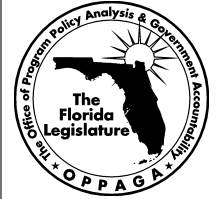




Office of Program Policy Analysis And Government Accountability



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Follow-Up Report on the Petroleum Contamination Site Cleanup Reimbursement Program

Abstract

- Since our prior report, the Legislature and the Department of Environmental Protection have implemented changes to the petroleum contamination cleanup program addressing all of our recommendations.
- The Petroleum Contamination Site Cleanup Reimbursement Program was eliminated by the Legislature on August 1, 1996. The program ended with a backlog of approximately \$540 million in reimbursement claims. These claims should be completely paid by the end of 1998 through the issue of bonds administered by the newly created Inland Protection Financing Corporation.

Purpose

In accordance with s. 11.45(7)(f), F.S., this follow-up report informs the Legislature of actions taken by the Department of Environmental Protection (DEP) in response to our Report No. 95-32, issued in February 1996. This report presents our assessment of the extent to which the department has addressed the findings and recommendations included in our previous report.

Background

As authorized by Ch. 376, F.S., the Department of Environmental Protection administers petroleum contamination cleanup programs.¹ The goal of the department's programs are to respond to incidents of inland contamination related to the storage of petroleum and petroleum products in order to protect the public

¹ The petroleum cleanup programs are: the Petroleum Preapproval Program, the Petroleum Cleanup Participation Program, and the Preapproved Advance Cleanup Program.

health, safety, and welfare and to minimize environmental damage.

Prior to legislative changes made during 1995 and 1996, the department administered a petroleum cleanup program that allowed for the reimbursement of cleanup costs to eligible parties. Reimbursement expenditures for petroleum contamination cleanup work were made on a first-come, first-served basis without regard to the ranking of the contamination site; most reimbursement expenditures were for low priority sites. Consequently, the backlog of reimbursement claims increased to millions of dollars.

Revisions to the law (Ch. 95-2, Laws of Florida) established a March 1995 end date for all site rehabilitation work on low priority sites. One-year later, further revisions (Ch. 96-277, Laws of Florida) established an August 1996 final end date for all other site rehabilitation work that would be eligible for reimbursement. All eligible reimbursement claims were to be submitted to the department by December 31, 1996.

Over the duration of the program responsible parties have submitted approximately \$1.3 billion of reimbursement claims to the department. Of this amount the department has paid approximately \$881 million in claims. The reimbursement program was replaced by the Petroleum Preapproval Program.²

Prior Findings

The findings from our prior report primarily addressed paying off current reimbursement claims and incorporating mechanisms that would lower the costs and expedite cleanups. At the time DEP estimated a backlog of unpaid reimbursement claims at between

² The Petroleum Preapproval Program requires that the scope of work and costs of cleanup efforts be approved by the department prior to any work being performed. This program's cleanup efforts are directed toward sites which are considered to be higher risk.

