

2016100e2

1                   A bill to be entitled  
2           An act relating to pollution discharge removal and  
3           prevention; amending s. 376.301, F.S.; defining the  
4           terms "background concentration" and "long-term  
5           natural attenuation"; amending s. 376.30701, F.S.;  
6           exempting nonprogram petroleum-contaminated sites from  
7           the application of risk-based corrective action  
8           principles under certain circumstances; requiring the  
9           Department of Environmental Protection to include  
10          protocols for the use of long-term natural attenuation  
11          where site conditions warrant; requiring specified  
12          interactive effects of contaminants to be considered  
13          as cleanup criteria; revising how cleanup target  
14          levels are applied where surface waters are exposed to  
15          contaminated groundwater; authorizing the use of  
16          relevant data and information when assessing cleanup  
17          target levels; providing that institutional controls  
18          are not required under certain circumstances if  
19          alternative cleanup target levels are used; amending  
20          s. 376.79, F.S.; defining the terms "background  
21          concentration" and "long-term natural attenuation";  
22          amending s. 376.81, F.S.; providing additional  
23          contamination cleanup criteria for brownfield sites  
24          and brownfield areas; amending ss. 196.1995, 287.0595,  
25          and 288.1175, F.S.; conforming cross-references;  
26          amending s. 376.305, F.S.; revising the eligibility  
27          requirements of the Abandoned Tank Restoration  
28          Program; deleting provisions prohibiting the relief of  
29          liability for persons who acquired title after a

2016100e2

30 certain date; amending s. 376.3071, F.S.; revising  
31 legislative intent and purpose; deleting an expiration  
32 date; revising the criteria for determining what  
33 constitutes certain rehabilitation program tasks;  
34 revising the conditions for eligibility and methods  
35 for payment of costs for the low-scored site  
36 initiative; revising the eligibility requirements for  
37 receiving rehabilitation funding; specifying that the  
38 issuance of a site rehabilitation completion order  
39 does not alter eligibility for state-funded  
40 remediation under certain circumstances; clarifying  
41 that a change in ownership does not preclude a site  
42 from entering into the program; providing additional  
43 funding for remediation and monitoring under certain  
44 circumstances; amending s. 376.30713, F.S.; revising  
45 advanced cleanup application requirements; increasing  
46 the total amount for which the department may contract  
47 for advanced cleanup work in a fiscal year;  
48 authorizing property owners and responsible parties to  
49 enter into voluntary cost-share agreements under  
50 certain circumstances; providing an effective date.

51  
52 Be It Enacted by the Legislature of the State of Florida:

53  
54 Section 1. Present subsections (4) through (22) of section  
55 376.301, Florida Statutes, are redesignated as subsections (5)  
56 through (23), respectively, present subsections (23) through  
57 (48) of that section are redesignated as subsections (25)  
58 through (50), respectively, and new subsections (4) and (24) are

2016100e2

59 added to that section, to read:

60 376.301 Definitions of terms used in ss. 376.30-376.317,  
61 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and  
62 376.75, unless the context clearly requires otherwise, the term:

63 (4) "Background concentration" means the concentration of  
64 contaminants naturally occurring or resulting from anthropogenic  
65 impacts unrelated to the discharge of pollutants or hazardous  
66 substances at a contaminated site undergoing site  
67 rehabilitation.

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

71 Section 2. Paragraph (b) of subsection (1) and subsection  
72 (2) of section 376.30701, Florida Statutes, are amended to read:

73 376.30701 Application of risk-based corrective action  
74 principles to contaminated sites; applicability; legislative  
75 intent; rulemaking authority; contamination cleanup criteria;  
76 limitations; reopeners.—

77 (1) APPLICABILITY.—

78 (b) This section shall apply to all contaminated sites  
79 resulting from a discharge of pollutants or hazardous substances  
80 where legal responsibility for site rehabilitation exists  
81 pursuant to other provisions of this chapter or chapter 403,  
82 except for those contaminated sites subject to the risk-based  
83 corrective action cleanup criteria established for the  
84 petroleum, brownfields, and drycleaning programs pursuant to ss.  
85 376.3071, 376.81, and 376.3078, respectively. This section does  
86 not apply to nonprogram petroleum-contaminated sites unless  
87 application of this section is requested by the person

2016100e2

88 responsible for site rehabilitation.

89 (2) INTENT; RULEMAKING AUTHORITY; CLEANUP CRITERIA.—It is  
90 the intent of the Legislature to protect the health of all  
91 people under actual circumstances of exposure. By July 1, 2004,  
92 the secretary of the department shall establish criteria by rule  
93 for the purpose of determining, on a site-specific basis, the  
94 rehabilitation program tasks that comprise a site rehabilitation  
95 program, including a voluntary site rehabilitation program, and  
96 the level at which a rehabilitation program task and a site  
97 rehabilitation program may be deemed completed. In establishing  
98 these rules, the department shall apply, to the maximum extent  
99 feasible, a risk-based corrective action process to achieve  
100 protection of human health and safety and the environment in a  
101 cost-effective manner based on the principles set forth in this  
102 subsection. These rules shall prescribe a phased risk-based  
103 corrective action process that is iterative and that tailors  
104 site rehabilitation tasks to site-specific conditions and risks.  
105 The department and the person responsible for site  
106 rehabilitation are encouraged to establish decision points at  
107 which risk management decisions will be made. The department  
108 shall provide an early decision, when requested, regarding  
109 applicable exposure factors and a risk management approach based  
110 on the current and future land use at the site. These rules must  
111 ~~shall also~~ include protocols for the use of natural attenuation,  
112 including long-term natural attenuation where site conditions  
113 warrant, the use of institutional and engineering controls, and  
114 the issuance of "No Further Action" orders. The criteria for  
115 determining what constitutes a rehabilitation program task or  
116 completion of a site rehabilitation program task or site

2016100e2

117 rehabilitation program, including a voluntary site  
118 rehabilitation program, must:

119 (a) Consider the current exposure and potential risk of  
120 exposure to humans and the environment, including multiple  
121 pathways of exposure. The physical, chemical, and biological  
122 characteristics of each contaminant must be considered in order  
123 to determine the feasibility of a risk-based corrective action  
124 assessment.

125 (b) Establish the point of compliance at the source of the  
126 contamination. However, the department may ~~is authorized to~~  
127 temporarily move the point of compliance to the boundary of the  
128 property, or to the edge of the plume when the plume is within  
129 the property boundary, while cleanup, including cleanup through  
130 natural attenuation processes in conjunction with appropriate  
131 monitoring, is proceeding. The department may ~~also is~~  
132 ~~authorized,~~ pursuant to criteria provided in this section, ~~to~~  
133 temporarily extend the point of compliance beyond the property  
134 boundary with appropriate monitoring, if such extension is  
135 needed to facilitate natural attenuation or to address the  
136 current conditions of the plume, provided human health, public  
137 safety, and the environment are protected. When temporarily  
138 extending the point of compliance beyond the property boundary,  
139 it cannot be extended further than the lateral extent of the  
140 plume, if known, at the time of execution of a cleanup  
141 agreement, if required, or the lateral extent of the plume as  
142 defined at the time of site assessment. Temporary extension of  
143 the point of compliance beyond the property boundary, as  
144 provided in this paragraph, must include actual notice by the  
145 person responsible for site rehabilitation to local governments

2016100e2

146 and the owners of any property into which the point of  
147 compliance is allowed to extend and constructive notice to  
148 residents and business tenants of the property into which the  
149 point of compliance is allowed to extend. Persons receiving  
150 notice pursuant to this paragraph shall have the opportunity to  
151 comment within 30 days after receipt of the notice. Additional  
152 notice concerning the status of natural attenuation processes  
153 shall be similarly provided to persons receiving notice pursuant  
154 to this paragraph every 5 years.

155 (c) Ensure that the site-specific cleanup goal is that all  
156 contaminated sites being cleaned up pursuant to this section  
157 ultimately achieve the applicable cleanup target levels provided  
158 in this subsection. In the circumstances provided in this  
159 subsection, and after constructive notice and opportunity to  
160 comment within 30 days after receipt of the notice to local  
161 government, owners of any property into which the point of  
162 compliance is allowed to extend, and residents of any property  
163 into which the point of compliance is allowed to extend, the  
164 department may allow concentrations of contaminants to  
165 temporarily exceed the applicable cleanup target levels while  
166 cleanup, including cleanup through natural attenuation processes  
167 in conjunction with appropriate monitoring, is proceeding, if  
168 human health, public safety, and the environment are protected.

