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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2013	.	
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Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) of section 287.0595, Florida
Statutes, is amended to read:

287.0595 Pollution response action contracts; department
rules.-

(4) Competitive solicitation pursuant to this section is
not subject to the requirements of s. 287.055. This section does
not apply to contracts which must be negotiated under s.
287.055.



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13 Section 2. Section 376.30711, Florida Statutes, is amended
14 to read:

15 376.30711 Petroleum ~~Preapproved~~ site rehabilitation.7
16 ~~effective March 29, 1995.~~

17 (1) (a) The Legislature finds and declares that the
18 financial operation of the petroleum contamination site
19 rehabilitation program, must be implemented in an efficient
20 manner which reduces costs and improves the efficiency of
21 rehabilitation activities, thereby reducing the significant
22 backlog of contaminated sites and their corresponding threat to
23 human health, safety and the environment. ~~as previously~~
24 ~~structured, has resulted in site rehabilitation proceeding at a~~
25 ~~higher rate than revenues can support and at sites that are not~~
26 ~~of the highest priority as established in s. 376.3071(5). This~~
27 ~~has resulted in a large backlog of reimbursement applications~~
28 ~~and excessive costs to the Inland Protection Trust Fund. It is~~
29 the intent of the Legislature that petroleum contaminated sites
30 be cleaned up efficiently and cost effectively in an open and
31 competitive manner, ~~contamination site cleanups be conducted on~~
32 ~~a preapproved basis~~ with emphasis on addressing first the sites
33 which pose the greatest threat to human health and the
34 environment, within the availability of funds in the Inland
35 Protection Trust Fund, recognizing that source removal, wherever
36 it is technologically feasible and cost-effective and will
37 significantly reduce the contamination or eliminate the spread
38 of contamination, shall be considered to protect public health
39 and safety, water resources, and the environment.

40 (b) Site rehabilitation work on sites eligible for state-
41 funded cleanup from the Inland Protection Trust Fund and



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42 pursuant to ss. 376.305(6), 376.3071, 376.3072, and 376.3073,
43 ~~shall~~ is only ~~be~~ eligible for site rehabilitation funding under
44 this section. After March 29, 1995, ~~only persons who have~~
45 ~~received prior written approval from the department of the scope~~
46 ~~of work and costs may continue site rehabilitation work.~~ in the
47 event of a new release, the facility operator is ~~shall be~~
48 required to abate the source of the discharge. If free product
49 is present, the operator must ~~shall~~ notify the department, which
50 may direct the removal of the free product ~~as a preapproved~~
51 ~~expense~~ pursuant to this section. The department must ~~shall~~
52 grant approval to continue site rehabilitation based on this
53 section and s. 376.3071(5).

54 (c) The Legislature declares that in order to protect
55 public resources, to maximize funding available for site
56 rehabilitation, and to prevent owners and operators of petroleum
57 storage facilities or tanks and their insurers, indemnitors, and
58 parties to other contractual arrangements providing funds for
59 site rehabilitation from receiving a windfall at the expense of
60 taxpayers, all such private funds available to perform site
61 rehabilitation for a discharge or condition determined to be
62 eligible for participation in any petroleum program providing
63 state funding for site rehabilitation after the effective date
64 of this act shall be exhausted prior to the expenditure of
65 public funds for site rehabilitation.

66 (d) An owner or operator of a facility or storage tank or
67 other person responsible for site rehabilitation may not receive
68 both funding from the Inland Protection Trust Fund and
69 remuneration or compensation for the same site rehabilitation
70 task from another funding source. Therefore, prior to the



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71 department authorizing the expenditure of any state funds for
72 site rehabilitation after July 1, 2013, the owner and, if
73 different, the operator, of every facility or petroleum storage
74 tank system that is determined to be eligible for site
75 rehabilitation funding under this section after that date shall
76 certify to the department that:

77 1. The certifying party has not received compensation from
78 any other funding source as remuneration or reimbursement for
79 site rehabilitation work for the eligible discharge or condition
80 other than from a state funding program; and

81 2. There is no insurance, indemnity agreement, or other
82 arrangement, other than a state funding program under this
83 chapter, that provides coverage for any site rehabilitation task
84 for the eligible discharge or condition; and

85 3. The certifying party has made no claims against any
86 insurance policy, indemnity agreement, or other arrangement for
87 the cost of site rehabilitation for the eligible discharge or
88 condition, nor received any remuneration for the cost of site
89 rehabilitation for the eligible discharge or condition.

90 (e) If the owner and operator cannot certify as required by
91 sub-paragraphs (d)1.-3., the owner and operator shall disclose
92 to the department the date, amount, and source of all payments
93 received as remuneration or reimbursement for site
94 rehabilitation work, including a description of the tasks for
95 which such remuneration or reimbursement was received, and shall
96 provide copies of all insurance policies, indemnity agreements
97 or other arrangements that provide coverage for all or a portion
98 of the cost of site rehabilitation, all claims made by the owner
99 or operator against any insurance policy, indemnity agreement,



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100 or other arrangement for the cost of site rehabilitation, and
101 all settlements, judgments and other documents detailing the
102 basis for the claim and its disposition.

103 (f) If the owner or operator of a petroleum storage tank
104 system or facility that is eligible for site rehabilitation or
105 other person responsible for site rehabilitation becomes aware
106 of an insurance policy, indemnity agreement, or other
107 arrangement, makes a claim against any such instrument, or
108 receives any remuneration or reimbursement for site
109 rehabilitation for an eligible discharge, the owner or operator
110 shall immediately notify the department and provide the
111 information required under paragraph (e), and shall immediately
112 reimburse the department in an amount equal to the lesser of the
113 amount of the payment received or the amount expended by the
114 department for site rehabilitation. If the payment received by
115 the owner or operator is the result of a settlement of a claim
116 or multiple claims against an insurer, indemnitor or other
117 person, the department or a court may determine how the sums
118 received should be allocated between site rehabilitation tasks
119 for which public funds have been expended and other tasks for
120 which the claim was made.

121 (g) Upon determining that a discharge or condition is
122 eligible for state funding, or upon expending funds for
123 rehabilitation of any site, the department has a right of
124 subrogation to any insurance policies, indemnity agreements, or
125 other arrangements providing funds for site rehabilitation in
126 existence at the time of the release to the extent of any rights
127 the owner or operator of a facility or petroleum storage tank
128 may have had under that policy, contract, or arrangement and has



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129 a right of subrogation against any third party who caused or
130 contributed to the release.

131 (h) The department may bring an action to compel compliance
132 with this section, and to recover any sums paid by the
133 department to the extent the owner or operator or other person
134 responsible for site rehabilitation has received a double
135 recovery prohibited by paragraph (d).

136 (i) Nothing in this section shall affect the department's
137 authority to recover payments or overpayments from the Inland
138 Protection Trust Fund pursuant to existing law.

139 (2) (a) Competitive bidding pursuant to this section is
140 ~~shall~~ ~~be~~ subject to the requirements of s. 287.055. The
141 department must ~~is authorized to~~ use competitive ~~bid~~ procurement
142 procedures or negotiated contracts for preapproving all costs
143 and rehabilitation procedures for site-specific rehabilitation
144 projects, pursuant to rules adopted under this section, s,
145 120.54 and s. 287.0595 through performance-based contracts. Site
146 rehabilitation shall be conducted according to the priority
147 ranking order established pursuant to s. 376.3071(5).

148 (b) In addition, the Petroleum Site Rehabilitation rules
149 shall include, at a minimum:

150 1. Generally applicable provisions from Ch. 287 that do not
151 conflict with this section or other applicable provisions in Ch.
152 376.

153 2. Procedures whereby the Department will develop a pool of
154 qualified contractors through an open and competitive
155 procurement process to provide site assessment and
156 rehabilitation services.

157 3. Coordination with the site or real property owner, at



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158 their option, to develop a site-specific scope of work.

159 4. The ability for the site or real property owner to
160 remove from the pool of qualified contractors, prior to the
161 procurement process, any contractor based on non-performance or
162 other demonstrable factors, subject to approval by the
163 department.

164 5. In order to ensure that the competitive procurement
165 process is effective and results in quality bids, procedures to
166 ensure that the pool of qualified contractors are provided with
167 the necessary site assessment report and other appropriate
168 information, have the ability to visit the work site and to
169 conduct other appropriate due diligence, and have questions
170 answered by the department or site owner as needed.

171 6. Procedures to improve the effectiveness and efficiency
172 of the site assessment process for eligible sites.

173 7. A method to ensure that a contractor conducting site
174 assessment activities may not submit a competitive bid for site
175 rehabilitation services unless approved by the department.

176 8. Procedures to ensure that site rehabilitation is
177 completed in an efficient and cost effective manner, in
178 accordance with criteria established in Ch. 376 and other
179 applicable statutes and rules.

180 9. Reporting deadlines for deliverables and departmental
181 review and approval deadlines for deliverables.

182 10. Reporting on the progress of site rehabilitation
183 completion through a publicly accessible website.

184 11. In addition to the requirements in subparagraph (2) (c)
185 below, procedures for the ongoing evaluation of contractor
186 performance based on criteria commonly used by federal and state



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187 agencies as well as other institutions and/or businesses engaged
188 in environmental cleanup activities.

189 ~~(b) Any contractor performing site rehabilitation program~~
190 ~~tasks must demonstrate to the department that:~~

191 ~~1. The contractor meets all certification and license~~
192 ~~requirements imposed by law.~~

193 ~~2. The contractor has obtained approval of its~~
194 ~~Comprehensive Quality Assurance Plan prepared under department~~
195 ~~rules.~~

196 (c) The contractor shall certify to the department that
197 such contractor:

198 1. Complies with applicable OSHA regulations.

199 2. Maintains workers' compensation insurance for all
200 employees as required by the Florida Workers' Compensation Law.

201 3. Maintains comprehensive general liability and
202 comprehensive automobile liability insurance with minimum limits
203 of at least \$1 million per occurrence and \$1 million annual
204 aggregate, as shall protect it from claims for damage for
205 personal injury, including accidental death, as well as claims
206 for property damage that ~~which~~ may arise from performance of
207 work under the program, designating the state as an additional
208 insured party.