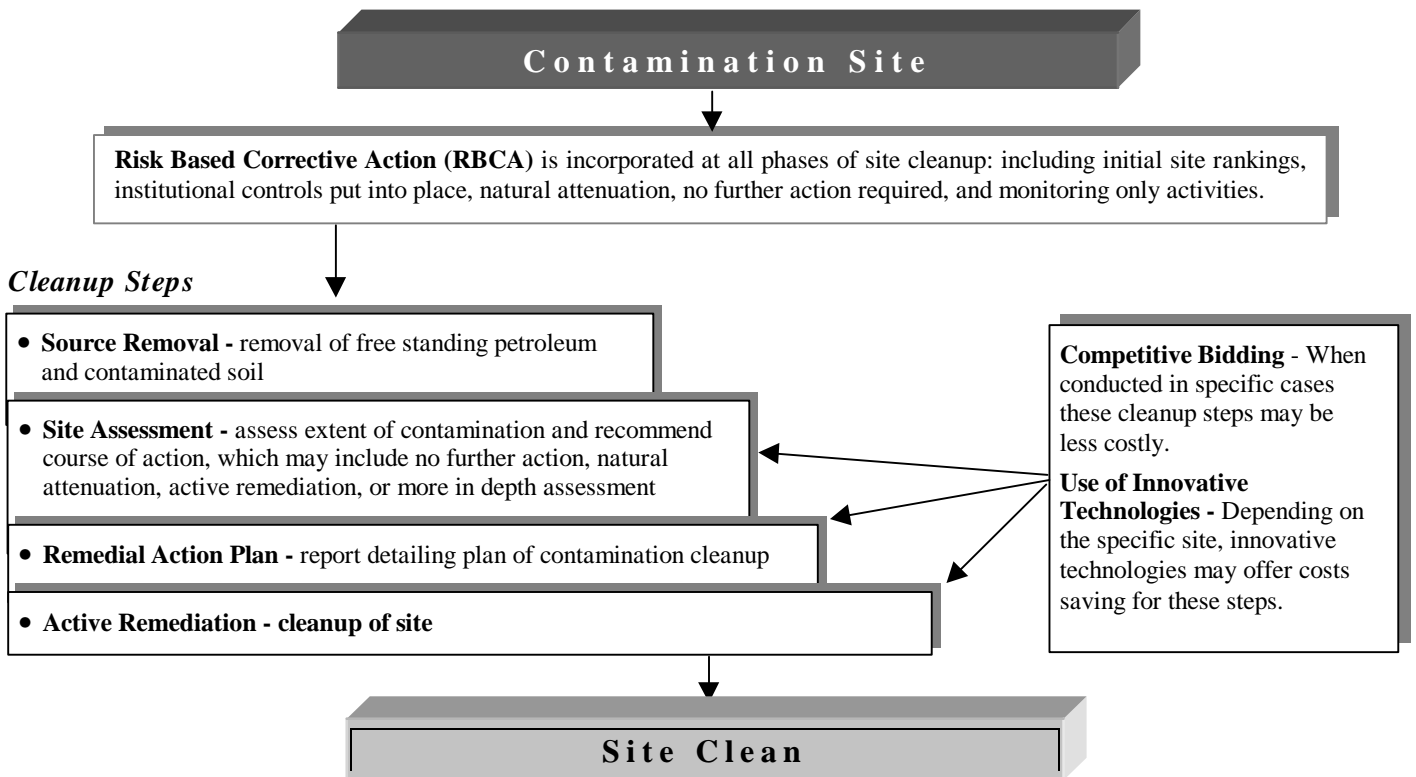
approximately \$410 million and \$439 million. Revisions to the law placed emphasis on cleaning higher priority petroleum contamination sites first.

Although the changes provided a means to slow the growth of backlogged reimbursement claims, significant financial liability accumulated for the state. With the tremendous backlog of unpaid claims, future work on some high priority sites would likely be delayed until previous claims could be paid. To determine the extent of the backlog and to plan for its payment, we recommended that the Legislature establish an end date for reimbursement applications for work initiated prior to March 29, 1995. We also recommended that the Legislature continue to place priority on the payment of claims already incurred.

Based on the amount of 1995-96 appropriations, these claims would be paid in approximately four years. To expedite the paying of the backlog off sooner we recommended that the Legislature consider other funding options, such as some form of financing.

Due to the great number of sites that required cleanup activities and to ensure the most serious contamination sites received priority for cleanup, we recommended that the department implement risk based corrective action (RBCA) on sites where it determines that the risk factors are acceptable. As a means of controlling costs, we also recommended that the department continue to use competitive bidding at those sites where site assessments and cleanup specifications have been made and where the department has determined that immediate cleanup is not necessary. Lastly, we recommended that DEP continue to consider the use of and approval of alternative technologies that offer cleanup cost savings. Exhibit 1 illustrates a simplified model of how the petroleum contamination cleanup process works in conjunction with the concepts of RBCA, competitive bidding, and use of innovative technologies.

