

## DO YOU OWN ONE OF THESE CONTAMINATED SITES?

By Thomas E. Lewis, PG, MBA



On June 1, 2010, Florida Governor Charlie Crist unexpectedly vetoed HB-1385, halting (for now) efforts to provide revisions to the petroleum contamination site selection and cleanup criteria, as well as increasing the use of long-term natural attenuation monitoring for site remediation. It is still possible, however, that due to a special session this fall (now unlikely to take place) or through lobbying efforts next year on a similar bill, that similar legislation could become law in the future; therefore, the impacts of HB-1385 (the “Bill”) to property owners should be fully appreciated.

Among the provisions in this Bill, the “low-scored site initiative” has the most impact for Florida property owners. This portion of the Bill would have enabled owners (or the confirmed responsible party) of properties in the Florida Department of Environmental Protection’s (FDEP) Petroleum Cleanup Program (the “Program”) with a priority ranking score of ten points or less (“low-scored properties”) to voluntarily participate in the “low-scored site initiative,” provided the site still retained a priority ranking score of ten points or less. The priority score was derived to prioritize the relative threat posed to potential receptors. The most important criterion was a site’s location in relation to public and private drinking water wells. A low priority score indicates that there are no known receptors for any potential contamination, so its relative threat is less than that of a site that is closer to receptors. All program sites were assigned a priority score when the owner (or responsible party) initially applied for funding assistance.

According to FDEP’s online Excel table documenting “All Eligible Discharges” that was updated on September 1, 2010, there are approximately 3,500 eligible sites in the Program with a priority ranking score of ten or less that are “waiting” for state funding for site assessment and/or remediation activities. To put this number in context, the current Priority Score Funding Threshold Level is 56, and there are approximately 6,000 sites with a priority ranking score between 11 and 55 still waiting for funding for assessment and cleanup activities. Additionally, there are approximately 2,900 sites currently undergoing site assessment and/or remediation activities. In these times of uncertain state budgets, coupled with approximately 8,900 sites either undergoing cleanup or awaiting funding for cleanup, it is quite possible that funding for these low priority ranked properties will not be available for at least two or more decades under the current law.

Because of this time gap, the owners of low-scored properties are left in a “lurch.” Even though the State of Florida has guaranteed to pay all or a portion of the assessment and cleanup costs, the reality is that property resale is often difficult and costly due to the unknown contamination issues and the indefinite funding timeframe. This issue is further complicated if contamination could possibly be encountered on the property as part of redevelopment activities; for example, this is often the case for properties that were formerly locations for gas stations. If the Bill had been implemented, these property owners would have been able to obtain assessment data from their property and, in many cases, obtain No Further Action (NFA) from FDEP if their site met the following five criteria:

1. No excessively contaminated soil exists onsite as a result of a release of petroleum products;
2. A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable;
3. Release of petroleum products not adversely affecting adjacent surface waters (an issue unlikely due to low score);
4. Areas of groundwater containing petroleum products’ chemicals of concern less than one-quarter acre; and
5. Soils onsite found between land surface and two feet below land surface meet the soil cleanup target levels, or human exposure is limited by appropriate institutional or engineering controls.

One other interesting part of the “low-scored site initiative” is that it would have also allowed sites **ineligible** for state restoration funds with a priority ranking score of ten or less to voluntarily participate in the initiative. These property owners (or confirmed responsible parties) would still have to pay for the assessment and cleanup costs; however, the aforementioned criteria to obtain NFA would have been potentially less costly compared to the more rigorous criteria currently required for assessing and remediating a petroleum impacted property in accordance with Chapter 62-770, Florida Administrative Code. According to FDEP’s online Excel table documenting “All Ineligible Discharges” that was updated on September 1, 2010, there are approximately 1,600 low-scored ineligible sites either already actively undergoing site assessment and/or remediation activities, or waiting for site activities to take place that would have been impacted by implementation of the Bill.

For owners, confirmed responsible party, or individuals who represent, or know someone who owns one or more of these low priority ranking scored sites, the message in all of this is to remain aware of potential similar future legislation that could have significant impacts to property valuation and assessment and cleanup costs. It should be noted that the “low-scored site initiative” of HB-1385 made funds available on a first-come, first-served basis. Because of this, it is critical that over the next year, people with an interest in low-scored properties stay informed and prepared to act if similar legislation is passed by the Florida Legislature. CSI can assist the property owner or the confirmed responsible party with this process if selected as the designated cleanup contractor for the respective site(s). This can be accomplished by simply signing FDEP’s Contractor Designation Form & Real Property Owner/Responsible Party Affidavit (CDF), which CSI can prepare and submit for the property owner or the confirmed responsible party.

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