209 4. Maintains professional liability insurance of at least
210 \$1 million per occurrence and \$1 million annual aggregate.

211 5. Has completed and submitted a sworn statement under s.
212 287.133(3) (a), on public entity crimes.

213 6. Has the capacity to perform or directly supervise the
214 majority of the work at a site in accordance with s. 489.113(9).

215 7. Meets all certification and license requirements imposed



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216 by law.

217 (3) Any person responsible for site rehabilitation who
218 received prior approval to conduct site rehabilitation and to
219 thereafter submit an application for reimbursement, pursuant to
220 s. 2(3), chapter 95-2, Laws of Florida, may request approval to
221 conduct site rehabilitation pursuant to this section regardless
222 of the site score.

223 (4) Any person responsible for site rehabilitation at a
224 site with a priority ranking score of 50 points or more who was
225 performing remedial action activities pursuant to s. 2(2),
226 chapter 95-2, Laws of Florida, may request approval to complete
227 site rehabilitation pursuant to this section in order to avoid
228 disruption in cleanup activities.

229 (5) (a) Any contractor ~~person~~ who performs services under
230 the approved contract ~~the conditions of a preapproved site~~
231 ~~rehabilitation agreement~~, pursuant to the provisions of this
232 section and s. 376.3071(5), may file invoices with the
233 department for payment ~~within the schedule and~~ for the services
234 described in the approved contract ~~preapproved site~~
235 ~~rehabilitation agreement~~. The ~~Such~~ invoices for payment must be
236 submitted to the department on forms provided by the department,
237 together with evidence documenting that ~~preapproved~~ activities
238 were conducted or completed in accordance with the approved
239 contract ~~preapproved authorization~~. Provided there are
240 sufficient unencumbered funds available in the Inland Protection
241 Trust Fund which have been appropriated for expenditure by the
242 Legislature and provided all of the terms of the approved
243 contract ~~preapproved site rehabilitation agreement~~ have been
244 met, invoices for payment must ~~shall~~ be paid consistent with the



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245 provisions of s. 215.422. After a contractor ~~an applicant~~ has
246 submitted its invoices to the department and before payment is
247 made, the contractor may assign its right to payment to any
248 other person, without recourse of the assignee or assignor to
249 the state, and in such cases the assignee must ~~shall~~ be paid
250 consistent with the provisions of s. 215.422. Prior notice of
251 the assignment and assignment information must ~~shall~~ be made to
252 the department, ~~which notice shall~~ and must be signed and
253 notarized by the assigning party. The department does ~~shall~~ not
254 have the authority to regulate private financial transactions by
255 which an applicant seeks to account for working capital or the
256 time value of money, unless charges associated with such
257 transactions are added as a separate charge in an invoice.

258 (b) The contractor must ~~shall~~ submit an invoice to the
259 department within 30 days after the date of the department's
260 written acceptance of each interim deliverable or written
261 approval of the final deliverable specified in the approved
262 contract ~~a preapproved site rehabilitation agreement~~.

263 (c) ~~Payments shall be made by~~ The department must make
264 payments based on the terms of ~~a~~ an approved contract for site
265 rehabilitation work. The department must ~~may, based on its~~
266 ~~experience and the past performance and concerns regarding a~~
267 ~~contractor,~~ retain between 5 and 25 ~~up to 25~~ percent of the
268 contracted amount or use performance bonds to assure performance
269 and final acceptance of the project by the department. The
270 amount of retainage or performance bond or bonds, as well as the
271 terms and conditions, must ~~shall~~ be a part of the approved site-
272 ~~specific performance-based~~ contract.

273 (d) Contractors or persons to which the contractor has



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274 assigned its right to payment pursuant to paragraph (a) shall
275 make prompt payment to subcontractors and suppliers for their
276 costs associated with an a approved contract ~~preapproved site~~
277 ~~rehabilitation agreement~~ pursuant to s. 287.0585(1).

278 (e) The exemption in s. 287.0585(2) does ~~shall~~ not apply to
279 payments associated with an a approved contract ~~preapproved site~~
280 ~~rehabilitation agreement~~.

281 (f) The department shall provide certification within 30
282 days after notification from a contractor that the terms of the
283 contract for site rehabilitation work have been completed.
284 Failure of the department to do so does ~~shall~~ not constitute a
285 default certification of completion. The department also may
286 withhold payment if the validity or accuracy of the contractor's
287 invoices or supporting documents is in question.

288 (g) ~~Nothing in~~ This section does not ~~shall be construed to~~
289 authorize payment to any person for costs of contaminated soil
290 treatment or disposal that does not meet the applicable rules of
291 this state for such treatment or disposal, including all general
292 permitting, state air emission standards, monitoring, sampling,
293 and reporting rules more specifically described in department
294 rules.

295 (h) If any contractor fails to perform, as determined by
296 the department, contractual duties for site rehabilitation
297 program tasks, the department must ~~shall~~ terminate the
298 contractor's eligibility for participation in the program.

299 (i) The contractor responsible for conducting site
300 rehabilitation must ~~shall~~ keep and preserve suitable records in
301 accordance with the provisions of s. 376.3071(12)(e).

302 (6) It is unlawful for a site owner or operator, or his or



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303 her designee, to receive any remuneration, in cash or in kind,
304 directly or indirectly, from a rehabilitation contractor
305 performing site cleanup activities pursuant to this section. It
306 is also unlawful for any contractor or subcontractor to receive
307 Inland Petroleum Trust Funds in any capacity when that
308 contractor or subcontractor:

309 (a) owns or holds any real property interest in any
310 percentage of property upon which such funds are being expended,
311 or has any beneficial interest in operations conducted on any
312 such property;

313 (b) is a relative of a person who owns or has a voting
314 interest in any decisions affecting any percentage of property
315 upon which such funds are being expended; or

316 (c) serves as a partner, director, officer, trustee, or
317 managing employee of a corporation that owns or has a voting
318 interest in any decisions affecting any percentage of property
319 upon which such funds are being expended. All contractors and
320 subcontractors performing work under this section shall sign an
321 affidavit affirming that they comply with this provision. Any
322 person or entity listed herein.

323
324 A contractor, subcontractor, real property owner or responsible
325 party, or employee or agent of any person or entity listed
326 herein, who offers, agrees, or contracts to solicit or secure a
327 contract for petroleum contaminated site assessment or
328 rehabilitation activities by a violation of any state or federal
329 law involving fraud, bribery, collusion, conspiracy, or material
330 misrepresentation with respect to such contracts is, upon
331 conviction in a competent court of this state, guilty of a third



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332 degree felony, punishable as provided in s. 775.082 or s.
333 775.083.

334 (7) On an annual basis, the department shall select one to
335 five sites eligible for state restoration funding assistance
336 under this section, each having a low-priority ranking score
337 pursuant to s. 376.3071(5), for an innovative technology pilot
338 program. Such sites shall be representative of varying
339 geographic, geophysical, and petroleum-contaminated conditions.
340 Utilizing the department's list of mechanical, chemical, and
341 biological products and processes which have already been deemed
342 acceptable from an environmental, regulatory, and safety
343 standpoint, the department shall select innovative products and
344 processes, based upon competitive bid procedures per subsection
345 (2), to be utilized on pilot project sites.

346 Section 3. Section 376.3071, Florida Statutes, is amended
347 to read:

348 376.3071 Inland Protection Trust Fund; creation; purposes;
349 funding.—

350 (1) FINDINGS.—In addition to the legislative findings set
351 forth in s. 376.30, the Legislature finds and declares:

352 (a) That significant quantities of petroleum and petroleum
353 products are being stored in storage systems in this state,
354 which is a hazardous undertaking.

355 (b) That spills, leaks, and other discharges from such
356 storage systems have occurred, are occurring, and will continue
357 to occur and that such discharges pose a significant threat to
358 the quality of the groundwaters and inland surface waters of
359 this state.

360 (c) That, where contamination of the ground or surface



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361 water has occurred, remedial measures have often been delayed
362 for long periods while determinations as to liability and the
363 extent of liability are made and that such delays result in the
364 continuation and intensification of the threat to the public
365 health, safety, and welfare; in greater damage to the
366 environment; and in significantly higher costs to contain and
367 remove the contamination.

368 (d) That adequate financial resources must be readily
369 available to provide for the expeditious supply of safe and
370 reliable alternative sources of potable water to affected
371 persons and to provide a means for investigation and cleanup of
372 contamination sites without delay.

373 (e) That it is necessary to fulfill the intent and purposes
374 of ss. 376.30-376.317, and further it is hereby determined to be
375 in the best interest of, and necessary for the protection of the
376 public health, safety, and general welfare of the residents of
377 this state, and therefore a paramount public purpose, to provide
378 for the creation of a nonprofit public benefit corporation as an
379 instrumentality of the state to assist in financing the
380 functions provided in ss. 376.30-376.317 and to authorize the
381 department to enter into one or more service contracts with such
382 corporation for the provision of financing services related to
383 such functions and to make payments thereunder from the amount
384 on deposit in the Inland Protection Trust Fund, subject to
385 annual appropriation by the Legislature.

386 (f) That to achieve the purposes established in paragraph
387 (e) and in order to facilitate the expeditious handling and
388 rehabilitation of contamination sites and remedial measures with
389 respect to contamination sites provided hereby without delay, it



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390 is in the best interests of the residents of this state to
391 authorize such corporation to issue evidences of indebtedness
392 payable from amounts paid by the department under any such
393 service contract entered into between the department and such
394 corporation.

395 (2) INTENT AND PURPOSE.—

396 (a) It is the intent of the Legislature to establish the
397 Inland Protection Trust Fund to serve as a repository for funds
398 which will enable the department to respond without delay to
399 incidents of inland contamination related to the storage of
400 petroleum and petroleum products in order to protect the public
401 health, safety, and welfare and to minimize environmental
402 damage.

403 (b) It is the intent of the Legislature that the department
404 implement rules and procedures to improve the efficiency of the
405 Petroleum Restoration Program. The department is directed to
406 implement rules and policies to eliminate and reduce duplication
407 of site rehabilitation efforts, paperwork, and documentation,
408 and micromanagement of site rehabilitation tasks.