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

2016100e2

175 after receipt of notice is provided to local governments, owners  
176 of any property into which the point of compliance is allowed to  
177 extend, and residents on any property into which the point of  
178 compliance is allowed to extend. When institutional or  
179 engineering controls are implemented to control exposure, the  
180 removal of the controls must have prior department approval and  
181 must be accompanied by the resumption of active cleanup, or  
182 other approved controls, unless cleanup target levels under this  
183 section have been achieved.

184 (e) Consider the interactive ~~additive~~ effects of  
185 contaminants, including additive, synergistic, and antagonistic  
186 effects. ~~The synergistic and antagonistic effects shall also be~~  
187 ~~considered when the scientific data become available.~~

188 (f) Take into consideration individual site  
189 characteristics, which shall include, but not be limited to, the  
190 current and projected use of the affected groundwater and  
191 surface water in the vicinity of the site, current and projected  
192 land uses of the area affected by the contamination, the exposed  
193 population, the degree and extent of contamination, the rate of  
194 contaminant migration, the apparent or potential rate of  
195 contaminant degradation through natural attenuation processes,  
196 the location of the plume, and the potential for further  
197 migration in relation to site property boundaries.

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

199 1. Cleanup target levels for each contaminant found in  
200 groundwater shall be the applicable state water quality  
201 standards. Where such standards do not exist, the cleanup target  
202 levels for groundwater shall be based on the minimum criteria  
203 specified in department rule. The department shall apply the

2016100e2

204 following, as appropriate, in establishing the applicable  
205 cleanup target levels: calculations using a lifetime cancer risk  
206 level of 1.0E-6; a hazard index of 1 or less; the best  
207 achievable detection limit; and nuisance, organoleptic, and  
208 aesthetic considerations. However, the department may ~~shall~~ not  
209 require site rehabilitation to achieve a cleanup target level  
210 for any individual contaminant that is more stringent than the  
211 site-specific, ~~naturally occurring~~ background concentration for  
212 that contaminant.

213 2. Where surface waters are exposed to contaminated  
214 groundwater, the cleanup target levels for the contaminants must  
215 ~~shall~~ be based on the more protective of the groundwater or  
216 surface water standards as established by department rule,  
217 unless it has been demonstrated that the contaminants do not  
218 cause or contribute to the exceedance of applicable surface  
219 water quality criteria. In such circumstance, the point of  
220 measuring compliance with the surface water standards shall be  
221 in the groundwater immediately adjacent to the surface water  
222 body.

223 3. Using risk-based corrective action principles, the  
224 department shall approve alternative cleanup target levels in  
225 conjunction with institutional and engineering controls, if  
226 needed, based upon an applicant's demonstration, using site-  
227 specific or other relevant data and information, risk assessment  
228 modeling results, including results from probabilistic risk  
229 assessment modeling, risk assessment studies, risk reduction  
230 techniques, or a combination thereof, that human health, public  
231 safety, and the environment are protected to the same degree as  
232 provided in subparagraphs 1. and 2. Where a state water quality

2016100e2

233 standard is applicable, a deviation may not result in the  
234 application of cleanup target levels more stringent than the  
235 standard. In determining whether it is appropriate to establish  
236 alternative cleanup target levels at a site, the department must  
237 consider the effectiveness of source removal, if any, that has  
238 been completed at the site and the practical likelihood of the  
239 use of low yield or poor quality groundwater, the use of  
240 groundwater near marine surface water bodies, the current and  
241 projected use of the affected groundwater in the vicinity of the  
242 site, or the use of groundwater in the immediate vicinity of the  
243 contaminated area, where it has been demonstrated that the  
244 groundwater contamination is not migrating away from such  
245 localized source, provided human health, public safety, and the  
246 environment are protected. Groundwater resource protection  
247 remains the ultimate goal of cleanup, particularly in light of  
248 the state's continued growth and consequent demands for drinking  
249 water resources. The Legislature recognizes the need for a  
250 protective yet flexible cleanup approach that risk-based  
251 corrective action provides. Only where it is appropriate on a  
252 site-specific basis, using the criteria in this paragraph and  
253 careful evaluation by the department, shall proposed alternative  
254 cleanup target levels be approved. If alternative cleanup target  
255 levels are used, institutional controls are not required if:  
256 a. The only cleanup target levels exceeded are the  
257 groundwater cleanup target levels derived from nuisance,  
258 organoleptic, or aesthetic considerations;  
259 b. Concentrations of all contaminants meet the state water  
260 quality standards or the minimum criteria, based on the  
261 protection of human health, public safety, and the environment,

2016100e2

262 as provided in subparagraph 1.;

263 c. All of the groundwater cleanup target levels established  
264 pursuant to subparagraph 1. are met at the property boundary;

265 d. The person responsible for site rehabilitation has  
266 demonstrated that the contaminants will not migrate beyond the  
267 property boundary at concentrations that exceed the groundwater  
268 cleanup target levels established pursuant to subparagraph 1.;

269 e. The property has access to and is using an offsite water  
270 supply, and an unplugged private well is not used for domestic  
271 purposes; and

272 f. The real property owner does not object to the "No  
273 Further Action" proposal to the department or the local  
274 pollution control program.

275 (h) Provide for the department to issue a "No Further  
276 Action" order, with conditions, including, but not limited to,  
277 the use of institutional or engineering controls where  
278 appropriate, when alternative cleanup target levels established  
279 pursuant to subparagraph (g)3. have been achieved or when the  
280 person responsible for site rehabilitation can demonstrate that  
281 the cleanup target level is unachievable with the use of  
282 available technologies. Before ~~Prior to~~ issuing such an order,  
283 the department shall consider the feasibility of an alternative  
284 site rehabilitation technology at the contaminated site.

285 (i) Establish appropriate cleanup target levels for soils.  
286 Although there are existing state water quality standards, there  
287 are no existing state soil quality standards. The Legislature  
288 does not intend, through the adoption of this section, to create  
289 such soil quality standards. The specific rulemaking authority  
290 granted pursuant to this section merely authorizes the

2016100e2

291 department to establish appropriate soil cleanup target levels.  
292 These soil cleanup target levels shall be applicable at sites  
293 only after a determination as to legal responsibility for site  
294 rehabilitation has been made pursuant to other provisions of  
295 this chapter or chapter 403.

296 1. In establishing soil cleanup target levels for human  
297 exposure to each contaminant found in soils from the land  
298 surface to 2 feet below land surface, the department shall apply  
299 the following, as appropriate: calculations using a lifetime  
300 cancer risk level of 1.0E-6; a hazard index of 1 or less; and  
301 the best achievable detection limit. However, the department may  
302 ~~shall~~ not require site rehabilitation to achieve a cleanup  
303 target level for an individual contaminant that is more  
304 stringent than the site-specific, ~~naturally occurring~~ background  
305 concentration for that contaminant. Institutional controls or  
306 other methods shall be used to prevent human exposure to  
307 contaminated soils more than 2 feet below the land surface. Any  
308 removal of such institutional controls shall require such  
309 contaminated soils to be remediated.

310 2. Leachability-based soil cleanup target levels shall be  
311 based on protection of the groundwater cleanup target levels or  
312 the alternate cleanup target levels for groundwater established  
313 pursuant to this paragraph, as appropriate. Source removal and  
314 other cost-effective alternatives that are technologically  
315 feasible shall be considered in achieving the leachability soil  
316 cleanup target levels established by the department. The  
317 leachability goals are ~~shall~~ not ~~be~~ applicable if the department  
318 determines, based upon individual site characteristics, and in  
319 conjunction with institutional and engineering controls, if

2016100e2

320 needed, that contaminants will not leach into the groundwater at  
321 levels that pose a threat to human health, public safety, and  
322 the environment.

323 3. Using risk-based corrective action principles, the  
324 department shall approve alternative cleanup target levels in  
325 conjunction with institutional and engineering controls, if  
326 needed, based upon an applicant's demonstration, using site-  
327 specific or other relevant data and information, risk assessment  
328 modeling results, including results from probabilistic risk  
329 assessment modeling, risk assessment studies, risk reduction  
330 techniques, or a combination thereof, that human health, public  
331 safety, and the environment are protected to the same degree as  
332 provided in subparagraphs 1. and 2.

333  
334 The department shall require source removal as a risk reduction  
335 measure if warranted and cost-effective. Once source removal at  
336 a site is complete, the department shall reevaluate the site to  
337 determine the degree of active cleanup needed to continue.  
338 Further, the department shall determine if the reevaluated site  
339 qualifies for monitoring only or if no further action is  
340 required to rehabilitate the site. If additional site  
341 rehabilitation is necessary to reach "No Further Action" status,  
342 the department is encouraged to utilize natural attenuation  
343 monitoring, including long-term natural attenuation ~~and~~  
344 monitoring, where site conditions warrant.