**Exhibit 1
Simplified Petroleum Cleanup Program Processes and Concepts**



Source: Compiled by OPPAGA in consultation with DEP

Current Status

Program Ends With \$540 Million in Estimated Backlog of Claims. With the passage of Ch. 96-277, Laws of Florida, the Petroleum Contamination Site Cleanup Reimbursement Program effectively came to an end on August 1, 1996, when all remaining eligible petroleum contamination site cleanup rehabilitation work would stop. Eligible reimbursement claims were to be submitted to the department by December 31, 1996, or face not being reimbursed.³ At the conclusion of the program there was a backlog of approximately \$540 million in reimbursement claims.

Inland Protection Financing Corporation Issues Bonds to Pay Backlog. Chapter 96-277, Laws of Florida, created the Inland Protection Financing Corporation for the purpose of financing the rehabilitation and settlement of obligations of contamination site work under the reimbursement program. In January 1998, the Inland Protection Financing Corporation issued its first bond for \$262 million to begin paying off the backlog from previous petroleum contamination reimbursement obligations. At the end of February 1998, DEP starting sending out reimbursements checks totaling \$200 million. A second bond issue estimated at \$81 million is scheduled for the fall of 1998. The total bonds issued at \$343 million are estimated to cover all reimbursement obligations. The department estimates that all original reimbursement claims will be reviewed by the end of September 1998 with all original obligations paid by the end of 1998. As a result of the bond issue, a majority of the backlog claims have been reviewed and paid. The table below depicts the backlog status as of May 31, 1998.

Petroleum Reimbursement Claims Status as of May 31, 1998

Total Amount of Claims in Backlog	\$151,659,404
Total Amount Anticipated to Be Approved (historically claims have been paid at 82% of submitted amounts)	124,360,711
Present Value of Allowed Amounts ¹	117,520,872

¹ Due to Ch. 97-277, Laws of Florida, and issuance of bonds to pay off the backlog early, reimbursements will be discounted to account for the time value of money.

Source: Department of Environmental Protection

³ This date was extended to January 3, 1997, due to some reimbursement claims not being received due to mail delivery problems associated with bad weather.

Risk Based Corrective Action (RBCA) Rule Formalized. Also in response to Ch. 96-277, Laws of Florida, DEP has amended Rule 62-770, F.A.C., to include formalized procedures for implementing Risk Based Corrective Action (RBCA) at petroleum contamination sites.⁴ The concept of RBCA is based on a specific petroleum contamination cleanup criterion that considers the risk to human health, public safety and the environment in determining whether site-specific deviations are appropriate. The amended rule provides for a site specific assessment of public health and environmental risks associated with petroleum contamination sites providing a framework of strategies (such as the use of alternate cleanup target levels, institutional controls, remediation by natural attenuation, and active remediation) to eliminate risk. The department has conducted training sessions for department staff and industry representatives to implement the concepts of RBCA. The department reports natural attenuation as the most notable use of RBCA since the rule was amended.

Competitive Bidding Pilot Project Shows Promise. Based on a pilot study the department concluded that competitive bidding demonstrates potential as an effective tool for cost control, under specific conditions. The department conducted a pilot project to evaluate the effectiveness and feasibility of using competitive bidding for the petroleum cleanup program.⁵ The study looked at high priority sites where no active remediation had begun, and the department was considering bids for the site assessment phase of cleanup. Once bids were received for sites these costs were compared with recent work of the state's preapproval program. Staff found that bids were well below the costs of the state's cleanup.

Comparative Costs of Bidding, Preapproval, and State Cleanup

Invitation to Bid (ITB) #	Minimum Bid Award	Preapproval Estimate ¹	State Cleanup Estimate ²
9803C	\$ 41,800	\$ 41,800	\$39,000
9818C	108,260	95,000	89,425
9820C	24,900	108,260	62,597

¹ Preapproval estimates are based on proposed work submitted by contractors hired by site owners or the site's responsible party.