409 (c) The department is directed to adopt and implement
410 uniform and standardized forms for ~~the requests for preapproval~~
411 site rehabilitation work and for the submittal of reports to
412 ensure that information is submitted to the department in a
413 concise, standardized uniform format seeking only information
414 that is necessary.

415 (d) The department is directed to implement computerized
416 and electronic filing capabilities ~~of preapproval requests~~ and
417 submittal of reports in order to expedite submittal of the
418 information and elimination of delay in paperwork. The



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419 computerized, electronic filing system shall be implemented no
420 later than January 1, 1997.

421 ~~(c) The department is directed to adopt uniform scopes of~~
422 ~~work with templated labor and equipment costs to provide~~
423 ~~definitive guidance as to the type of work and authorized~~
424 ~~expenditures that will be allowed for preapproved site~~
425 ~~rehabilitation tasks.~~

426 (e) ~~(f)~~ The department is directed to establish guidelines
427 for consideration and acceptance of new and innovative
428 technologies for site rehabilitation work.

429 (3) CREATION.—There is hereby created the Inland Protection
430 Trust Fund, hereinafter referred to as the “fund,” to be
431 administered by the department. This fund shall be used by the
432 department as a nonlapsing revolving fund for carrying out the
433 purposes of this section and s. 376.3073. To this fund shall be
434 credited all penalties, judgments, recoveries, reimbursements,
435 loans, and other fees and charges related to the implementation
436 of this section and s. 376.3073 and the excise tax revenues
437 levied, collected, and credited pursuant to ss. 206.9935(3) and
438 206.9945(1)(c). Charges against the fund shall be made in
439 accordance with the provisions of this section.

440 (4) USES.—Whenever, in its determination, incidents of
441 inland contamination related to the storage of petroleum or
442 petroleum products may pose a threat to the environment or the
443 public health, safety, or welfare, the department shall obligate
444 moneys available in the fund to provide for:

445 (a) Prompt investigation and assessment of contamination
446 sites.

447 (b) Expeditious restoration or replacement of potable water



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448 supplies as provided in s. 376.30(3)(c)1.

449 (c) Rehabilitation of contamination sites, which shall
450 consist of cleanup of affected soil, groundwater, and inland
451 surface waters, using the most cost-effective alternative that
452 is technologically feasible and reliable and that provides
453 adequate protection of the public health, safety, and welfare
454 and minimizes environmental damage, in accordance with the site
455 selection and cleanup criteria established by the department
456 under subsection (5), except that nothing herein shall be
457 construed to authorize the department to obligate funds for
458 payment of costs which may be associated with, but are not
459 integral to, site rehabilitation, such as the cost for
460 retrofitting or replacing petroleum storage systems.

461 (d) Maintenance and monitoring of contamination sites.

462 (e) Inspection and supervision of activities described in
463 this subsection.

464 (f) Payment of expenses incurred by the department in its
465 efforts to obtain from responsible parties the payment or
466 recovery of reasonable costs resulting from the activities
467 described in this subsection.

468 (g) Payment of any other reasonable costs of
469 administration, including those administrative costs incurred by
470 the Department of Health in providing field and laboratory
471 services, toxicological risk assessment, and other assistance to
472 the department in the investigation of drinking water
473 contamination complaints and costs associated with public
474 information and education activities.

475 (h) Establishment and implementation of the compliance
476 verification program as authorized in s. 376.303(1)(a),



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477 including contracting with local governments or state agencies
478 to provide for the administration of such program through
479 locally administered programs, to minimize the potential for
480 further contamination sites.

481 (i) Funding of the provisions of ss. 376.305(6) and
482 376.3072.

483 (j) Activities related to removal and replacement of
484 petroleum storage systems, exclusive of costs of any tank,
485 piping, dispensing unit, or related hardware, if soil removal is
486 preapproved as a component of site rehabilitation and requires
487 removal of the tank where remediation is conducted under s.
488 376.30711 or if such activities were justified in an approved
489 remedial action plan performed pursuant to subsection (12).

490 (k) Activities related to reimbursement application
491 preparation and activities related to reimbursement application
492 examination by a certified public accountant pursuant to
493 subsection (12).

494 (l) Reasonable costs of restoring property as nearly as
495 practicable to the conditions which existed prior to activities
496 associated with contamination assessment or remedial action
497 taken under s. 376.303(4).

498 (m) Repayment of loans to the fund.

499 (n) Expenditure of sums from the fund to cover ineligible
500 sites or costs as set forth in subsection (13), if the
501 department in its discretion deems it necessary to do so. In
502 such cases, the department may seek recovery and reimbursement
503 of costs in the same manner and in accordance with the same
504 procedures as are established for recovery and reimbursement of
505 sums otherwise owed to or expended from the fund.



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506 (o) Payment of amounts payable under any service contract
507 entered into by the department pursuant to s. 376.3075, subject
508 to annual appropriation by the Legislature.

509 (p) Petroleum remediation pursuant to s. 376.30711
510 throughout a state fiscal year. The department shall establish a
511 process to uniformly encumber appropriated funds throughout a
512 state fiscal year and shall allow for emergencies and imminent
513 threats to human health and the environment as provided in
514 paragraph (5) (a). This paragraph does not apply to
515 appropriations associated with the free product recovery
516 initiative of paragraph (5) (c) or the ~~preapproved~~ advanced
517 cleanup program of s. 376.30713.

518 (q) Enforcement of this section and ss. 376.30-376.317 by
519 the Fish and Wildlife Conservation Commission. The department
520 shall disburse moneys to the commission for such purpose.

521
522 The Inland Protection Trust Fund may only be used to fund the
523 activities in ss. 376.30-376.317 except ss. 376.3078 and
524 376.3079. Amounts on deposit in the Inland Protection Trust Fund
525 in each fiscal year shall first be applied or allocated for the
526 payment of amounts payable by the department pursuant to
527 paragraph (o) under a service contract entered into by the
528 department pursuant to s. 376.3075 and appropriated in each year
529 by the Legislature prior to making or providing for other
530 disbursements from the fund. Nothing in this subsection shall
531 authorize the use of the Inland Protection Trust Fund for
532 cleanup of contamination caused primarily by a discharge of
533 solvents as defined in s. 206.9925(6), or polychlorinated
534 biphenyls when their presence causes them to be hazardous



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535 wastes, except solvent contamination which is the result of
536 chemical or physical breakdown of petroleum products and is
537 otherwise eligible. Facilities used primarily for the storage of
538 motor or diesel fuels as defined in ss. 206.01 and 206.86 shall
539 be presumed not to be excluded from eligibility pursuant to this
540 section.

541 (5) SITE SELECTION AND CLEANUP CRITERIA.—

542 (a) The department shall adopt rules to establish
543 priorities based upon a scoring system for state-conducted
544 cleanup at petroleum contamination sites based upon factors that
545 include, but need not be limited to:

546 1. The degree to which human health, safety, or welfare may
547 be affected by exposure to the contamination;

548 2. The size of the population or area affected by the
549 contamination;

550 3. The present and future uses of the affected aquifer or
551 surface waters, with particular consideration as to the
552 probability that the contamination is substantially affecting,
553 or will migrate to and substantially affect, a known public or
554 private source of potable water; and

555 4. The effect of the contamination on the environment.

556

557 Moneys in the fund shall then be obligated for activities
558 described in paragraphs (4) (a)-(e) at individual sites in
559 accordance with such established criteria. However, nothing in
560 this paragraph shall be construed to restrict the department
561 from modifying the priority status of a rehabilitation site
562 where conditions warrant, taking into consideration the actual
563 distance between the contamination site and groundwater or



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564 surface water receptors or other factors that affect the risk of
565 exposure to petroleum products' chemicals of concern. The
566 department may use the effective date of a department final
567 order granting eligibility pursuant to subsections (9) and (13)
568 and ss. 376.305(6) and 376.3072 to establish a prioritization
569 system within a particular priority scoring range.

570 (b) It is the intent of the Legislature to protect the
571 health of all people under actual circumstances of exposure. The
572 secretary shall establish criteria by rule for the purpose of
573 determining, on a site-specific basis, the rehabilitation
574 program tasks that comprise a site rehabilitation program and
575 the level at which a rehabilitation program task and a site
576 rehabilitation program may be deemed completed. In establishing
577 the rule, the department shall incorporate, to the maximum
578 extent feasible, risk-based corrective action principles to
579 achieve protection of human health and safety and the
580 environment in a cost-effective manner as provided in this
581 subsection. Criteria for determining what constitutes a
582 rehabilitation program task or completion of site rehabilitation
583 program tasks and site rehabilitation programs shall be based
584 upon the factors set forth in paragraph (a) and the following
585 additional factors:

586 1. The current exposure and potential risk of exposure to
587 humans and the environment including multiple pathways of
588 exposure.

589 2. The appropriate point of compliance with cleanup target
590 levels for petroleum products' chemicals of concern. The point
591 of compliance shall be at the source of the petroleum
592 contamination. However, the department is authorized to



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593 temporarily move the point of compliance to the boundary of the
594 property, or to the edge of the plume when the plume is within
595 the property boundary, while cleanup, including cleanup through
596 natural attenuation processes in conjunction with appropriate
597 monitoring, is proceeding. The department also is authorized,
598 pursuant to criteria provided for in this paragraph, to
599 temporarily extend the point of compliance beyond the property
600 boundary with appropriate monitoring, if such extension is
601 needed to facilitate natural attenuation or to address the
602 current conditions of the plume, provided human health, public
603 safety, and the environment are adequately protected. Temporary
604 extension of the point of compliance beyond the property
605 boundary, as provided in this subparagraph, shall include notice
606 to local governments and owners of any property into which the
607 point of compliance is allowed to extend.

608 3. The appropriate site-specific cleanup goal. The site-
609 specific cleanup goal shall be that all petroleum contamination
610 sites ultimately achieve the applicable cleanup target levels
611 provided in this paragraph. However, the department is
612 authorized to allow concentrations of the petroleum products'
613 chemicals of concern to temporarily exceed the applicable
614 cleanup target levels while cleanup, including cleanup through
615 natural attenuation processes in conjunction with appropriate
616 monitoring, is proceeding, provided human health, public safety,
617 and the environment are adequately protected.