345 Section 3. Present subsections (3) through (11) of section  
346 376.79, Florida Statutes, are redesignated as subsections (4)  
347 through (12), respectively, present subsections (12) through  
348 (19) are redesignated as subsections (14) through (21),

2016100e2

349 respectively, and new subsections (3) and (13) are added to that  
350 section, to read:

351 376.79 Definitions relating to Brownfields Redevelopment  
352 Act.—As used in ss. 376.77–376.85, the term:

353 (3) “Background concentration” means the concentration of  
354 contaminants naturally occurring or resulting from anthropogenic  
355 impacts unrelated to the discharge of pollutants or hazardous  
356 substances at a contaminated site undergoing site  
357 rehabilitation.

358 (13) “Long-term natural attenuation” means natural  
359 attenuation approved by the department as a site rehabilitation  
360 program task for a period of more than 5 years.

361 Section 4. Section 376.81, Florida Statutes, is amended to  
362 read:

363 376.81 Brownfield site and brownfield areas contamination  
364 cleanup criteria.—

365 (1) It is the intent of the Legislature to protect the  
366 health of all people under actual circumstances of exposure. By  
367 July 1, 2001, the secretary of the department shall establish  
368 criteria by rule for the purpose of determining, on a site-  
369 specific basis, the rehabilitation program tasks that comprise a  
370 site rehabilitation program and the level at which a  
371 rehabilitation program task and a site rehabilitation program  
372 may be deemed completed. In establishing the rule, the  
373 department shall apply, to the maximum extent feasible, a risk-  
374 based corrective action process to achieve protection of human  
375 health and safety and the environment in a cost-effective manner  
376 based on the principles set forth in this subsection. The rule  
377 must prescribe a phased risk-based corrective action process

2016100e2

378 that is iterative and that tailors site rehabilitation tasks to  
379 site-specific conditions and risks. The department and the  
380 person responsible for brownfield site rehabilitation are  
381 encouraged to establish decision points at which risk management  
382 decisions will be made. The department shall provide an early  
383 decision, when requested, regarding applicable exposure factors  
384 and a risk management approach based on the current and future  
385 land use at the site. The rule must ~~shall also~~ include protocols  
386 for the use of natural attenuation, including long-term natural  
387 attenuation where site conditions warrant, the use of  
388 institutional and engineering controls, and the issuance of "no  
389 further action" letters. The criteria for determining what  
390 constitutes a rehabilitation program task or completion of a  
391 site rehabilitation program task or site rehabilitation program  
392 must:

393 (a) Consider the current exposure and potential risk of  
394 exposure to humans and the environment, including multiple  
395 pathways of exposure. The physical, chemical, and biological  
396 characteristics of each contaminant must be considered in order  
397 to determine the feasibility of risk-based corrective action  
398 assessment.

399 (b) Establish the point of compliance at the source of the  
400 contamination. However, the department may ~~is authorized to~~  
401 temporarily move the point of compliance to the boundary of the  
402 property, or to the edge of the plume when the plume is within  
403 the property boundary, while cleanup, including cleanup through  
404 natural attenuation processes in conjunction with appropriate  
405 monitoring, is proceeding. The department may also ~~is~~  
406 ~~authorized~~, pursuant to criteria provided for in this section,

2016100e2

407 ~~to~~ temporarily extend the point of compliance beyond the  
408 property boundary with appropriate monitoring, if such extension  
409 is needed to facilitate natural attenuation or to address the  
410 current conditions of the plume, provided human health, public  
411 safety, and the environment are protected. When temporarily  
412 extending the point of compliance beyond the property boundary,  
413 it cannot be extended further than the lateral extent of the  
414 plume at the time of execution of the brownfield site  
415 rehabilitation agreement, if known, or the lateral extent of the  
416 plume as defined at the time of site assessment. Temporary  
417 extension of the point of compliance beyond the property  
418 boundary, as provided in this paragraph, must include actual  
419 notice by the person responsible for brownfield site  
420 rehabilitation to local governments and the owners of any  
421 property into which the point of compliance is allowed to extend  
422 and constructive notice to residents and business tenants of the  
423 property into which the point of compliance is allowed to  
424 extend. Persons receiving notice pursuant to this paragraph  
425 shall have the opportunity to comment within 30 days of receipt  
426 of the notice.

427 (c) Ensure that the site-specific cleanup goal is that all  
428 contaminated brownfield sites and brownfield areas ultimately  
429 achieve the applicable cleanup target levels provided in this  
430 section. In the circumstances provided below, and after  
431 constructive notice and opportunity to comment within 30 days  
432 from receipt of the notice to local government, to owners of any  
433 property into which the point of compliance is allowed to  
434 extend, and to residents on any property into which the point of  
435 compliance is allowed to extend, the department may allow

2016100e2

436 concentrations of contaminants to temporarily exceed the  
437 applicable cleanup target levels while cleanup, including  
438 cleanup through natural attenuation processes in conjunction  
439 with appropriate monitoring, is proceeding, if human health,  
440 public safety, and the environment are protected.

441 (d) Allow brownfield site and brownfield area  
442 rehabilitation programs to include the use of institutional or  
443 engineering controls, where appropriate, to eliminate or control  
444 the potential exposure to contaminants of humans or the  
445 environment. The use of controls must be preapproved by the  
446 department and only after constructive notice and opportunity to  
447 comment within 30 days from receipt of notice is provided to  
448 local governments, to owners of any property into which the  
449 point of compliance is allowed to extend, and to residents on  
450 any property into which the point of compliance is allowed to  
451 extend. When institutional or engineering controls are  
452 implemented to control exposure, the removal of the controls  
453 must have prior department approval and must be accompanied by  
454 the resumption of active cleanup, or other approved controls,  
455 unless cleanup target levels under this section have been  
456 achieved.

457 (e) Consider the interactive ~~additive~~ effects of  
458 contaminants, including additive, synergistic, and antagonistic  
459 effects. ~~The synergistic and antagonistic effects shall also be~~  
460 ~~considered when the scientific data become available.~~

461 (f) Take into consideration individual site  
462 characteristics, which shall include, but not be limited to, the  
463 current and projected use of the affected groundwater and  
464 surface water in the vicinity of the site, current and projected

2016100e2

465 land uses of the area affected by the contamination, the exposed  
466 population, the degree and extent of contamination, the rate of  
467 contaminant migration, the apparent or potential rate of  
468 contaminant degradation through natural attenuation processes,  
469 the location of the plume, and the potential for further  
470 migration in relation to site property boundaries.

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

472 1. Cleanup target levels for each contaminant found in  
473 groundwater shall be the applicable state water quality  
474 standards. Where such standards do not exist, the cleanup target  
475 levels for groundwater shall be based on the minimum criteria  
476 specified in department rule. The department shall apply the  
477 following, as appropriate, in establishing the applicable  
478 cleanup target levels: calculations using a lifetime cancer risk  
479 level of 1.0E-6; a hazard index of 1 or less; the best  
480 achievable detection limit; and nuisance, organoleptic, and  
481 aesthetic considerations. However, the department may ~~shall~~ not  
482 require site rehabilitation to achieve a cleanup target level  
483 for any individual contaminant which is more stringent than the  
484 site-specific, ~~naturally occurring~~ background concentration for  
485 that contaminant.

486 2. Where surface waters are exposed to contaminated  
487 groundwater, the cleanup target levels for the contaminants must  
488 ~~shall~~ be based on the more protective of the groundwater or  
489 surface water standards as established by department rule,  
490 unless it has been demonstrated that the contaminants do not  
491 cause or contribute to the exceedance of applicable surface  
492 water quality criteria. In such circumstances, the point of  
493 measuring compliance with the surface water standards shall be

2016100e2

494 in the groundwater immediately adjacent to the surface water  
495 body.

