



Florida
PEER

Public Employees for Environmental Responsibility

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November 27, 2017

Honorable Rick Scott
Governor, State of Florida
Governor's Office
400 S. Monroe Street
Tallahassee, FL 32399

Noah Valenstein
Secretary
Florida, Department of Environmental Protection
3900 Commonwealth Boulevard M.S. 49
Tallahassee, FL 32399

Re: Public Notice of Contaminated Petroleum Sites

Dear Messrs. Scott and Valenstein:

Florida PEER has been reviewing numerous records involving Florida's Petroleum Restoration Program. In conducting our review, we found that there are currently at least 19,000 contaminated sites in the state. While the high number of sites is troubling in and of itself we are also concerned about the lack of stringent laws requiring notification to potentially affected residents within close proximity to these sites. Consequently, we are writing to you to suggest that these laws need to be significantly strengthened so that more protection can be afforded to those residents.

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Our concern specifically deals with the current requirements of § 376.3072, Fla. Stat. Under the statutory framework, §§ 376.30702 (1) & (2), Fla. Stat. the Department of Environmental Protection (FDEP) is to be notified whenever a contaminated site is discovered. It is then incumbent upon the FDEP to notify the public of that discovery. Specifically, § 376.30702(1), Fla. Stat., states, in pertinent part, that:

“ . . . it is in the public’s best interest that potentially affected persons be notified of the existence of such contamination. Therefore, persons discovering such contamination shall notify the department of such discovery in accordance with the requirements of this section, and the department shall be responsible for notifying the affected public. The Legislature intends for the provisions of this section to govern the notice requirements for early notification of the discovery of contamination.”

§ 376.30702(2), Fla. Stat., extends the above provision to cases involving the Inland Protection Trust Fund (IPTF), which is codified in § 376.3071(5), Fla. Stat. The caveat to this requirement, however, is that notice is *only to be given* to persons if the original plume of contamination extends beyond the *original property boundaries*. See, § 376.30702(2), Fla. Stat., In those situations, the notice given to the FDEP must include the property’s location, as well as “a listing of all record owners of any real property, other than the property that is directly contaminated.” § 376.30702(2)(b), Fla. Stat.

It is the FDEP’s responsibility to take this information that has been received from the public and to notify a select group of persons. Under § 376.30702(3), Fla. Stat., when the contamination involves IPTF cases¹ there are only two classes of persons who are entitled to notice. First, there are persons to whom notice must be given under § 376.3071(5), Fla. Stat. The second group that is entitled to notice is comprised of school boards in those cases in which the contaminated property is the site of a school. In the latter situations, it is incumbent on school boards to then notify teachers, as well as the parents and guardians of students who are attending each school.

This brings us to the statutory requirements imposed under the above-mentioned § 376.3071(5), Fla. Stat. This statutory provision (which is specifically included in § 376.30702(3), Fla. Stat.) deals directly with IPTF cases. § 376.3071(5), Fla. Stat., does have a notice requirement. However, it limits such notice to those situations in which there will be a temporary extension of the point of compliance beyond the property boundary, i.e., when remediation operations are expected to go beyond the property on which the original plume existed. Moreover, the only persons entitled to notice are local governments and actual property owners. This provision, which is found in § 376.3071(5)(b)2., states, in its entirety that:

“The appropriate point of compliance with cleanup target levels for petroleum products’ chemicals of concern. The point of compliance shall be at the source of the petroleum contamination. However, the department may temporarily move the point of

¹ It should also be noted that similar exemptions from the notice requirements in § 376.30702(3), Fla. Stat., apply to drycleaning cleaning cases (§ 376.3078, Fla. Stat.) and brownfields cases (§ 376.81, Fla. Stat.).

compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department may also, pursuant to criteria provided for in this paragraph, temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, if the public health, safety, and welfare, water resources, and the environment are adequately protected. **Temporary extension of the point of compliance beyond the property boundary, as provided in this subparagraph, must include notice to local governments and owners of any property into which the point of compliance is allowed to extend.”**

(Emphasis added) The statute imposes no other notice requirements upon the State of Florida to notify by direct or constructive means residents or other persons that a parcel of property is contaminated with petroleum products.

We have likewise found no rules adopted by the Florida, Department of Environmental Protection in Chapter 62, F.A.C., that require that notice be given to persons potentially affected by petroleum-based products.

What does this mean in practical terms? It means that the Department is to be provided notice whenever petroleum contamination exists on real property. However, there is no obligation placed upon the Department to provide notice of the contamination to anyone, including the current property owner, residents or the public at large unless remediation activities are expected to extend beyond the original parcel under which the plume of contamination was found.

It is not as if the Legislature has not required more extensive notice to be given to other persons in other situations involving contamination. In fact, § 376.30701, Fla. Stat., which is also referenced in § 376.30702, Fla. Stat., specifically requires that constructive notice be given, to both residents and business tenants of property upon which site rehabilitation operations are to be extended. See, §§ 376.30701(2)(b), (2)(c), & (2)(d), Fla. Stat. But § 376.30701(1)(b), Fla. Stat., notably limits these notice requirements by exempting operations involving the IPTF as addressed in § 376.3071, Fla. Stat.

There is no logical basis to require that notice be given to a larger group of people (even if it is constructive notice) when they are exposed to one form of hazardous contamination, but not to another. Simply stated, the statutory notice requirements surrounding petroleum contamination identification and remediation are quite simply insufficient. The health risks involved when people are exposed to petroleum-contaminated soils and water are much too severe to justify a failure to notify the men, women and children who, through no fault of their own, are exposed to them.

Honorable Rick Scott
Secretary Noah Valenstein, FDEP
November 27, 2017

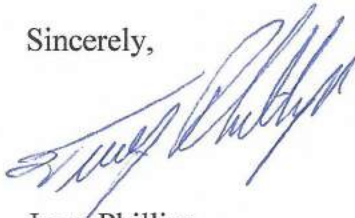
With this correspondence we are asking that you take all necessary steps to amend the appropriate Florida statutes so that they require that:

- Direct notice be given to all owners of property upon which petroleum-based contamination is found to exist;
- Direct notice be given to all residents of property upon which petroleum-based contamination is found to exist;
- Constructive notice be given to all persons who own property or reside upon or conduct business operations within a one-half (1/2) mile radius of property known to be contaminated with petroleum-based products.

I would also note that we have issued a more comprehensive report concerning the operation of Florida's Petroleum Restoration Program. This report may be found on our website at www.peer.org.

Thank you for your kind attention to this issue.

Sincerely,



Jerry Phillips
Director
Florida PEER