618 4. The appropriateness of using institutional or
619 engineering controls. Site rehabilitation programs may include
620 the use of institutional or engineering controls to eliminate
621 the potential exposure to petroleum products' chemicals of



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622 concern to humans or the environment. Use of such controls must
623 be preapproved by the department, and institutional controls
624 shall not be acquired with funds from the Inland Protection
625 Trust Fund. When institutional or engineering controls are
626 implemented to control exposure, the removal of such controls
627 must have prior department approval and must be accompanied
628 immediately by the resumption of active cleanup, or other
629 approved controls, unless cleanup target levels pursuant to this
630 paragraph have been achieved.

631 5. The additive effects of the petroleum products'
632 chemicals of concern. The synergistic effects of petroleum
633 products' chemicals of concern shall also be considered when the
634 scientific data becomes available.

635 6. Individual site characteristics which shall include, but
636 not be limited to, the current and projected use of the affected
637 groundwater in the vicinity of the site, current and projected
638 land uses of the area affected by the contamination, the exposed
639 population, the degree and extent of contamination, the rate of
640 contaminant migration, the apparent or potential rate of
641 contaminant degradation through natural attenuation processes,
642 the location of the plume, and the potential for further
643 migration in relation to site property boundaries.

644 7. Applicable state water quality standards.

645 a. Cleanup target levels for petroleum products' chemicals
646 of concern found in groundwater shall be the applicable state
647 water quality standards. Where such standards do not exist, the
648 cleanup target levels for groundwater shall be based on the
649 minimum criteria specified in department rule. The department
650 shall consider the following, as appropriate, in establishing



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651 the applicable minimum criteria: calculations using a lifetime
652 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
653 best achievable detection limit; the naturally occurring
654 background concentration; or nuisance, organoleptic, and
655 aesthetic considerations.

656 b. Where surface waters are exposed to petroleum
657 contaminated groundwater, the cleanup target levels for the
658 petroleum products' chemicals of concern shall be based on the
659 surface water standards as established by department rule. The
660 point of measuring compliance with the surface water standards
661 shall be in the groundwater immediately adjacent to the surface
662 water body.

663 8. Whether deviation from state water quality standards or
664 from established criteria is appropriate. The department may
665 issue a "No Further Action Order" based upon the degree to which
666 the desired cleanup target level is achievable and can be
667 reasonably and cost-effectively implemented within available
668 technologies or engineering and institutional control
669 strategies. Where a state water quality standard is applicable,
670 a deviation may not result in the application of cleanup target
671 levels more stringent than said standard. In determining whether
672 it is appropriate to establish alternate cleanup target levels
673 at a site, the department may consider the effectiveness of
674 source removal that has been completed at the site and the
675 practical likelihood of: the use of low yield or poor quality
676 groundwater; the use of groundwater near marine surface water
677 bodies; the current and projected use of the affected
678 groundwater in the vicinity of the site; or the use of
679 groundwater in the immediate vicinity of the storage tank area,



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680 where it has been demonstrated that the groundwater
681 contamination is not migrating away from such localized source;
682 provided human health, public safety, and the environment are
683 adequately protected.

684 9. Appropriate cleanup target levels for soils.

685 a. In establishing soil cleanup target levels for human
686 exposure to petroleum products' chemicals of concern found in
687 soils from the land surface to 2 feet below land surface, the
688 department shall consider the following, as appropriate:
689 calculations using a lifetime cancer risk level of 1.0E-6; a
690 hazard index of 1 or less; the best achievable detection limit;
691 or the naturally occurring background concentration.

692 b. Leachability-based soil target levels shall be based on
693 protection of the groundwater cleanup target levels or the
694 alternate cleanup target levels for groundwater established
695 pursuant to this paragraph, as appropriate. Source removal and
696 other cost-effective alternatives that are technologically
697 feasible shall be considered in achieving the leachability soil
698 target levels established by the department. The leachability
699 goals shall not be applicable if the department determines,
700 based upon individual site characteristics, that petroleum
701 products' chemicals of concern will not leach into the
702 groundwater at levels which pose a threat to human health and
703 safety or the environment.

704
705 However, nothing in this paragraph shall be construed to
706 restrict the department from temporarily postponing completion
707 of any site rehabilitation program for which funds are being
708 expended whenever such postponement is deemed necessary in order



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709 to make funds available for rehabilitation of a contamination
710 site with a higher priority status.

711 (c) The department shall require source removal, if
712 warranted and cost-effective, at each site eligible for
713 restoration funding from the Inland Protection Trust Fund.

714 1. Funding for free product recovery may be provided in
715 advance of the order established by the priority ranking system
716 under paragraph (a) for site cleanup activities. However, a
717 separate prioritization for free product recovery shall be
718 established consistent with paragraph (a). No more than \$5
719 million shall be encumbered from the Inland Protection Trust
720 Fund in any fiscal year for free product recovery conducted in
721 advance of the priority order under paragraph (a) established
722 for site cleanup activities.

723 2. Once free product removal and other source removal
724 identified in this paragraph are completed at a site, and
725 notwithstanding the order established by the priority ranking
726 system under paragraph (a) for site cleanup activities, the
727 department may reevaluate the site to determine the degree of
728 active cleanup needed to continue site rehabilitation. Further,
729 the department shall determine if the reevaluated site qualifies
730 for natural attenuation monitoring, long-term natural
731 attenuation monitoring, or no further action. If additional site
732 rehabilitation is necessary to reach no further action status,
733 the site rehabilitation shall be conducted in the order
734 established by the priority ranking system under paragraph (a).
735 The department shall utilize natural attenuation monitoring
736 strategies and, when cost-effective, transition sites eligible
737 for restoration funding assistance to long-term natural



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738 attenuation monitoring where the plume is shrinking or stable
739 and confined to the source property boundaries and the petroleum
740 products' chemicals of concern meet the natural attenuation
741 default concentrations, as defined by department rule. If the
742 plume migrates beyond the source property boundaries, natural
743 attenuation monitoring may be conducted in accordance with
744 department rule, or if the site no longer qualifies for natural
745 attenuation monitoring, active remediation may be resumed. For
746 long-term natural attenuation monitoring, if the petroleum
747 products' chemicals of concern increase or are not significantly
748 reduced after 42 months of monitoring or at the discretion of
749 the department, or if the plume migrates beyond the property
750 boundaries, active remediation shall be resumed as necessary.
751 For sites undergoing active remediation, the department shall
752 evaluate ~~template~~ the cost of natural attenuation monitoring
753 pursuant to s. 376.30711 to ensure that site mobilizations are
754 performed in a cost-effective manner. Sites that are not
755 eligible for state restoration funding may transition to long-
756 term natural attenuation monitoring using the criteria in this
757 subparagraph. Nothing in this subparagraph precludes a site from
758 pursuing a "No Further Action" order with conditions.

759 3. The department shall evaluate whether higher natural
760 attenuation default concentrations for natural attenuation
761 monitoring or long-term natural attenuation monitoring are cost-
762 effective and would adequately protect public health and the
763 environment. The department shall also evaluate site-specific
764 characteristics that would allow for higher natural attenuation
765 or long-term natural attenuation concentration levels.

766 4. A local government may not deny a building permit based



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767 solely on the presence of petroleum contamination for any
768 construction, repairs, or renovations performed in conjunction
769 with tank upgrade activities to an existing retail fuel facility
770 if the facility was fully operational before the building permit
771 was requested and if the construction, repair, or renovation is
772 performed by a licensed contractor. All building permits and any
773 construction, repairs, or renovations performed in conjunction
774 with such permits must comply with the applicable provisions of
775 chapters 489 and 553.

776 (6) FUNDING.—The Inland Protection Trust Fund shall be
777 funded as follows:

778 (a) All excise taxes levied, collected, and credited to the
779 fund in accordance with the provisions of ss. 206.9935(3) and
780 206.9945(1)(c).

781 (b) All penalties, judgments, recoveries, reimbursements,
782 and other fees and charges credited to the fund in accordance
783 with the provisions of subsection (3).

784 (7) DEPARTMENTAL DUTY TO SEEK RECOVERY AND REIMBURSEMENT.—

785 (a) Except as provided in subsection (9) and as otherwise
786 provided by law, the department shall recover to the use of the
787 fund from a person or persons at any time causing or having
788 caused the discharge or from the Federal Government, jointly and
789 severally, all sums owed or expended from the fund, pursuant to
790 s. 376.308, except that the department may decline to pursue
791 such recovery if it finds the amount involved too small or the
792 likelihood of recovery too uncertain. Sums recovered as a result
793 of damage due to a discharge related to the storage of petroleum
794 or petroleum products or other similar disaster shall be
795 apportioned between the fund and the General Revenue Fund so as



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796 to repay the full costs to the General Revenue Fund of any sums
797 disbursed therefrom as a result of such disaster. Any request
798 for reimbursement to the fund for such costs, if not paid within
799 30 days of demand, shall be turned over to the department for
800 collection.

801 (b) Except as provided in subsection (9) and as otherwise
802 provided by law, it is the duty of the department in
803 administering the fund diligently to pursue the reimbursement to
804 the fund of any sum expended from the fund for cleanup and
805 abatement in accordance with the provisions of this section or
806 s. 376.3073, unless the department finds the amount involved too
807 small or the likelihood of recovery too uncertain. For the
808 purposes of s. 95.11, the limitation period within which to
809 institute an action to recover such sums shall commence on the
810 last date on which any such sums were expended, and not the date
811 that the discharge occurred.

812 (c) If the department initiates an enforcement action to
813 clean up a contaminated site and determines that the responsible
814 party is financially unable to undertake complete restoration of
815 the contaminated site, that the current property owner was not
816 responsible for the discharge when the contamination first
817 occurred, or that the state's interest can best be served by
818 conducting cleanup, the department may enter into an agreement
819 with the responsible party or property owner whereby the
820 department agrees to conduct site rehabilitation and the
821 responsible party or property owner agrees to pay for the
822 portion of the cleanup costs that are within such party's or
823 owner's financial capabilities as determined by the department,
824 taking into consideration the party's net worth and the economic



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825 impact on the party.