496 3. Using risk-based corrective action principles, the  
497 department shall approve alternative cleanup target levels in  
498 conjunction with institutional and engineering controls, if  
499 needed, based upon an applicant's demonstration, using site-  
500 specific or other relevant data and information, risk assessment  
501 modeling results, including results from probabilistic risk  
502 assessment modeling, risk assessment studies, risk reduction  
503 techniques, or a combination thereof, that human health, public  
504 safety, and the environment are protected to the same degree as  
505 provided in subparagraphs 1. and 2. Where a state water quality  
506 standard is applicable, a deviation may not result in the  
507 application of cleanup target levels more stringent than the  
508 standard. In determining whether it is appropriate to establish  
509 alternative cleanup target levels at a site, the department must  
510 consider the effectiveness of source removal, if any, which has  
511 been completed at the site and the practical likelihood of the  
512 use of low yield or poor quality groundwater, the use of  
513 groundwater near marine surface water bodies, the current and  
514 projected use of the affected groundwater in the vicinity of the  
515 site, or the use of groundwater in the immediate vicinity of the  
516 contaminated area, where it has been demonstrated that the  
517 groundwater contamination is not migrating away from such  
518 localized source, provided human health, public safety, and the  
519 environment are protected. When using alternative cleanup target  
520 levels at a brownfield site, institutional controls are shall  
521 not ~~be~~ required if:

522 a. The only cleanup target levels exceeded are the

2016100e2

523 groundwater cleanup target levels derived from nuisance,  
524 organoleptic, or aesthetic considerations;

525 b. Concentrations of all contaminants meet the state water  
526 quality standards or the minimum criteria, based on the  
527 protection of human health, provided in subparagraph 1.;

528 c. All of the groundwater cleanup target levels established  
529 pursuant to subparagraph 1. are met at the property boundary;

530 d. The person responsible for brownfield site  
531 rehabilitation has demonstrated that the contaminants will not  
532 migrate beyond the property boundary at concentrations exceeding  
533 the groundwater cleanup target levels established pursuant to  
534 subparagraph 1.;

535 e. The property has access to and is using an offsite water  
536 supply and no unplugged private wells are used for domestic  
537 purposes; and

538 f. The real property owner provides written acceptance of  
539 the "no further action" proposal to the department or the local  
540 pollution control program.

541 (h) Provide for the department to issue a "no further  
542 action order," with conditions, including, but not limited to,  
543 the use of institutional or engineering controls where  
544 appropriate, when alternative cleanup target levels established  
545 pursuant to subparagraph (g)3. have been achieved, or when the  
546 person responsible for brownfield site rehabilitation can  
547 demonstrate that the cleanup target level is unachievable within  
548 available technologies. Before ~~Prior to~~ issuing such an order,  
549 the department shall consider the feasibility of an alternative  
550 site rehabilitation technology at ~~in~~ the brownfield site ~~area~~.

551 (i) Establish appropriate cleanup target levels for soils.

2016100e2

552           1. In establishing soil cleanup target levels for human  
553 exposure to each contaminant found in soils from the land  
554 surface to 2 feet below land surface, the department shall apply  
555 the following, as appropriate: calculations using a lifetime  
556 cancer risk level of 1.0E-6; a hazard index of 1 or less; and  
557 the best achievable detection limit. However, the department may  
558 ~~shall~~ not require site rehabilitation to achieve a cleanup  
559 target level for an individual contaminant which is more  
560 stringent than the site-specific, ~~naturally occurring~~ background  
561 concentration for that contaminant. Institutional controls or  
562 other methods shall be used to prevent human exposure to  
563 contaminated soils more than 2 feet below the land surface. Any  
564 removal of such institutional controls shall require such  
565 contaminated soils to be remediated.

566           2. Leachability-based soil cleanup target levels shall be  
567 based on protection of the groundwater cleanup target levels or  
568 the alternate cleanup target levels for groundwater established  
569 pursuant to this paragraph, as appropriate. Source removal and  
570 other cost-effective alternatives that are technologically  
571 feasible shall be considered in achieving the leachability soil  
572 cleanup target levels established by the department. The  
573 leachability goals are ~~shall~~ not be applicable if the department  
574 determines, based upon individual site characteristics, and in  
575 conjunction with institutional and engineering controls, if  
576 needed, that contaminants will not leach into the groundwater at  
577 levels that pose a threat to human health, public safety, and  
578 the environment.

579           3. Using risk-based corrective action principles, the  
580 department shall approve alternative cleanup target levels in

2016100e2

581 conjunction with institutional and engineering controls, if  
582 needed, based upon an applicant's demonstration, using site-  
583 specific or other relevant data and information, risk assessment  
584 modeling results, including results from probabilistic risk  
585 assessment modeling, risk assessment studies, risk reduction  
586 techniques, or a combination thereof, that human health, public  
587 safety, and the environment are protected to the same degree as  
588 provided in subparagraphs 1. and 2.

589 (2) The department shall require source removal, as a risk  
590 reduction measure, if warranted and cost-effective. Once source  
591 removal at a site is complete, the department shall reevaluate  
592 the site to determine the degree of active cleanup needed to  
593 continue. Further, the department shall determine if the  
594 reevaluated site qualifies for monitoring only or if no further  
595 action is required to rehabilitate the site. If additional site  
596 rehabilitation is necessary to reach "no further action" status,  
597 the department is encouraged to utilize natural attenuation  
598 monitoring, including long-term natural attenuation and  
599 monitoring, where site conditions warrant.

600 (3) The cleanup criteria described in this section govern  
601 only site rehabilitation activities occurring at the  
602 contaminated site. Removal of contaminated media from a site for  
603 offsite relocation or treatment must be in accordance with all  
604 applicable federal, state, and local laws and regulations.

605 Section 5. Subsection (3) of section 196.1995, Florida  
606 Statutes, is amended to read:

607 196.1995 Economic development ad valorem tax exemption.—

608 (3) The board of county commissioners or the governing  
609 authority of the municipality that calls a referendum within its

2016100e2

610 total jurisdiction to determine whether its respective  
611 jurisdiction may grant economic development ad valorem tax  
612 exemptions may vote to limit the effect of the referendum to  
613 authority to grant economic development tax exemptions for new  
614 businesses and expansions of existing businesses located in an  
615 enterprise zone or a brownfield area, as defined in s. 376.79(5)  
616 ~~s. 376.79(4)~~. If an area nominated to be an enterprise zone  
617 pursuant to s. 290.0055 has not yet been designated pursuant to  
618 s. 290.0065, the board of county commissioners or the governing  
619 authority of the municipality may call such referendum prior to  
620 such designation; however, the authority to grant economic  
621 development ad valorem tax exemptions does not apply until such  
622 area is designated pursuant to s. 290.0065. The ballot question  
623 in such referendum shall be in substantially the following form  
624 and shall be used in lieu of the ballot question prescribed in  
625 subsection (2):

626

627 Shall the board of county commissioners of this county (or the  
628 governing authority of this municipality, or both) be authorized  
629 to grant, pursuant to s. 3, Art. VII of the State Constitution,  
630 property tax exemptions for new businesses and expansions of  
631 existing businesses that are located in an enterprise zone or a  
632 brownfield area and that are expected to create new, full-time  
633 jobs in the county (or municipality, or both)?

634

635 ....Yes-For authority to grant exemptions.

636 ....No-Against authority to grant exemptions.

637 Section 6. Paragraph (a) of subsection (1) of section  
638 287.0595, Florida Statutes, is amended to read:

2016100e2

639 287.0595 Pollution response action contracts; department  
640 rules.—

641 (1) The Department of Environmental Protection shall  
642 establish, by adopting administrative rules as provided in  
643 chapter 120:

644 (a) Procedures for determining the qualifications of  
645 responsible potential vendors prior to advertisement for and  
646 receipt of bids, proposals, or replies for pollution response  
647 action contracts, including procedures for the rejection of  
648 unqualified vendors. Response actions are those activities  
649 described in s. 376.301(39) ~~s. 376.301(37)~~.

650 Section 7. Paragraph (c) of subsection (5) of section  
651 288.1175, Florida Statutes, is amended to read:

652 288.1175 Agriculture education and promotion facility.—

653 (5) The Department of Agriculture and Consumer Services  
654 shall competitively evaluate applications for funding of an  
655 agriculture education and promotion facility. If the number of  
656 applicants exceeds three, the Department of Agriculture and  
657 Consumer Services shall rank the applications based upon  
658 criteria developed by the Department of Agriculture and Consumer  
659 Services, with priority given in descending order to the  
660 following items:

661 (c) The location of the facility in a brownfield site as  
662 defined in s. 376.79(4) ~~s. 376.79(3)~~, a rural enterprise zone as  
663 defined in s. 290.004, an agriculturally depressed area as  
664 defined in s. 570.74, or a county that has lost its agricultural  
665 land to environmental restoration projects.

666 Section 8. Subsection (6) of section 376.305, Florida  
667 Statutes, is amended to read:

2016100e2

668 376.305 Removal of prohibited discharges.—

669 (6) The Legislature created the Abandoned Tank Restoration  
670 Program in response to the need to provide financial assistance  
671 for cleanup of sites that have abandoned petroleum storage  
672 systems. For purposes of this subsection, the term "abandoned  
673 petroleum storage system" means a petroleum storage system that  
674 has not stored petroleum products for consumption, use, or sale  
675 since March 1, 1990. The department shall establish the  
676 Abandoned Tank Restoration Program to facilitate the restoration  
677 of sites contaminated by abandoned petroleum storage systems.

