation or to address the
92 | current conditions of the plume, provided human health, public
93 | safety, and the environment are protected. When temporarily
94 | extending the point of compliance beyond the property boundary,
95 | it cannot be extended further than the lateral extent of the
96 | plume, if known, at the time of execution of a cleanup
97 | agreement, if required, or the lateral extent of the plume as
98 | defined at the time of site assessment. Temporary extension of
99 | the point of compliance beyond the property boundary, as
100 | provided in this paragraph, must include actual notice by the
101 | person responsible for site rehabilitation to local governments
102 | and the owners of any property into which the point of
103 | compliance is allowed to extend and constructive notice to
104 | residents and business tenants of the property into which the

105 point of compliance is allowed to extend. Persons receiving
106 notice pursuant to this paragraph shall have the opportunity to
107 comment within 30 days after receipt of the notice. Additional
108 notice concerning the status of natural attenuation processes
109 shall be similarly provided to persons receiving notice pursuant
110 to this paragraph every 5 years.

111 (c) Ensure that the site-specific cleanup goal is that all
112 contaminated sites being cleaned up pursuant to this section
113 ultimately achieve the applicable cleanup target levels provided
114 in this subsection. In the circumstances provided in this
115 subsection, and after constructive notice and opportunity to
116 comment within 30 days after receipt of the notice to local
117 government, owners of any property into which the point of
118 compliance is allowed to extend, and residents of any property
119 into which the point of compliance is allowed to extend, the
120 department may allow concentrations of contaminants to
121 temporarily exceed the applicable cleanup target levels while
122 cleanup, including cleanup through natural attenuation processes
123 in conjunction with appropriate monitoring, is proceeding, if
124 human health, public safety, and the environment are protected.

125 (d) Allow the use of institutional or engineering controls
126 at contaminated sites being cleaned up pursuant to this section,
127 where appropriate, to eliminate or control the potential
128 exposure to contaminants of humans or the environment. The use
129 of controls must be preapproved by the department and only after
130 constructive notice and opportunity to comment within 30 days

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131 after receipt of notice is provided to local governments, owners
132 of any property into which the point of compliance is allowed to
133 extend, and residents on any property into which the point of
134 compliance is allowed to extend. When institutional or
135 engineering controls are implemented to control exposure, the
136 removal of the controls must have prior department approval and
137 must be accompanied by the resumption of active cleanup, or
138 other approved controls, unless cleanup target levels under this
139 section have been achieved.

140 (e) Consider the interactive ~~additive~~ effects of
141 contaminants, including additive, synergistic, and antagonistic
142 effects. ~~The synergistic and antagonistic effects shall also be~~
143 ~~considered when the scientific data become available.~~

144 (f) Take into consideration individual site
145 characteristics, which shall include, but not be limited to, the
146 current and projected use of the affected groundwater and
147 surface water in the vicinity of the site, current and projected
148 land uses of the area affected by the contamination, the exposed
149 population, the degree and extent of contamination, the rate of
150 contaminant migration, the apparent or potential rate of
151 contaminant degradation through natural attenuation processes,
152 the location of the plume, and the potential for further
153 migration in relation to site property boundaries.

154 (g) Apply state water quality standards as follows:

155 1. Cleanup target levels for each contaminant found in
156 groundwater shall be the applicable state water quality

157 standards. Where such standards do not exist, the cleanup target
158 levels for groundwater shall be based on the minimum criteria
159 specified in department rule. The department shall apply the
160 following, as appropriate, in establishing the applicable
161 cleanup target levels: calculations using a lifetime cancer risk
162 level of 1.0E-6; a hazard index of 1 or less; the best
163 achievable detection limit; and nuisance, organoleptic, and
164 aesthetic considerations. However, the department may not ~~shall~~
165 ~~not~~ require site rehabilitation to achieve a cleanup target
166 level for any individual contaminant that is more stringent than
167 the site-specific, ~~naturally occurring~~ background concentration
168 for that contaminant.

169 2. Where surface waters are exposed to contaminated
170 groundwater, the cleanup target levels for the contaminants must
171 ~~shall~~ be based on the more protective of the groundwater or
172 surface water standards as established by department rule,
173 unless it has been demonstrated that the contaminants do not
174 cause or contribute to the exceedance of applicable surface
175 water quality criteria. In such circumstance, the point of
176 measuring compliance with the surface water standards shall be
177 in the groundwater immediately adjacent to the surface water
178 body.

179 3. Using risk-based corrective action principles, the
180 department shall approve alternative cleanup target levels in
181 conjunction with institutional and engineering controls, if
182 needed, based upon an applicant's demonstration, using site-

183 | specific or other relevant data and information, risk assessment
184 | modeling results, including results from probabilistic risk
185 | assessment modeling, risk assessment studies, risk reduction
186 | techniques, or a combination thereof, that human health, public
187 | safety, and the environment are protected to the same degree as
188 | provided in subparagraphs 1. and 2. Where a state water quality
189 | standard is applicable, a deviation may not result in the
190 | application of cleanup target levels more stringent than the
191 | standard. In determining whether it is appropriate to establish
192 | alternative cleanup target levels at a site, the department must
193 | consider the effectiveness of source removal, if any, that has
194 | been completed at the site and the practical likelihood of the
195 | use of low yield or poor quality groundwater, the use of
196 | groundwater near marine surface water bodies, the current and
197 | projected use of the affected groundwater in the vicinity of the
198 | site, or the use of groundwater in the immediate vicinity of the
199 | contaminated area, where it has been demonstrated that the
200 | groundwater contamination is not migrating away from such
201 | localized source, provided human health, public safety, and the
202 | environment are protected. Groundwater resource protection
203 | remains the ultimate goal of cleanup, particularly in light of
204 | the state's continued growth and consequent demands for drinking
205 | water resources. The Legislature recognizes the need for a
206 | protective yet flexible cleanup approach that risk-based
207 | corrective action provides. Only where it is appropriate on a
208 | site-specific basis, using the criteria in this paragraph and