826 (d) The department may impose a lien on the real property
827 on which the contaminated site is located equal to the estimated
828 cost to bring the site into compliance, including attorney's
829 fees and court costs. Any owner whose property has such a lien
830 imposed may release her or his property from any lien claimed
831 under this subsection by filing with the clerk of the circuit
832 court a cash or surety bond, payable to the department in the
833 amount of the estimated cost of bringing the site into
834 compliance with department rules, including attorney's fees and
835 court costs, or the value of the property after the abatement
836 action is complete, whichever is less. A lien provided by this
837 subsection may not continue for a period longer than 4 years
838 after the abatement action is completed, unless within that
839 period an action to enforce the lien is commenced in a court of
840 competent jurisdiction. The department may take action to
841 enforce the lien in the same manner used for construction liens
842 under part I of chapter 713.

843 (8) INVESTMENTS; INTEREST.—Moneys in the fund which are not
844 needed currently to meet the obligations of the department in
845 the exercise of its responsibilities under this section and s.
846 376.3073 shall be deposited with the Chief Financial Officer to
847 the credit of the fund and may be invested in such manner as is
848 provided for by statute. The interest received on such
849 investment shall be credited to the fund. Any provisions of law
850 to the contrary notwithstanding, such interest may be freely
851 transferred between this trust fund and the Water Quality
852 Assurance Trust Fund, in the discretion of the department.

853 (9) EARLY DETECTION INCENTIVE PROGRAM.—To encourage early



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854 detection, reporting, and cleanup of contamination from leaking
855 petroleum storage systems, the department shall, within the
856 guidelines established in this subsection, conduct an incentive
857 program which shall provide for a 30-month grace period ending
858 on December 31, 1988. Pursuant thereto:

859 (a) The department shall establish reasonable requirements
860 for the written reporting of petroleum contamination incidents
861 and shall distribute forms to registrants under s. 376.303(1)(b)
862 and to other interested parties upon request to be used for such
863 purpose. Until such forms are available for distribution, the
864 department shall take reports of such incidents, however made,
865 but shall notify any person making such a report that a complete
866 written report of the incident will be required by the
867 department at a later time, the form for which will be provided
868 by the department.

869 (b) When reporting forms become available for distribution,
870 all sites involving incidents of contamination from petroleum
871 storage systems initially reported to the department at any time
872 from midnight on June 30, 1986, to midnight on December 31,
873 1988, shall be qualified sites, provided that such a complete
874 written report is filed with respect thereto within a reasonable
875 time. Subject to the delays which may occur as a result of the
876 prioritization of sites under paragraph (5)(a) for any qualified
877 site, costs for activities described in paragraphs (4)(a)-(e)
878 shall be absorbed at the expense of the fund, without recourse
879 to reimbursement or recovery, with the following exceptions:

880 1. The provisions of this subsection shall not apply to any
881 site where the department has been denied site access to
882 implement the provisions of this section.



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883 2. The provisions of this subsection shall not be construed
884 to authorize or require reimbursement from the fund for costs
885 expended prior to the beginning of the grace period, except as
886 provided in subsection (12).

887 3.a. Upon discovery by the department that the owner or
888 operator of a petroleum storage system has been grossly
889 negligent in the maintenance of such petroleum storage system;
890 has, with willful intent to conceal the existence of a serious
891 discharge, falsified inventory or reconciliation records
892 maintained with respect to the site at which such system is
893 located; or has intentionally damaged such petroleum storage
894 system, the site at which such system is located shall be
895 ineligible for participation in the incentive program and the
896 owner shall be liable for all costs due to discharges from
897 petroleum storage systems at that site, any other provisions of
898 chapter 86-159, Laws of Florida, to the contrary
899 notwithstanding. For the purposes of this paragraph, willful
900 failure to maintain inventory and reconciliation records,
901 willful failure to make monthly monitoring system checks where
902 such systems are in place, and failure to meet monitoring and
903 retrofitting requirements within the schedules established under
904 chapter 62-761, Florida Administrative Code, or violation of
905 similar rules adopted by the department under this chapter,
906 shall be construed to be gross negligence in the maintenance of
907 a petroleum storage system.

908 b. The department shall redetermine the eligibility of
909 petroleum storage systems for which a timely EDI application was
910 filed, but which were deemed ineligible by the department, under
911 the following conditions:



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912 (I) The owner or operator, on or before March 31, 1991,
913 shall submit, in writing, notification that the storage system
914 is now in compliance with department rules adopted pursuant to
915 s. 376.303, and which requests the department to reevaluate the
916 storage system eligibility; and

917 (II) The department verifies the storage system compliance
918 based on a compliance inspection.

919

920 Provided, however, that a site may be determined eligible by the
921 department for good cause shown, including, but not limited to,
922 demonstration by the owner or operator that to achieve
923 compliance would cause an increase in the potential for the
924 spread of the contamination.

925 c. Redetermination of eligibility pursuant to sub-
926 subparagraph b. shall not be available to:

927 (I) Petroleum storage systems owned or operated by the
928 Federal Government.

929 (II) Facilities that denied site access to the department.

930 (III) Facilities where a discharge was intentionally
931 concealed.

932 (IV) Facilities that were denied eligibility due to:

933 (A) Absence of contamination, unless any such facility
934 subsequently establishes that contamination did exist at that
935 facility on or before December 31, 1988.

936 (B) Contamination from substances that were not petroleum
937 or a petroleum product.

938 (C) Contamination that was not from a petroleum storage
939 system.

940 d. EDI applicants who demonstrate compliance for a site



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941 pursuant to sub-subparagraph b. are eligible for the Early
942 Detection Incentive Program and site rehabilitation funding
943 pursuant to subsection (5) and s. 376.30711.
944

945 If, in order to avoid prolonged delay, the department in its
946 discretion deems it necessary to expend sums from the fund to
947 cover ineligible sites or costs as set forth in this paragraph,
948 the department may do so and seek recovery and reimbursement
949 therefor in the same manner and in accordance with the same
950 procedures as are established for recovery and reimbursement of
951 sums otherwise owed to or expended from the fund.

952 (c) No report of a discharge made to the department by any
953 person in accordance with this subsection, or any rules
954 promulgated pursuant hereto, shall be used directly as evidence
955 of liability for such discharge in any civil or criminal trial
956 arising out of the discharge.

957 (d) The provisions of this subsection shall not apply to
958 petroleum storage systems owned or operated by the Federal
959 Government.

960 (10) VIOLATIONS; PENALTY.—It is unlawful for any person to:

961 (a) Falsify inventory or reconciliation records maintained
962 in compliance with chapters 62-761 and 62-762, Florida
963 Administrative Code, with willful intent to conceal the
964 existence of a serious leak; or

965 (b) Intentionally damage a petroleum storage system.
966

967 Any person convicted of such a violation shall be guilty of a
968 felony of the third degree, punishable as provided in s.
969 775.082, s. 775.083, or s. 775.084.



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970 (11) SITE CLEANUP.—
971 (a) *Voluntary cleanup.*—This section does not prohibit a
972 person from conducting site rehabilitation either through his or
973 her own personnel or through responsible response action
974 contractors or subcontractors when such person is not seeking
975 site rehabilitation funding from the fund. Such voluntary
976 cleanups must meet all applicable environmental standards.
977 (b) *Low-scored site initiative.*—Notwithstanding s.
978 376.30711, any site with a priority ranking score of 29 points
979 or less may voluntarily participate in the low-scored site
980 initiative, whether or not the site is eligible for state
981 restoration funding.
982 1. To participate in the low-scored site initiative, the
983 responsible party or property owner must affirmatively
984 demonstrate that the following conditions are met:
985 a. Upon reassessment pursuant to department rule, the site
986 retains a priority ranking score of 29 points or less.
987 b. No excessively contaminated soil, as defined by
988 department rule, exists onsite as a result of a release of
989 petroleum products.
990 c. A minimum of 6 months of groundwater monitoring
991 indicates that the plume is shrinking or stable.
992 d. The release of petroleum products at the site does not
993 adversely affect adjacent surface waters, including their
994 effects on human health and the environment.
995 e. The area of groundwater containing the petroleum
996 products' chemicals of concern is less than one-quarter acre and
997 is confined to the source property boundaries of the real
998 property on which the discharge originated.



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999 f. Soils onsite that are subject to human exposure found
1000 between land surface and 2 feet below land surface meet the soil
1001 cleanup target levels established by department rule or human
1002 exposure is limited by appropriate institutional or engineering
1003 controls.

1004 2. Upon affirmative demonstration of the conditions under
1005 subparagraph 1., the department shall issue a determination of
1006 "No Further Action." Such determination acknowledges that
1007 minimal contamination exists onsite and that such contamination
1008 is not a threat to human health or the environment. If no
1009 contamination is detected, the department may issue a site
1010 rehabilitation completion order.

1011 3. Sites that are eligible for state restoration funding
1012 may receive payment of ~~pre-approved~~ costs for the low-scored site
1013 initiative as follows:

1014 a. A responsible party or property owner may submit an
1015 assessment plan designed to affirmatively demonstrate that the
1016 site meets the conditions under subparagraph 1. Notwithstanding
1017 the priority ranking score of the site, the department may
1018 approve ~~preapprove~~ the cost of the assessment pursuant to s.
1019 376.30711, including 6 months of groundwater monitoring, not to
1020 exceed \$30,000 for each site. The department may not pay the
1021 costs associated with the establishment of institutional or
1022 engineering controls.

1023 b. The assessment work shall be completed no later than 6
1024 months after the department issues its approval.

1025 c. No more than \$10 million for the low-scored site
1026 initiative may be encumbered from the Inland Protection Trust
1027 Fund in any fiscal year. Funds shall be made available on a



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1028 first-come, first-served basis and shall be limited to 10 sites
1029 in each fiscal year for each responsible party or property
1030 owner.

1031 d. Program deductibles, copayments, and the limited
1032 contamination assessment report requirements under paragraph
1033 (13) (c) do not apply to expenditures under this paragraph.