678 (a) To be included in the program:

679 1. An application must be submitted to the department ~~by~~  
680 ~~June 30, 1996,~~ certifying that the system has not stored  
681 petroleum products for consumption, use, or sale at the facility  
682 since March 1, 1990.

683 2. The owner or operator of the petroleum storage system  
684 when it was in service must have ceased conducting business  
685 involving consumption, use, or sale of petroleum products at  
686 that facility on or before March 1, 1990.

687 3. The site is not otherwise eligible for the cleanup  
688 programs pursuant to ~~s. 376.3071~~ or s. 376.3072.

689 4. The site is not otherwise eligible for the Petroleum  
690 Cleanup Participation Program under s. 376.3071(13) based on any  
691 discharge reporting form received by the department before  
692 January 1, 1995, or a written report of contamination submitted  
693 to the department on or before December 31, 1998.

694 (b) In order to be eligible for the program, petroleum  
695 storage systems from which a discharge occurred must be closed  
696 pursuant to department rules before an eligibility

2016100e2

697 determination. However, if the department determines that the  
698 owner of the facility cannot financially comply with the  
699 department's petroleum storage system closure requirements and  
700 all other eligibility requirements are met, the petroleum  
701 storage system closure requirements shall be waived. The  
702 department shall take into consideration the owner's net worth  
703 and the economic impact on the owner in making the determination  
704 of the owner's financial ability. ~~The June 30, 1996, application~~  
705 ~~deadline shall be waived for owners who cannot financially~~  
706 ~~comply.~~

707 (c) Sites accepted in the program are eligible for site  
708 rehabilitation funding as provided in s. 376.3071.

709 (d) The following sites are excluded from eligibility:

- 710 1. Sites on property of the Federal Government;  
711 2. Sites contaminated by pollutants that are not petroleum  
712 products; or  
713 3. Sites where the department has been denied site access;  
714 ~~or~~

715 ~~4. Sites which are owned by a person who had knowledge of~~  
716 ~~the polluting condition when title was acquired unless the~~  
717 ~~person acquired title to the site after issuance of a notice of~~  
718 ~~site eligibility by the department.~~

719 (e) Participating sites are subject to a deductible as  
720 determined by rule, not to exceed \$10,000.

721  
722 ~~This subsection does not relieve a person who has acquired title~~  
723 ~~after July 1, 1992, from the duty to establish by a~~  
724 ~~preponderance of the evidence that he or she undertook, at the~~  
725 ~~time of acquisition, all appropriate inquiry into the previous~~

2016100e2

726 ~~ownership and use of the property consistent with good~~  
727 ~~commercial or customary practice in an effort to minimize~~  
728 ~~liability, as required by s. 376.308(1)(c).~~

729 Section 9. Paragraph (b) of subsection (2), subsection (4),  
730 paragraph (b) of subsection (5), paragraph (b) of subsection  
731 (12), and subsection (13) of section 376.3071, Florida Statutes,  
732 are amended to read:

733 376.3071 Inland Protection Trust Fund; creation; purposes;  
734 funding.—

735 (2) INTENT AND PURPOSE.—

736 (b) It is the intent of the Legislature that the department  
737 implement rules and procedures to improve the efficiency and  
738 productivity of the Petroleum Restoration Program. The  
739 department is directed to implement rules and policies to  
740 eliminate and reduce duplication of site rehabilitation efforts,  
741 paperwork, and documentation, and micromanagement of site  
742 rehabilitation tasks. The department shall make efficiency and  
743 productivity a priority in the administration of the Petroleum  
744 Restoration Program and to this end, when necessary, shall use  
745 petroleum program contracted services to improve the efficiency  
746 and productivity of the program. Furthermore, when implementing  
747 rules and procedures to improve such efficiency and  
748 productivity, the department shall recognize and consider the  
749 potential value of utilizing contracted inspection and  
750 professional resources to efficiently and productively  
751 administer the program.

752 (4) USES.—Whenever, in its determination, incidents of  
753 inland contamination related to the storage of petroleum or  
754 petroleum products may pose a threat to the public health,

2016100e2

755 safety, or welfare, water resources, or the environment, the  
756 department shall obligate moneys available in the fund to  
757 provide for:

758 (a) Prompt investigation and assessment of contamination  
759 sites.

760 (b) Expeditious restoration or replacement of potable water  
761 supplies as provided in s. 376.30(3)(c)1.

762 (c) Rehabilitation of contamination sites, which shall  
763 consist of cleanup of affected soil, groundwater, and inland  
764 surface waters, using the most cost-effective alternative that  
765 is technologically feasible and reliable and that provides  
766 adequate protection of the public health, safety, and welfare,  
767 and water resources, and that minimizes environmental damage,  
768 pursuant to the site selection and cleanup criteria established  
769 by the department under subsection (5), except that this  
770 paragraph does not authorize the department to obligate funds  
771 for payment of costs which may be associated with, but are not  
772 integral to, site rehabilitation, such as the cost for  
773 retrofitting or replacing petroleum storage systems.

774 (d) Maintenance and monitoring of contamination sites.

775 (e) Inspection and supervision of activities described in  
776 this subsection.

777 (f) Payment of expenses incurred by the department in its  
778 efforts to obtain from responsible parties the payment or  
779 recovery of reasonable costs resulting from the activities  
780 described in this subsection.

781 (g) Payment of any other reasonable costs of  
782 administration, including those administrative costs incurred by  
783 the Department of Health in providing field and laboratory

2016100e2

784 services, toxicological risk assessment, and other assistance to  
785 the department in the investigation of drinking water  
786 contamination complaints and costs associated with public  
787 information and education activities.

788 (h) Establishment and implementation of the compliance  
789 verification program as authorized in s. 376.303(1)(a),  
790 including contracting with local governments or state agencies  
791 to provide for the administration of such program through  
792 locally administered programs, to minimize the potential for  
793 further contamination sites.

794 (i) Funding of the provisions of ss. 376.305(6) and  
795 376.3072.

796 (j) Activities related to removal and replacement of  
797 petroleum storage systems, exclusive of costs of any tank,  
798 piping, dispensing unit, or related hardware, if soil removal is  
799 approved as a component of site rehabilitation and requires  
800 removal of the tank where remediation is conducted under this  
801 section or if such activities were justified in an approved  
802 remedial action plan.

803 (k) Reasonable costs of restoring property as nearly as  
804 practicable to the conditions which existed before activities  
805 associated with contamination assessment or remedial action  
806 taken under s. 376.303(4).

807 (l) Repayment of loans to the fund.

808 (m) Expenditure of sums from the fund to cover ineligible  
809 sites or costs as set forth in subsection (13), if the  
810 department in its discretion deems it necessary to do so. In  
811 such cases, the department may seek recovery and reimbursement  
812 of costs in the same manner and pursuant to the same procedures

2016100e2

813 established for recovery and reimbursement of sums otherwise  
814 owed to or expended from the fund.

815 (n) Payment of amounts payable under any service contract  
816 entered into by the department pursuant to s. 376.3075, subject  
817 to annual appropriation by the Legislature.

818 (o) Petroleum remediation pursuant to this section  
819 throughout a state fiscal year. The department shall establish a  
820 process to uniformly encumber appropriated funds throughout a  
821 state fiscal year and shall allow for emergencies and imminent  
822 threats to public health, safety, and welfare, water resources,  
823 and the environment as provided in paragraph (5) (a). This  
824 paragraph does not apply to appropriations associated with the  
825 free product recovery initiative provided in paragraph (5) (c) or  
826 the advanced cleanup program provided in s. 376.30713.

827 (p) Enforcement of this section and ss. 376.30-376.317 by  
828 the Fish and Wildlife Conservation Commission. The department  
829 shall disburse moneys to the commission for such purpose.