² State cleanup estimates are based on assignments to DEP state contractors where DEP has initiated cleanup.

Source: Department of Environmental Protection

While the department believes that competitive bidding can provide opportunities for costs savings in petroleum cleanup, it should not be the only tool the state uses to control costs. Department staff cautioned that lower cost should not outweigh quality of work performed. Also, due to the administrative constraints involved with

⁴ The amended rule changes were formally adopted into rule promulgated on September 23, 1997.

⁵ Pursuant to s. 376.30711(7), F.S., the department conducted the pilot program for competitive bidding for petroleum contamination cleanup.

competitive bidding, it may not be appropriate when cleanup work must get done quickly or when the likelihood is high that the scope of work may change as more is discovered about site conditions.

Alternative Technology Program Established. To encourage the use of innovative strategies and technologies for maximizing cost effective and efficient cleanup, the department has created the Innovative Technology Acceptance Program.⁶ The purpose of this program is to recognize innovative technologies as viable alternatives to traditional cleanup methods. Staff hope this consideration results in the use of these technologies for petroleum site cleanup.

The department does not endorse any particular technology. Staff believe that the selection of cleanup technology should be dependent on site characteristics. At this time the department has recognized 14 innovative technologies for petroleum contamination site cleanup.

Increased Legislative Financial Oversight of Reimbursement Claims. Since 1993, at least four reports have been published identifying concerns with the petroleum contamination site cleanup reimbursement program.⁷ Problems identified in these reports included, inadequate documentation of reasonable reimbursement rates, lack of technical audits to ensure work had been done, and inadequate controls to ensure that only necessary costs were reimbursed. In 1997, the Legislature appropriated \$5 million (and another \$5 million in 1998) to the Office of the Auditor General to oversee additional audits of reimbursement applications to provide added assurance regarding the reasonableness and allowability of costs submitted for reimbursement. The Auditor General contracted with 33 certified public accounting firms which are currently conducting audits of reimbursement applications. By November 1, 1998, the Auditor General will report on the status and results of the audits to the Legislature.

⁶ In a recent report, January 1998, published by the Southern States Energy Board in cooperation with the U.S. Environmental Protection Agency, found that the department's Innovative Technology Acceptance Program serves as a useful model for other states in addressing innovative environmental technologies.

⁷ These reports were conducted by OPPAGA, the Office of the Auditor General, the Statewide Grand Jury, and the Office of the Comptroller.

Conclusions and Recommendations

The Petroleum Contamination Site Cleanup Reimbursement Program effectively came to an end on August 1, 1996, ending a very expensive chapter in Florida's petroleum cleanup history. The issuance of bonds by the Inland Protection Financing Corporation will provide approximately \$340 million to pay off reimbursement obligations. Once these claims are paid the department will be able to provide more attention to its current petroleum contamination cleanup programs.

It appears that with legislative changes the departments' efforts should move forward with cleaning up the highest priority sites in the quickest and most cost effective manner. Risk Based Corrective Action (RBCA) is being implemented now in a more comprehensive fashion. The use of RBCA, however, will have to be monitored to ensure that it is used effectively and protects human health and the environment. Competitive bidding has proven to be a useful tool to achieve cost savings in specific cleanups and efforts to use it, when appropriate should continue. With the ongoing advancements in cleanup technology, the department should continue to actively incorporate the use of alternative and innovative technologies.

The Petroleum Contamination Site Cleanup Reimbursement Program has provided the state with many lessons concerning the financing and management of pollution control and cleanup. Some of these lessons include

- prioritizing site cleanup versus paying claims on a first-come, first-served basis to ensure that the highest risk sites receive the highest priority;
- the need for preapproval for the scope of work to ensure proper fiscal control over cleanup payments; and
- preapproval of scope of work and costs rather than obligations to pay for cleanup with little knowledge of work that was done.

The lessons learned should be used as the state moves forward in managing and directing cleanup and prevention efforts of other environmental programs such as the Drycleaning Solvent Cleanup program.

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