1034 (12) REIMBURSEMENT FOR CLEANUP EXPENSES.—Except as provided
1035 in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall
1036 not apply to any site rehabilitation program task initiated
1037 after March 29, 1995. Effective August 1, 1996, no further site
1038 rehabilitation work on sites eligible for state-funded cleanup
1039 from the Inland Protection Trust Fund shall be eligible for
1040 reimbursement pursuant to this subsection. The person
1041 responsible for conducting site rehabilitation may seek
1042 reimbursement for site rehabilitation program task work
1043 conducted after March 28, 1995, in accordance with s. 2(2) and
1044 (3), chapter 95-2, Laws of Florida, regardless of whether the
1045 site rehabilitation program task is completed. A site
1046 rehabilitation program task shall be considered to be initiated
1047 when actual onsite work or engineering design, pursuant to
1048 chapter 62-770, Florida Administrative Code, which is integral
1049 to performing a site rehabilitation program task has begun and
1050 shall not include contract negotiation and execution, site
1051 research, or project planning. All reimbursement applications
1052 pursuant to this subsection must be submitted to the department
1053 by January 3, 1997. The department shall not accept any
1054 applications for reimbursement or pay any claims on applications
1055 for reimbursement received after that date; provided, however if
1056 an application filed on or prior to January 3, 1997, was



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1057 returned by the department on the grounds of untimely filing, it
1058 shall be refiled within 30 days after the effective date of this
1059 act in order to be processed.

1060 (a) *Legislative findings.*—The Legislature finds and
1061 declares that rehabilitation of contamination sites should be
1062 conducted in a manner and to a level of completion which will
1063 protect the public health, safety, and welfare and will minimize
1064 damage to the environment.

1065 (b) *Conditions.*—

1066 1. The owner, operator, or his or her designee of a site
1067 which is eligible for restoration funding assistance in the EDI,
1068 PLRIP, or ATRP programs shall be reimbursed from the Inland
1069 Protection Trust Fund of allowable costs at reasonable rates
1070 incurred on or after January 1, 1985, for completed program
1071 tasks as identified in the department rule promulgated pursuant
1072 to paragraph (5)(b), or uncompleted program tasks pursuant to
1073 chapter 95-2, Laws of Florida, subject to the conditions in this
1074 section. It is unlawful for a site owner or operator, or his or
1075 her designee, to receive any remuneration, in cash or in kind,
1076 directly or indirectly from the rehabilitation contractor.

1077 2. Nothing in this subsection shall be construed to
1078 authorize reimbursement to any person for costs of contaminated
1079 soil treatment or disposal that does not meet the applicable
1080 rules of this state for such treatment or disposal, including
1081 all general permitting, state air emission standards,
1082 monitoring, sampling, and reporting rules more specifically
1083 described in department rules.

1084 (c) *Legislative intent.*—Due to the value of the potable
1085 water of this state, it is the intent of the Legislature that



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1086 the department initiate and facilitate as many cleanups as
1087 possible utilizing the resources of the state, local
1088 governments, and the private sector, recognizing that source
1089 removal, wherever it is technologically feasible and cost-
1090 effective, shall be considered the primary initial response to
1091 protect public health, safety, and the environment.

1092 (d) *Amount of reimbursement.*—The department shall reimburse
1093 actual and reasonable costs for site rehabilitation. The
1094 department shall not reimburse interest on the amount of
1095 reimbursable costs for any reimbursement application. However,
1096 nothing herein shall affect the department's authority to pay
1097 interest authorized under prior law.

1098 (e) *Records.*—The person responsible for conducting site
1099 rehabilitation, or his or her agent, shall keep and preserve
1100 suitable records as follows:

1101 1. Hydrological and other site investigations and
1102 assessments; site rehabilitation plans; contracts and contract
1103 negotiations; and accounts, invoices, sales tickets, or other
1104 payment records from purchases, sales, leases, or other
1105 transactions involving costs actually incurred related to site
1106 rehabilitation. Such records shall be made available upon
1107 request to agents and employees of the department during regular
1108 business hours and at other times upon written request of the
1109 department.

1110 2. In addition, the department may from time to time
1111 request submission of such site-specific information as it may
1112 require, unless a waiver or variance from such department
1113 request is granted pursuant to paragraph (k).

1114 3. All records of costs actually incurred for cleanup shall



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1115 be certified by affidavit to the department as being true and
1116 correct.

1117 (f) *Application for reimbursement.*—Any eligible person who
1118 performs a site rehabilitation program or performs site
1119 rehabilitation program tasks such as preparation of site
1120 rehabilitation plans or assessments; product recovery; cleanup
1121 of groundwater or inland surface water; soil treatment or
1122 removal; or any other tasks identified by department rule
1123 developed pursuant to subsection (5), may apply for
1124 reimbursement. Such applications for reimbursement must be
1125 submitted to the department on forms provided by the department,
1126 together with evidence documenting that site rehabilitation
1127 program tasks were conducted or completed in accordance with
1128 department rule developed pursuant to subsection (5), and other
1129 such records or information as the department requires. The
1130 reimbursement application and supporting documentation shall be
1131 examined by a certified public accountant in accordance with
1132 standards established by the American Institute of Certified
1133 Public Accountants. A copy of the accountant's report shall be
1134 submitted with the reimbursement application. Applications for
1135 reimbursement shall not be approved for site rehabilitation
1136 program tasks which have not been completed, except for the task
1137 of remedial action and except for uncompleted program tasks
1138 pursuant to chapter 95-2, Laws of Florida, and this subsection.
1139 Applications for remedial action may be submitted semiannually
1140 at the discretion of the person responsible for cleanup. After
1141 an applicant has filed an application with the department and
1142 before payment is made, the applicant may assign the right to
1143 payment to any other person, without recourse of the assignee or



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1144 assignor to the state, without affecting the order in which
1145 payment is made. Information necessary to process the
1146 application shall be requested from and provided by the
1147 assigning applicant. Proper notice of the assignment and
1148 assignment information shall be made to the department which
1149 notice shall be signed and notarized by the assigning applicant.

1150 (g) *Review.*—

1151 1. Provided there are sufficient unencumbered funds
1152 available in the Inland Protection Trust Fund, or to the extent
1153 proceeds of debt obligations are available for the payment of
1154 existing reimbursement obligations pursuant to s. 376.3075, the
1155 department shall have 60 days to determine if the applicant has
1156 provided sufficient information for processing the application
1157 and shall request submission of any additional information that
1158 the department may require within such 60-day period. If the
1159 applicant believes any request for additional information is not
1160 authorized, the applicant may request a hearing pursuant to ss.
1161 120.569 and 120.57. Once the department requests additional
1162 information, the department may request only that information
1163 needed to clarify such additional information or to answer new
1164 questions raised by or directly related to such additional
1165 information.

1166 2. The department shall deny or approve the application for
1167 reimbursement within 90 days after receipt of the last item of
1168 timely requested additional material, or, if no additional
1169 material is requested, within 90 days of the close of the 60-day
1170 period described in subparagraph 1., unless the total review
1171 period is otherwise extended by written mutual agreement of the
1172 applicant and the department.



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1173 3. Final disposition of an application shall be provided to
1174 the applicant in writing, accompanied by a written explanation
1175 setting forth in detail the reason or reasons for the approval
1176 or denial. If the department fails to make a determination on an
1177 application within the time provided in subparagraph 2., or
1178 denies an application, or if a dispute otherwise arises with
1179 regard to reimbursement, the applicant may request a hearing
1180 pursuant to ss. 120.569 and 120.57.

1181 (h) *Reimbursement.*—Upon approval of an application for
1182 reimbursement, reimbursement for reasonable expenditures of a
1183 site rehabilitation program or site rehabilitation program tasks
1184 documented therein shall be made in the order in which the
1185 department receives completed applications. Effective January 1,
1186 1997, all unpaid reimbursement applications are subject to
1187 payment on the following terms: The department shall develop a
1188 schedule of the anticipated dates of reimbursement of
1189 applications submitted to the department pursuant to this
1190 subsection. The schedule shall specify the projected date of
1191 payment based on equal monthly payments and projected annual
1192 revenue of \$100 million. Based on the schedule, the department
1193 shall notify all reimbursement applicants of the projected date
1194 of payment of their applications. The department shall direct
1195 the Inland Protection Financing Corporation to pay applicants
1196 the present value of their applications as soon as practicable
1197 after approval by the department, subject to the availability of
1198 funds within the Inland Protection Financing Corporation. The
1199 present value of an application shall be based on the date on
1200 which the department anticipates the Inland Protection Financing
1201 Corporation will settle the reimbursement application and the



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1202 schedule's projected date of payment and shall use 3.5 percent
1203 as the annual discount rate. The determination of the amount of
1204 the claim and the projected date of payment shall be subject to
1205 s. 120.57.

1206 (i) *Liberal construction.*—With respect to site
1207 rehabilitation initiated prior to July 1, 1986, the provisions
1208 of this subsection shall be given such liberal construction by
1209 the department as will accomplish the purposes set forth in this
1210 subsection. With regard to the keeping of particular records or
1211 the giving of certain notice, the department may accept as
1212 compliance action by a person which meets the intent of the
1213 requirements set forth in this subsection.

1214 (j) *Reimbursement-review contracts.*—The department may
1215 contract with entities capable of processing or assisting in the
1216 review of reimbursement applications. ~~Any purchase of such~~
1217 ~~services shall not be subject to chapter 287.~~

1218 (k) *Audits.*—

1219 1. The department is authorized to perform financial and
1220 technical audits in order to certify site restoration costs and
1221 ensure compliance with this chapter. The department shall seek
1222 recovery of any overpayments based on the findings of these
1223 audits. The department must commence any audit within 5 years
1224 after the date of reimbursement, except in cases where the
1225 department alleges specific facts indicating fraud.

1226 2. Upon determination by the department that any portion of
1227 costs which have been reimbursed are disallowed, the department
1228 shall give written notice to the applicant setting forth with
1229 specificity the allegations of fact which justify the
1230 department's proposed action and ordering repayment of



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1231 disallowed costs within 60 days of notification of the
1232 applicant.