830 (q) Payments for program deductibles, copayments, and  
831 limited contamination assessment reports that otherwise would be  
832 paid by another state agency for state-funded petroleum  
833 contamination site rehabilitation. ~~This paragraph expires July~~  
834 ~~1, 2016.~~

835  
836 The issuance of a site rehabilitation completion order pursuant  
837 to subsection (5) or paragraph (12) (b) for contamination  
838 eligible for programs funded by this section does not alter the  
839 project's eligibility for state-funded remediation if the  
840 department determines that site conditions are not protective of  
841 human health under actual or proposed circumstances of exposure

2016100e2

842 under subsection (5). The Inland Protection Trust Fund may ~~only~~  
843 be used only to fund the activities in ss. 376.30-376.317 except  
844 ss. 376.3078 and 376.3079. Amounts on deposit in the fund in  
845 each fiscal year must ~~shall~~ first be applied or allocated for  
846 the payment of amounts payable by the department pursuant to  
847 paragraph (n) under a service contract entered into by the  
848 department pursuant to s. 376.3075 and appropriated in each year  
849 by the Legislature before making or providing for other  
850 disbursements from the fund. This subsection does not authorize  
851 the use of the fund for cleanup of contamination caused  
852 primarily by a discharge of solvents as defined in s.  
853 206.9925(6), or polychlorinated biphenyls when their presence  
854 causes them to be hazardous wastes, except solvent contamination  
855 which is the result of chemical or physical breakdown of  
856 petroleum products and is otherwise eligible. Facilities used  
857 primarily for the storage of motor or diesel fuels as defined in  
858 ss. 206.01 and 206.86 are not excluded from eligibility pursuant  
859 to this section.

860 (5) SITE SELECTION AND CLEANUP CRITERIA.—

861 (b) It is the intent of the Legislature to protect the  
862 health of all people under actual circumstances of exposure. The  
863 secretary shall establish criteria by rule for the purpose of  
864 determining, on a site-specific basis, the rehabilitation  
865 program tasks that comprise a site rehabilitation program and  
866 the level at which a rehabilitation program task and a site  
867 rehabilitation program are completed. In establishing the rule,  
868 the department shall incorporate, to the maximum extent  
869 feasible, risk-based corrective action principles to achieve  
870 protection of the public health, safety, and welfare, water

2016100e2

871 resources, and the environment in a cost-effective manner as  
872 provided in this subsection. Criteria for determining what  
873 constitutes a rehabilitation program task or completion of site  
874 rehabilitation program tasks and site rehabilitation programs  
875 shall be based upon the factors set forth in paragraph (a) and  
876 the following additional factors:

877 1. The current exposure and potential risk of exposure to  
878 humans and the environment including multiple pathways of  
879 exposure.

880 2. The appropriate point of compliance with cleanup target  
881 levels for petroleum products' chemicals of concern. The point  
882 of compliance shall be at the source of the petroleum  
883 contamination. However, the department may temporarily move the  
884 point of compliance to the boundary of the property, or to the  
885 edge of the plume when the plume is within the property  
886 boundary, while cleanup, including cleanup through natural  
887 attenuation processes in conjunction with appropriate  
888 monitoring, is proceeding. The department may also, pursuant to  
889 criteria provided for in this paragraph, temporarily extend the  
890 point of compliance beyond the property boundary with  
891 appropriate monitoring, if such extension is needed to  
892 facilitate natural attenuation or to address the current  
893 conditions of the plume, if the public health, safety, and  
894 welfare, water resources, and the environment are adequately  
895 protected. Temporary extension of the point of compliance beyond  
896 the property boundary, as provided in this subparagraph, must  
897 include notice to local governments and owners of any property  
898 into which the point of compliance is allowed to extend.

899 3. The appropriate site-specific cleanup goal. The site-

2016100e2

900 specific cleanup goal shall be that all petroleum contamination  
901 sites ultimately achieve the applicable cleanup target levels  
902 provided in this paragraph. However, the department may allow  
903 concentrations of the petroleum products' chemicals of concern  
904 to temporarily exceed the applicable cleanup target levels while  
905 cleanup, including cleanup through natural attenuation processes  
906 in conjunction with appropriate monitoring, is proceeding, if  
907 the public health, safety, and welfare, water resources, and the  
908 environment are adequately protected.

909 4. The appropriateness of using institutional or  
910 engineering controls. Site rehabilitation programs may include  
911 the use of institutional or engineering controls to eliminate  
912 the potential exposure to petroleum products' chemicals of  
913 concern to humans or the environment. Use of such controls must  
914 have prior department approval, and institutional controls may  
915 not be acquired with moneys from the fund other than the costs  
916 associated with a professional land survey or a specific purpose  
917 survey, if such is needed, and costs associated with obtaining a  
918 title report and recording fees. When institutional or  
919 engineering controls are implemented to control exposure, the  
920 removal of such controls must have prior department approval and  
921 must be accompanied immediately by the resumption of active  
922 cleanup or other approved controls unless cleanup target levels  
923 pursuant to this paragraph have been achieved.

924 5. The additive effects of the petroleum products'  
925 chemicals of concern. The synergistic effects of petroleum  
926 products' chemicals of concern must also be considered when the  
927 scientific data becomes available.

928 6. Individual site characteristics which must include, but

2016100e2

929 not be limited to, the current and projected use of the affected  
930 groundwater in the vicinity of the site, current and projected  
931 land uses of the area affected by the contamination, the exposed  
932 population, the degree and extent of contamination, the rate of  
933 contaminant migration, the apparent or potential rate of  
934 contaminant degradation through natural attenuation processes,  
935 the location of the plume, and the potential for further  
936 migration in relation to site property boundaries.

937 7. Applicable state water quality standards.

938 a. Cleanup target levels for petroleum products' chemicals  
939 of concern found in groundwater shall be the applicable state  
940 water quality standards. Where such standards do not exist, the  
941 cleanup target levels for groundwater shall be based on the  
942 minimum criteria specified in department rule. The department  
943 shall consider the following, as appropriate, in establishing  
944 the applicable minimum criteria: calculations using a lifetime  
945 cancer risk level of 1.0E-6; a hazard index of 1 or less; the  
946 best achievable detection limit; the naturally occurring  
947 background concentration; or nuisance, organoleptic, and  
948 aesthetic considerations.

949 b. Where surface waters are exposed to petroleum  
950 contaminated groundwater, the cleanup target levels for the  
951 petroleum products' chemicals of concern shall be based on the  
952 surface water standards as established by department rule. The  
953 point of measuring compliance with the surface water standards  
954 shall be in the groundwater immediately adjacent to the surface  
955 water body.

956 8. Whether deviation from state water quality standards or  
957 from established criteria is appropriate. The department may

2016100e2

958 issue a "No Further Action Order" based upon the degree to which  
959 the desired cleanup target level is achievable and can be  
960 reasonably and cost-effectively implemented within available  
961 technologies or engineering and institutional control  
962 strategies. Where a state water quality standard is applicable,  
963 a deviation may not result in the application of cleanup target  
964 levels more stringent than the standard. In determining whether  
965 it is appropriate to establish alternate cleanup target levels  
966 at a site, the department may consider the effectiveness of  
967 source removal that has been completed at the site and the  
968 practical likelihood of the use of low yield or poor quality  
969 groundwater; the use of groundwater near marine surface water  
970 bodies; the current and projected use of the affected  
971 groundwater in the vicinity of the site; or the use of  
972 groundwater in the immediate vicinity of the storage tank area,  
973 where it has been demonstrated that the groundwater  
974 contamination is not migrating away from such localized source,  
975 if the public health, safety, and welfare, water resources, and  
976 the environment are adequately protected.

977 9. Appropriate cleanup target levels for soils.

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

985 b. Leachability-based soil target levels shall be based on  
986 protection of the groundwater cleanup target levels or the

2016100e2

987 alternate cleanup target levels for groundwater established  
988 pursuant to this paragraph, as appropriate. Source removal and  
989 other cost-effective alternatives that are technologically  
990 feasible shall be considered in achieving the leachability soil  
991 target levels established by the department. The leachability  
992 goals do not apply if the department determines, based upon  
993 individual site characteristics, that petroleum products'  
994 chemicals of concern will not leach into the groundwater at  
995 levels which pose a threat to public health, safety, and  
996 welfare, water resources, or the environment.

997  
998 This paragraph does not restrict the department from temporarily  
999 postponing completion of any site rehabilitation program for  
1000 which funds are being expended whenever such postponement is  
1001 necessary in order to make funds available for rehabilitation of  
1002 a contamination site with a higher priority status.

1003 (12) SITE CLEANUP.—

1004 (b) *Low-scored site initiative.*—Notwithstanding subsections  
1005 (5) and (6), a site with a priority ranking score of 29 points  
1006 or less may voluntarily participate in the low-scored site  
1007 initiative regardless of whether the site is eligible for state  
1008 restoration funding.