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209 careful evaluation by the department, shall proposed alternative
210 cleanup target levels be approved. If alternative cleanup target
211 levels are used, institutional controls are not required if:
212 a. The only cleanup target levels exceeded are the
213 groundwater cleanup target levels derived from nuisance,
214 organoleptic, or aesthetic considerations;
215 b. Concentrations of all contaminants meet the state water
216 quality standards or the minimum criteria, based on the
217 protection of human health, public safety, and the environment,
218 as provided in subparagraph 1.;
219 c. All of the groundwater cleanup target levels
220 established pursuant to subparagraph 1. are met at the property
221 boundary;
222 d. The person responsible for site rehabilitation has
223 demonstrated that the contaminants will not migrate beyond the
224 property boundary at concentrations that exceed the groundwater
225 cleanup target levels established pursuant to subparagraph 1.;
226 e. The property has access to and is using an offsite
227 water supply, and an unplugged private well is not used for
228 domestic purposes; and
229 f. The property owner does not object to the "No Further
230 Action" proposal to the department or the local pollution
231 control program.
232 (h) Provide for the department to issue a "No Further
233 Action" order, with conditions, including, but not limited to,
234 the use of institutional or engineering controls where

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235 appropriate, when alternative cleanup target levels established
236 pursuant to subparagraph (g)3. have been achieved or when the
237 person responsible for site rehabilitation can demonstrate that
238 the cleanup target level is unachievable with the use of
239 available technologies. Before ~~Prior to~~ issuing such an order,
240 the department shall consider the feasibility of an alternative
241 site rehabilitation technology at the contaminated site.

242 (i) Establish appropriate cleanup target levels for soils.
243 Although there are existing state water quality standards, there
244 are no existing state soil quality standards. The Legislature
245 does not intend, through the adoption of this section, to create
246 such soil quality standards. The specific rulemaking authority
247 granted pursuant to this section merely authorizes the
248 department to establish appropriate soil cleanup target levels.
249 These soil cleanup target levels shall be applicable at sites
250 only after a determination as to legal responsibility for site
251 rehabilitation has been made pursuant to other provisions of
252 this chapter or chapter 403.

253 1. In establishing soil cleanup target levels for human
254 exposure to each contaminant found in soils from the land
255 surface to 2 feet below land surface, the department shall apply
256 the following, as appropriate: calculations using a lifetime
257 cancer risk level of 1.0E-6; a hazard index of 1 or less; and
258 the best achievable detection limit. However, the department may
259 ~~shall~~ not require site rehabilitation to achieve a cleanup
260 target level for an individual contaminant that is more

261 stringent than the site-specific, ~~naturally occurring~~ background
262 concentration for that contaminant. Institutional controls or
263 other methods shall be used to prevent human exposure to
264 contaminated soils more than 2 feet below the land surface. Any
265 removal of such institutional controls shall require such
266 contaminated soils to be remediated.

267 2. Leachability-based soil cleanup target levels shall be
268 based on protection of the groundwater cleanup target levels or
269 the alternate cleanup target levels for groundwater established
270 pursuant to this paragraph, as appropriate. Source removal and
271 other cost-effective alternatives that are technologically
272 feasible shall be considered in achieving the leachability soil
273 cleanup target levels established by the department. The
274 leachability goals are ~~shall~~ not be applicable if the department
275 determines, based upon individual site characteristics, and in
276 conjunction with institutional and engineering controls, if
277 needed, that contaminants will not leach into the groundwater at
278 levels that pose a threat to human health, public safety, and
279 the environment.

280 3. Using risk-based corrective action principles, the
281 department shall approve alternative cleanup target levels in
282 conjunction with institutional and engineering controls, if
283 needed, based upon an applicant's demonstration, using site-
284 specific or other relevant data and information, risk assessment
285 modeling results, including results from probabilistic risk
286 assessment modeling, risk assessment studies, risk reduction

287 techniques, or a combination thereof, that human health, public
288 safety, and the environment are protected to the same degree as
289 provided in subparagraphs 1. and 2.

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291 The department shall require source removal as a risk reduction
292 measure if warranted and cost-effective. Once source removal at
293 a site is complete, the department shall reevaluate the site to
294 determine the degree of active cleanup needed to continue.
295 Further, the department shall determine if the reevaluated site
296 qualifies for monitoring only or if no further action is
297 required to rehabilitate the site. If additional site
298 rehabilitation is necessary to reach "No Further Action" status,
299 the department is encouraged to utilize natural attenuation
300 monitoring, including long-term natural attenuation ~~and~~
301 monitoring, where site conditions warrant.

302 Section 3. Paragraph (a) of subsection (1) of section
303 287.0595, Florida Statutes, is amended to read:

304 287.0595 Pollution response action contracts; department
305 rules.—

306 (1) The Department of Environmental Protection shall
307 establish, by adopting administrative rules as provided in
308 chapter 120:

309 (a) Procedures for determining the qualifications of
310 responsible potential vendors before ~~prior to~~ advertisement for
311 and receipt of bids, proposals, or replies for pollution
312 response action contracts, including procedures for the

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313 rejection of unqualified vendors. Response actions are those
314 activities described in s. 376.301(41) ~~s. 376.301(39)~~.

315 Section 4. This act shall take effect July 1, 2015.