1233 3. In the event the applicant does not make payment to the
1234 department within 60 days of receipt of such notice, the
1235 department shall seek recovery in a court of competent
1236 jurisdiction to recover reimbursement overpayments made to the
1237 person responsible for conducting site rehabilitation, unless
1238 the department finds the amount involved too small or the
1239 likelihood of recovery too uncertain.

1240 4. In addition to the amount of any overpayment, the
1241 applicant shall be liable to the department for interest of 1
1242 percent per month or the prime rate, whichever is less, on the
1243 amount of overpayment, from the date of overpayment by the
1244 department until the applicant satisfies the department's
1245 request for repayment pursuant to this paragraph. The
1246 calculation of interest shall be tolled during the pendency of
1247 any litigation.

1248 5. Financial and technical audits frequently are conducted
1249 under this section many years after the site rehabilitation
1250 activities were performed and the costs examined in the course
1251 of the audit were incurred by the person responsible for site
1252 rehabilitation. During the intervening span of years, the
1253 department's rule requirements and its related guidance and
1254 other nonrule policy directives may have changed significantly.
1255 The Legislature finds that it may be appropriate for the
1256 department to provide relief to persons subject to such
1257 requirements in financial and technical audits conducted
1258 pursuant to this section.

1259 a. The department is authorized to grant variances and



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1260 waivers from the documentation requirements of subparagraph
1261 (e)2. and from the requirements of rules applicable in technical
1262 and financial audits conducted under this section. Variances and
1263 waivers shall be granted when the person responsible for site
1264 rehabilitation demonstrates to the department that application
1265 of a financial or technical auditing requirement would create a
1266 substantial hardship or would violate principles of fairness.
1267 For purposes of this subsection, "substantial hardship" means a
1268 demonstrated economic, technological, legal, or other type of
1269 hardship to the person requesting the variance or waiver. For
1270 purposes of this subsection, "principles of fairness" are
1271 violated when the application of a requirement affects a
1272 particular person in a manner significantly different from the
1273 way it affects other similarly situated persons who are affected
1274 by the requirement or when the requirement is being applied
1275 retroactively without due notice to the affected parties.

1276 b. A person whose reimbursed costs are subject to a
1277 financial and technical audit under this section may file a
1278 written request to the department for grant of a variance or
1279 waiver. The request shall specify:

1280 (I) The requirement from which a variance or waiver is
1281 requested.

1282 (II) The type of action requested.

1283 (III) The specific facts which would justify a waiver or
1284 variance.

1285 (IV) The reason or reasons why the requested variance or
1286 waiver would serve the purposes of this section.

1287 c. Within 90 days after receipt of a written request for
1288 variance or waiver under this subsection, the department shall



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1289 grant or deny the request. If the request is not granted or
1290 denied within 90 days of receipt, the request shall be deemed
1291 approved. An order granting or denying the request shall be in
1292 writing and shall contain a statement of the relevant facts and
1293 reasons supporting the department's action. The department's
1294 decision to grant or deny the petition shall be supported by
1295 competent substantial evidence and is subject to ss. 120.569 and
1296 120.57. Once adopted, model rules promulgated by the
1297 Administration Commission under s. 120.542 shall govern the
1298 processing of requests under this provision.

1299 6. The Chief Financial Officer may audit the records of
1300 persons who receive or who have received payments pursuant to
1301 this chapter in order to verify site restoration costs, ensure
1302 compliance with this chapter, and verify the accuracy and
1303 completeness of audits performed by the department pursuant to
1304 this paragraph. The Chief Financial Officer may contract with
1305 entities or persons to perform audits pursuant to this
1306 subparagraph. The Chief Financial Officer shall commence any
1307 audit within 1 year after the department's completion of an
1308 audit conducted pursuant to this paragraph, except in cases
1309 where the department or the Chief Financial Officer alleges
1310 specific facts indicating fraud.

1311 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
1312 detection, reporting, and cleanup of contamination caused by
1313 discharges of petroleum or petroleum products, the department
1314 shall, within the guidelines established in this subsection,
1315 implement a cost-sharing cleanup program to provide
1316 rehabilitation funding assistance for all property contaminated
1317 by discharges of petroleum or petroleum products occurring



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1318 before January 1, 1995, subject to a copayment provided for in a
1319 ~~preapproved~~ Petroleum Cleanup Participation Program site
1320 rehabilitation agreement. Eligibility shall be subject to an
1321 annual appropriation from the Inland Protection Trust Fund.
1322 Additionally, funding for eligible sites shall be contingent
1323 upon annual appropriation in subsequent years. Such continued
1324 state funding shall not be deemed an entitlement or a vested
1325 right under this subsection. Eligibility in the program shall be
1326 notwithstanding any other provision of law, consent order,
1327 order, judgment, or ordinance to the contrary.

1328 (a)1. The department shall accept any discharge reporting
1329 form received prior to January 1, 1995, as an application for
1330 this program, and the facility owner or operator need not
1331 reapply.

1332 2. Owners or operators of property contaminated by
1333 petroleum or petroleum products from a petroleum storage system
1334 may apply for such program by filing a written report of the
1335 contamination incident, including evidence that such incident
1336 occurred prior to January 1, 1995, with the department.
1337 Incidents of petroleum contamination discovered after December
1338 31, 1994, at sites which have not stored petroleum or petroleum
1339 products for consumption, use, or sale after such date shall be
1340 presumed to have occurred prior to January 1, 1995. An
1341 operator's filed report shall be deemed an application of the
1342 owner for all purposes. Sites reported to the department after
1343 December 31, 1998, shall not be eligible for this program.

1344 (b) Subject to annual appropriation from the Inland
1345 Protection Trust Fund, sites meeting the criteria of this
1346 subsection are eligible for up to \$400,000 of site



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1347 rehabilitation funding assistance in priority order pursuant to
1348 subsection (5) and s. 376.30711. Sites meeting the criteria of
1349 this subsection for which a site rehabilitation completion order
1350 was issued prior to June 1, 2008, do not qualify for the 2008
1351 increase in site rehabilitation funding assistance and are bound
1352 by the pre-June 1, 2008, limits. Sites meeting the criteria of
1353 this subsection for which a site rehabilitation completion order
1354 was not issued prior to June 1, 2008, regardless of whether or
1355 not they have previously transitioned to nonstate-funded cleanup
1356 status, may continue state-funded cleanup pursuant to s.
1357 376.30711 until a site rehabilitation completion order is issued
1358 or the increased site rehabilitation funding assistance limit is
1359 reached, whichever occurs first. At no time shall expenses
1360 incurred outside the preapproved site rehabilitation program
1361 under s. 376.30711 be reimbursable.

1362 (c) Upon notification by the department that rehabilitation
1363 funding assistance is available for the site pursuant to
1364 subsection (5) and s. 376.30711, the owner, operator, or person
1365 otherwise responsible for site rehabilitation shall provide the
1366 department with a limited contamination assessment report and
1367 shall enter into a ~~preapproved~~ Petroleum Cleanup Participation
1368 Program site rehabilitation agreement with the department
1369 pursuant to ~~and a contractor qualified under~~ s. 376.30711(2)(b).
1370 The agreement shall provide for a 25-percent copayment by the
1371 owner, operator, or person otherwise responsible for conducting
1372 site rehabilitation. The owner, operator, or person otherwise
1373 responsible for conducting site rehabilitation shall adequately
1374 demonstrate the ability to meet the copayment obligation. The
1375 limited contamination assessment report and the copayment costs



1376 may be reduced or eliminated if the owner and all operators
1377 responsible for restoration under s. 376.308 demonstrate that
1378 they are financially unable to comply with the copayment and
1379 limited contamination assessment report requirements. The
1380 department shall take into consideration the owner's and
1381 operator's net worth in making the determination of financial
1382 ability. In the event the department and the owner, operator, or
1383 person otherwise responsible for site rehabilitation are unable
1384 to complete negotiation of the cost-sharing agreement within 120
1385 days after commencing negotiations, the department shall
1386 terminate negotiations and the site shall be deemed ineligible
1387 for state funding under this subsection and all liability
1388 protections provided for in this subsection shall be revoked.

1389 (d) No report of a discharge made to the department by any
1390 person in accordance with this subsection, or any rules adopted
1391 pursuant hereto, shall be used directly as evidence of liability
1392 for such discharge in any civil or criminal trial arising out of
1393 the discharge.

1394 (e) Nothing in this subsection shall be construed to
1395 preclude the department from pursuing penalties in accordance
1396 with s. 403.141 for violations of any law or any rule, order,
1397 permit, registration, or certification adopted or issued by the
1398 department pursuant to its lawful authority.

1399 (f) Upon the filing of a discharge reporting form under
1400 paragraph (a), neither the department nor any local government
1401 shall pursue any judicial or enforcement action to compel
1402 rehabilitation of the discharge. This paragraph shall not
1403 prevent any such action with respect to discharges determined
1404 ineligible under this subsection or to sites for which



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1405 rehabilitation funding assistance is available in accordance
1406 with subsection (5) and s. 376.30711.

1407 (g) The following shall be excluded from participation in
1408 the program:

1409 1. Sites at which the department has been denied reasonable
1410 site access to implement the provisions of this section.

1411 2. Sites that were active facilities when owned or operated
1412 by the Federal Government.

1413 3. Sites that are identified by the United States
1414 Environmental Protection Agency to be on, or which qualify for
1415 listing on, the National Priorities List under Superfund. This
1416 exception does not apply to those sites for which eligibility
1417 has been requested or granted as of the effective date of this
1418 act under the Early Detection Incentive Program established
1419 pursuant to s. 15, chapter 86-159, Laws of Florida.

1420 4. The contamination is covered under the Early Detection
1421 Incentive Program, the Abandoned Tank Restoration Program or the
1422 Petroleum Liability and Restoration Insurance Program, in which
1423 case site rehabilitation funding assistance shall continue under
1424 the respective program.