1009 1. To participate in the low-scored site initiative, the  
1010 ~~responsible party or~~ property owner, or a responsible party who  
1011 provides evidence of authorization from the property owner, must  
1012 submit a "No Further Action" proposal and affirmatively  
1013 demonstrate that the following conditions imposed under  
1014 subparagraph 4. are met.÷

1015 ~~a. Upon reassessment pursuant to department rule, the site~~

2016100e2

1016 ~~retains a priority ranking score of 29 points or less.~~

1017 ~~b. Excessively contaminated soil, as defined by department~~  
1018 ~~rule, does not exist onsite as a result of a release of~~  
1019 ~~petroleum products.~~

1020 ~~e. A minimum of 6 months of groundwater monitoring~~  
1021 ~~indicates that the plume is shrinking or stable.~~

1022 ~~d. The release of petroleum products at the site does not~~  
1023 ~~adversely affect adjacent surface waters, including their~~  
1024 ~~effects on human health and the environment.~~

1025 ~~e. The area of groundwater containing the petroleum~~  
1026 ~~products' chemicals of concern is less than one quarter acre and~~  
1027 ~~is confined to the source property boundaries of the real~~  
1028 ~~property on which the discharge originated.~~

1029 ~~f. Soils onsite that are subject to human exposure found~~  
1030 ~~between land surface and 2 feet below land surface meet the soil~~  
1031 ~~cleanup target levels established by department rule or human~~  
1032 ~~exposure is limited by appropriate institutional or engineering~~  
1033 ~~controls.~~

1034 2. Upon affirmative demonstration that ~~of~~ the conditions  
1035 imposed under subparagraph 4. are met ~~subparagraph 1.~~, the  
1036 department shall issue a site rehabilitation completion order  
1037 incorporating the determination of "No Further Action." proposal  
1038 submitted by the property owner or the responsible party, who  
1039 must provide evidence of authorization from the property owner  
1040 ~~Such determination acknowledges that minimal contamination~~  
1041 ~~exists onsite and that such contamination is not a threat to the~~  
1042 ~~public health, safety, or welfare, water resources, or the~~  
1043 ~~environment.~~ If no contamination is detected, the department may  
1044 issue a site rehabilitation completion order.

2016100e2

1045 3. Sites that are eligible for state restoration funding  
1046 may receive payment of costs for the low-scored site initiative  
1047 as follows:

1048 a. A ~~responsible party or property owner~~, or a responsible  
1049 party who provides evidence of authorization from the property  
1050 owner, may submit an assessment and limited remediation plan  
1051 designed to affirmatively demonstrate that the site meets the  
1052 conditions imposed under subparagraph 4 ~~subparagraph 1~~.  
1053 Notwithstanding the priority ranking score of the site, the  
1054 department may approve the cost of the assessment and limited  
1055 remediation, including up to 12 ~~6~~ months of groundwater  
1056 monitoring and 12 months of limited remediation activities in  
1057 one or more task assignments or modifications thereof, not to  
1058 exceed the threshold amount provided in s. 287.017 for CATEGORY  
1059 TWO, \$30,000 for each site where the department has determined  
1060 that the assessment and limited remediation, if applicable, will  
1061 likely result in a determination of "No Further Action." ~~The~~  
1062 department may not pay the costs associated with the  
1063 establishment of institutional or engineering controls other  
1064 than the costs associated with a professional land survey or a  
1065 specific purpose survey, if such is needed, and the costs  
1066 associated with obtaining a title report and paying recording  
1067 fees.

1068 b. After the approval of initial site assessment results  
1069 provided pursuant to state funding under sub-subparagraph a.,  
1070 the department may approve an additional amount not to exceed  
1071 the threshold amount provided in s. 287.017 for CATEGORY TWO for  
1072 limited remediation needed to achieve a determination of "No  
1073 Further Action."

2016100e2

1074 ~~c.b.~~ The assessment and limited remediation work shall be  
1075 completed no later than 15 ~~6~~ months after the department  
1076 authorizes the start of a state-funded, low-score site  
1077 initiative task. If groundwater monitoring is required after the  
1078 assessment and limited remediation in order to satisfy the  
1079 conditions under subparagraph 4., the department may authorize  
1080 an additional 12 months to complete the monitoring ~~issues its~~  
1081 ~~approval.~~

1082 ~~d.e.~~ No more than \$15 ~~\$10~~ million for the low-scored site  
1083 initiative may be encumbered from the fund in any fiscal year.  
1084 Funds shall be made available on a first-come, first-served  
1085 basis and shall be limited to 10 sites in each fiscal year for  
1086 each ~~responsible party or~~ property owner or each responsible  
1087 party who provides evidence of authorization from the property  
1088 owner.

1089 ~~e.d.~~ Program deductibles, copayments, and the limited  
1090 contamination assessment report requirements under paragraph  
1091 (13) (d) ~~(13) (e)~~ do not apply to expenditures under this  
1092 paragraph.

1093 4. The department shall issue an order incorporating the  
1094 "No Further Action" proposal submitted by a property owner or a  
1095 responsible party who provides evidence of authorization from  
1096 the property owner upon affirmative demonstration that all of  
1097 the following conditions are met:

1098 a. Soil saturated with petroleum or petroleum products, or  
1099 soil that causes a total corrected hydrocarbon measurement of  
1100 500 parts per million or higher for the Gasoline Analytical  
1101 Group or 50 parts per million or higher for the Kerosene  
1102 Analytical Group, as defined by department rule, does not exist

2016100e2

1103 onsite as a result of a release of petroleum products.

1104 b. A minimum of 12 months of groundwater monitoring  
1105 indicates that the plume is shrinking or stable.

1106 c. The release of petroleum products at the site does not  
1107 adversely affect adjacent surface waters, including their  
1108 effects on human health and the environment.

1109 d. The area containing the petroleum products' chemicals of  
1110 concern:

1111 (I) Is confined to the source property boundaries of the  
1112 real property on which the discharge originated, unless the  
1113 property owner has requested or authorized a more limited area  
1114 in the "No Further Action" proposal submitted under this  
1115 subsection; or

1116 (II) Has migrated from the source property onto or beneath  
1117 a transportation facility as defined s. 334.03(30) for which the  
1118 department has approved, and governmental entity owning the  
1119 transportation facility has agreed to institutional controls as  
1120 defined in s. 376.301(21). This sub-sub-subparagraph does not,  
1121 however, impose any legal liability on the transportation  
1122 facility owner, obligate such owner to engage in remediation, or  
1123 wave such owner's right to recover costs for damages.

1124 e. The groundwater contamination containing the petroleum  
1125 products' chemicals of concern is not a threat to any permitted  
1126 potable water supply well.

1127 f. Soils onsite found between land surface and 2 feet below  
1128 land surface which are subject to human exposure meet the soil  
1129 cleanup target levels established in subparagraph (5)(b)9., or  
1130 human exposure is limited by appropriate institutional or  
1131 engineering controls.

2016100e2

1132  
1133 Issuance of a site rehabilitation completion order under this  
1134 paragraph acknowledges that minimal contamination exists onsite  
1135 and that such contamination is not a threat to the public  
1136 health, safety, or welfare; water resources; or the environment.  
1137 Pursuant to subsection (4), the issuance of the site  
1138 rehabilitation completion order, with or without conditions,  
1139 does not alter eligibility for state-funded rehabilitation that  
1140 would otherwise be applicable under this section.

1141 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage  
1142 detection, reporting, and cleanup of contamination caused by  
1143 discharges of petroleum or petroleum products, the department  
1144 shall, within the guidelines established in this subsection,  
1145 implement a cost-sharing cleanup program to provide  
1146 rehabilitation funding assistance for all property contaminated  
1147 by discharges of petroleum or petroleum products from a  
1148 petroleum storage system occurring before January 1, 1995,  
1149 subject to a copayment provided for in a Petroleum Cleanup  
1150 Participation Program site rehabilitation agreement. Eligibility  
1151 is subject to an annual appropriation from the fund.  
1152 Additionally, funding for eligible sites is contingent upon  
1153 annual appropriation in subsequent years. Such continued state  
1154 funding is not an entitlement or a vested right under this  
1155 subsection. Eligibility shall be determined in the program,  
1156 notwithstanding any other provision of law, consent order,  
1157 order, judgment, or ordinance to the contrary.

1158 (a)1. The department shall accept any discharge reporting  
1159 form received before January 1, 1995, as an application for this  
1160 program, and the facility owner or operator need not reapply.