1425 (14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—Prior to the
1426 department entering into a service contract with the Inland
1427 Protection Financing Corporation which includes payments by the
1428 department to support any existing or planned note, bond,
1429 certificate of indebtedness, or other obligation or evidence of
1430 indebtedness of the corporation pursuant to s. 376.3075, the
1431 Legislature, by law, must specifically authorize the department
1432 to enter into such a contract. The corporation may issue bonds
1433 in an amount not to exceed \$104 million, with a term up to 15



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1434 years, and annual payments not in excess of \$10.4 million. The
1435 department may enter into a service contract in conjunction with
1436 the issuance of such bonds which provides for annual payments
1437 for debt service payments or other amounts payable with respect
1438 to bonds, plus any administrative expenses of the corporation to
1439 finance the rehabilitation of petroleum contamination sites
1440 pursuant to ss. 376.30-376.317.

1441 Section 4. Section 376.30713, Florida Statutes, is amended
1442 to read:

1443 376.30713 Advanced ~~Preapproved~~ advanced cleanup.-

1444 (1) In addition to the legislative findings provided in s.
1445 376.30711, the Legislature finds and declares:

1446 (a) That the inability to conduct site rehabilitation in
1447 advance of a site's priority ranking pursuant to s.
1448 376.3071(5) (a) may substantially impede or prohibit property
1449 transactions or the proper completion of public works projects.

1450 (b) While the first priority of the state is to provide for
1451 protection of the water resources of the state, human health,
1452 and the environment, the viability of commerce is of equal
1453 importance to the state.

1454 (c) It is in the public interest and of substantial
1455 economic benefit to the state to provide an opportunity for site
1456 rehabilitation to be conducted on a limited basis at
1457 contaminated sites, in advance of the site's priority ranking,
1458 to facilitate property transactions or public works projects.

1459 (d) It is appropriate for persons responsible for site
1460 rehabilitation to share the costs associated with managing and
1461 conducting ~~preapproved~~ advanced cleanup, to facilitate the
1462 opportunity for ~~preapproved~~ advanced cleanup, and to mitigate



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1463 the additional costs that will be incurred by the state in
1464 conducting site rehabilitation in advance of the site's priority
1465 ranking. Such cost sharing will result in more contaminated
1466 sites being cleaned up and greater environmental benefits to the
1467 state. The provisions of this section are ~~shall~~ only be
1468 available for sites eligible for restoration funding under EDI,
1469 ATRP, or PLIRP. This section is available for discharges
1470 eligible for restoration funding under the petroleum cleanup
1471 participation program for the state's cost share of site
1472 rehabilitation. Applications must ~~shall~~ include a cost-sharing
1473 commitment for this section in addition to the 25-percent-
1474 copayment requirement of the petroleum cleanup participation
1475 program. This section is not available for any discharge under a
1476 petroleum cleanup participation program where the 25-percent-
1477 copayment requirement of the petroleum cleanup participation
1478 program has been reduced or eliminated pursuant to s.
1479 376.3071(13)(c).

1480 (2) The department may ~~is authorized to~~ approve an
1481 application for ~~preapproved~~ advanced cleanup at eligible sites,
1482 prior to funding based on the site's priority ranking
1483 established pursuant to s. 376.3071(5)(a), in accordance with
1484 the provisions of this section. Persons who qualify as an
1485 applicant under the provisions of this section shall only
1486 include the facility owner or operator or the person otherwise
1487 responsible for site rehabilitation.

1488 (a) Advanced ~~Preapproved advanced~~ cleanup applications may
1489 be submitted between May 1 and June 30 and between November 1
1490 and December 31 of each fiscal year. Applications submitted
1491 between May 1 and June 30 are ~~shall be~~ for the fiscal year



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1492 beginning July 1. An application must ~~shall~~ consist of:

1493 1. A commitment to pay ~~no less than~~ 25 percent or more of
1494 the total cleanup cost deemed recoverable under the provisions
1495 of this section along with proof of the ability to pay the cost
1496 share.

1497 2. A nonrefundable review fee of \$250 to cover the
1498 administrative costs associated with the department's review of
1499 the application.

1500 3. A limited contamination assessment report.

1501 4. A proposed course of action.

1502

1503 The limited contamination assessment report is ~~shall be~~
1504 sufficient to support the proposed course of action and to
1505 estimate the cost of the proposed course of action. Any costs
1506 incurred related to conducting the limited contamination
1507 assessment report are not refundable from the Inland Protection
1508 Trust Fund. Site eligibility under this subsection, or any other
1509 provision of this section, is ~~shall~~ not ~~constitute~~ an
1510 entitlement to ~~preapproved~~ advanced cleanup or continued
1511 restoration funding. The applicant must ~~shall~~ certify to the
1512 department that the applicant has the prerequisite authority to
1513 enter into a preapproved advanced cleanup contract with the
1514 department. This certification shall be submitted with the
1515 application.

1516 (b) The department must ~~shall~~ rank the applications based
1517 on the percentage of cost-sharing commitment proposed by the
1518 applicant, with the highest ranking given to the applicant who
1519 ~~that~~ proposes the highest percentage of cost sharing. If the
1520 department receives applications that propose identical cost-



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1521 sharing commitments and that ~~which~~ exceed the funds available to
1522 commit to all such proposals during the ~~preapproved~~ advanced
1523 cleanup application period, the department must ~~shall proceed to~~
1524 rerank those applicants. Those applicants submitting identical
1525 cost-sharing proposals which exceed funding availability must
1526 ~~shall~~ be ~~so~~ notified by the department and must ~~shall~~ be offered
1527 the opportunity to raise their individual cost-share
1528 commitments, in a period of time specified in the notice. At the
1529 close of the period, the department must ~~shall proceed to~~ rerank
1530 the applications in accordance with this paragraph.

1531 (3) (a) Based on the ranking established under paragraph
1532 (2) (b) ~~and the funding limitations provided in subsection (4),~~
1533 the department must ~~shall~~ commence negotiation with ~~such~~
1534 applicants. If the department and the applicant agree on the
1535 course of action, the department may enter into a contract with
1536 the applicant. The department may ~~is authorized~~ to negotiate the
1537 terms and conditions of the contract.

1538 (b) Advanced ~~Preapproved advanced~~ cleanup must ~~shall~~ be
1539 conducted under the provisions of ss. 376.3071(5) (b) and
1540 376.30711 and rules adopted pursuant to s. 376.30711 and s.
1541 287.0595. If the terms of the preapproved advanced cleanup
1542 contract are not fulfilled, the applicant forfeits any right to
1543 future payment for any site rehabilitation work conducted under
1544 the contract.

1545 (c) The department's decision not to enter into a
1546 ~~preapproved~~ an advanced cleanup contract with the applicant is
1547 ~~shall~~ not be subject to the provisions of chapter 120. If the
1548 department cannot ~~is not able to~~ complete negotiation of the
1549 course of action and the terms of the contract within 60 days



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1550 after commencing negotiations, the department shall terminate
1551 negotiations with that applicant.

1552 (4) The department may ~~is authorized to~~ enter into contract
1553 for a total of up to \$10 million of ~~preapproved~~ advanced cleanup
1554 work in each fiscal year. However, no facility may ~~shall~~ be
1555 approved ~~preapproved~~ for more than \$500,000 of cleanup activity
1556 in each fiscal year. For the purposes of this section the term
1557 "facility" includes ~~shall include~~, but is not ~~be~~ limited to,
1558 multiple site facilities such as airports, port facilities, and
1559 terminal facilities even though such enterprises may be treated
1560 as separate facilities for other purposes under this chapter.

1561 (5) All funds collected by the department pursuant to this
1562 section must ~~shall~~ be deposited into the Inland Protection Trust
1563 Fund to be used as provided in this section.

1564 Section 5. Section 373.326, Florida Statutes, is amended to
1565 read:

1566 373.326 Exemptions.—

1567 (1) When the water management district finds that
1568 compliance with all requirements of this part would result in
1569 undue hardship, an exemption from any one or more such
1570 requirements may be granted by the water management district to
1571 the extent necessary to ameliorate such undue hardship and to
1572 the extent such exemption can be granted without impairing the
1573 intent and purpose of this part.

1574 (2) Nothing in this part shall prevent a person who has not
1575 obtained a license pursuant to s. 373.323 from constructing a
1576 well that is 2 inches or under in diameter, on the person's own
1577 or leased property, intended for use only in a single-family
1578 house which is his or her residence, or intended for use only



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1579 for farming purposes on the person's farm, and when the waters
1580 to be produced are not intended for use by the public or any
1581 residence other than his or her own, provided that such person
1582 complies with all local and state rules and regulations relating
1583 to the construction of water wells.

1584 (3) A permit or a fee may not be required under this part
1585 for:

1586 (a) any well authorized pursuant to ss. 403.061 and 403.087
1587 under the State Underground Injection Control Program identified
1588 in chapter 62-528, Florida Administrative Code, as Class I,
1589 Class II, Class III, Class IV, or Class V Groups 2-9.

1590 (b) any monitoring well required pursuant to site
1591 rehabilitation activities under chapter 376, when such water
1592 wells are constructed using state funds being expended pursuant
1593 to ss. 376.3071(4), 376.3078(2)(b), or 376.307(1).

1594 (c) However, such wells must be constructed by persons who
1595 have obtained a license pursuant to s. 373.323 as otherwise
1596 required by law.

1597 Section 6. This act shall take effect upon becoming law.

1598
1599 ===== T I T L E A M E N D M E N T =====

1600 And the title is amended as follows:

1601 Delete everything before the enacting clause
1602 and insert:

1603 A bill to be entitled
1604 An act relating to rehabilitation projects for
1605 petroleum contamination sites; amending 287.0595,
1606 F.S.; clarifying competitive solicitation
1607 requirements; amending s. 376.30711, F.S.; providing



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1608 legislative findings; requiring contractors to provide
1609 certain information; allowing the Department of
1610 Environmental Protection to recover sums paid in the
1611 event of overpayment; requiring the department to
1612 adopt rules; providing specific criteria to be adopted
1613 by rule; amending 376.3071; conforming language;
1614 allowing the department to impose a lien on real
1615 property which the contaminated site is located;
1616 amending 376.30713; conforming language; amending
1617 373.326; exempting certain monitoring wells from
1618 requiring a permit or fee; providing an effective
1619 date; providing an effective date.