2016100e2

1161           2. Regardless of whether ownership has changed, owners or  
1162 operators of property that is contaminated by petroleum or  
1163 petroleum products from a petroleum storage system may apply for  
1164 such program by filing a written report of the contamination  
1165 incident, including evidence that such incident occurred before  
1166 January 1, 1995, with the department. Incidents of petroleum  
1167 contamination discovered after December 31, 1994, at sites which  
1168 have not stored petroleum or petroleum products for consumption,  
1169 use, or sale after such date shall be presumed to have occurred  
1170 before January 1, 1995. An operator's filed report shall be an  
1171 application of the owner for all purposes. ~~Sites reported to the~~  
1172 ~~department after December 31, 1998, are not eligible for the~~  
1173 ~~program.~~

1174           (b) Subject to annual appropriation from the fund, sites  
1175 meeting the criteria of this subsection are eligible for up to  
1176 \$400,000 of site rehabilitation funding assistance in priority  
1177 order pursuant to subsections (5) and (6). Sites meeting the  
1178 criteria of this subsection for which a site rehabilitation  
1179 completion order was issued before June 1, 2008, do not qualify  
1180 for the 2008 increase in site rehabilitation funding assistance  
1181 and are bound by the pre-June 1, 2008, limits. Sites meeting the  
1182 criteria of this subsection for which a site rehabilitation  
1183 completion order was not issued before June 1, 2008, regardless  
1184 of whether they have previously transitioned to nonstate-funded  
1185 cleanup status, may continue state-funded cleanup pursuant to  
1186 this section until a site rehabilitation completion order is  
1187 issued or the increased site rehabilitation funding assistance  
1188 limit is reached, whichever occurs first. The department may not  
1189 pay expenses incurred beyond the scope of an approved contract.

2016100e2

1190           (c) The department may also approve supplemental funding of  
1191 up to \$100,000 for additional remediation and monitoring if such  
1192 remediation and monitoring is necessary to achieve a  
1193 determination of "No Further Action."

1194           (d) Upon notification by the department that rehabilitation  
1195 funding assistance is available for the site pursuant to  
1196 subsections (5) and (6), the property owner, operator, or person  
1197 otherwise responsible for site rehabilitation shall provide the  
1198 department with a limited contamination assessment report and  
1199 shall enter into a Petroleum Cleanup Participation Program site  
1200 rehabilitation agreement with the department. The agreement must  
1201 provide for a 25-percent copayment by the owner, operator, or  
1202 person otherwise responsible for conducting site rehabilitation.  
1203 The owner, operator, or person otherwise responsible for  
1204 conducting site rehabilitation shall adequately demonstrate the  
1205 ability to meet the copayment obligation. The limited  
1206 contamination assessment report and the copayment costs may be  
1207 reduced or eliminated if the owner and all operators responsible  
1208 for restoration under s. 376.308 demonstrate that they cannot  
1209 financially comply with the copayment and limited contamination  
1210 assessment report requirements. The department shall take into  
1211 consideration the owner's and operator's net worth in making the  
1212 determination of financial ability. In the event the department  
1213 and the owner, operator, or person otherwise responsible for  
1214 site rehabilitation cannot complete negotiation of the cost-  
1215 sharing agreement within 120 days after beginning negotiations,  
1216 the department shall terminate negotiations and the site shall  
1217 be ineligible for state funding under this subsection and all  
1218 liability protections provided for in this subsection shall be

2016100e2

1219 revoked.

1220 (e)~~(d)~~ A report of a discharge made to the department by a  
1221 person pursuant to this subsection or any rules adopted pursuant  
1222 to this subsection may not be used directly as evidence of  
1223 liability for such discharge in any civil or criminal trial  
1224 arising out of the discharge.

1225 (f)~~(e)~~ This subsection does not preclude the department  
1226 from pursuing penalties under s. 403.141 for violations of any  
1227 law or any rule, order, permit, registration, or certification  
1228 adopted or issued by the department pursuant to its lawful  
1229 authority.

1230 (g)~~(f)~~ Upon the filing of a discharge reporting form under  
1231 paragraph (a), the department or local government may not pursue  
1232 any judicial or enforcement action to compel rehabilitation of  
1233 the discharge. This paragraph does not prevent any such action  
1234 with respect to discharges determined ineligible under this  
1235 subsection or to sites for which rehabilitation funding  
1236 assistance is available pursuant to subsections (5) and (6).

1237 (h)~~(g)~~ The following are excluded from participation in the  
1238 program:

1239 1. Sites at which the department has been denied reasonable  
1240 site access to implement this section.

1241 2. Sites that were active facilities when owned or operated  
1242 by the Federal Government.

1243 3. Sites that are identified by the United States  
1244 Environmental Protection Agency to be on, or which qualify for  
1245 listing on, the National Priorities List under Superfund. This  
1246 exception does not apply to those sites for which eligibility  
1247 has been requested or granted as of the effective date of this

2016100e2

1248 act under the Early Detection Incentive Program established  
1249 pursuant to s. 15, chapter 86-159, Laws of Florida.

1250 4. Sites for which contamination is covered under the Early  
1251 Detection Incentive Program, the Abandoned Tank Restoration  
1252 Program, or the Petroleum Liability and Restoration Insurance  
1253 Program, in which case site rehabilitation funding assistance  
1254 shall continue under the respective program.

1255 Section 10. Paragraph (d) of subsection (1), paragraph (a)  
1256 of subsection (2), and subsection (4) of section 376.30713,  
1257 Florida Statutes, are amended to read:

1258 376.30713 Advanced cleanup.—

1259 (1) In addition to the legislative findings provided in s.  
1260 376.3071, the Legislature finds and declares:

1261 (d) It is appropriate for a person who is responsible for  
1262 site rehabilitation to share the costs associated with managing  
1263 and conducting advanced cleanup, to facilitate the opportunity  
1264 for advanced cleanup, and to mitigate the additional costs that  
1265 will be incurred by the state in conducting site rehabilitation  
1266 in advance of the site's priority ranking. Such cost sharing  
1267 will result in more contaminated sites being cleaned up and  
1268 greater environmental benefits to the state. This section is  
1269 only available for sites eligible for restoration funding under  
1270 EDI, ATRP, or PLRIP. This section is available for discharges  
1271 eligible for restoration funding under the petroleum cleanup  
1272 participation program for the state's cost share of site  
1273 rehabilitation. Applications must include a cost-sharing  
1274 commitment for this section in addition to the 25-percent-  
1275 copayment requirement of the petroleum cleanup participation  
1276 program. This section is not available for any discharge under a

2016100e2

1277 petroleum cleanup participation program where the 25-percent-  
1278 copayment requirement of the petroleum cleanup participation  
1279 program has been reduced or eliminated pursuant to s.  
1280 376.3071(13)(d) ~~s. 376.3071(13)(e)~~.

1281 (2) The department may approve an application for advanced  
1282 cleanup at eligible sites, notwithstanding ~~before funding based~~  
1283 ~~on~~ the site's priority ranking established pursuant to s.  
1284 376.3071(5)(a), pursuant to this section. Only the facility  
1285 owner or operator or the person otherwise responsible for site  
1286 rehabilitation qualifies as an applicant under this section.

1287 (a) Advanced cleanup applications may be submitted between  
1288 May 1 and June 30 and between November 1 and December 31 of each  
1289 fiscal year. Applications submitted between May 1 and June 30  
1290 shall be for the fiscal year beginning July 1. An application  
1291 must consist of:

1292 1. A commitment to pay 25 percent or more of the total  
1293 cleanup cost deemed recoverable under this section along with  
1294 proof of the ability to pay the cost share. The department shall  
1295 determine whether the cost savings demonstration is acceptable.  
1296 Such determination is not subject to chapter 120.

1297 a. Applications for the aggregate cleanup of 5 or more  
1298 sites may be submitted in one of two formats to meet the cost-  
1299 share requirement:

1300 (I) For an aggregate application proposing that the  
1301 department enter into a performance-based contract ~~for the~~  
1302 ~~cleanup of 20 or more sites~~ may use a commitment to pay, a  
1303 demonstrated cost savings to the department, or both to meet the  
1304 ~~cost-share~~ requirement.

1305 (II) For an aggregate application relying on a demonstrated

2016100e2

1306 cost savings to the department, the applicant shall, in  
1307 conjunction with the proposed agency term contractor, establish  
1308 and provide in the application the percentage of cost savings in  
1309 the aggregate that is being provided to the department for  
1310 cleanup of the sites under the application compared to the cost  
1311 of cleanup of those same sites using the current rates provided  
1312 to the department by the proposed agency term contractor. ~~The~~  
1313 ~~department shall determine whether the cost savings~~  
1314 ~~demonstration is acceptable. Such determination is not subject~~  
1315 ~~to chapter 120.~~

1316 b. Applications for the cleanup of individual sites may be  
1317 submitted in one of two formats to meet the cost-share  
1318 requirement:

1319 (I) For an individual application proposing that the  
1320 department enter into a performance-based contract may use a  
1321 commitment to pay, a demonstrated cost savings to the  
1322 department, or both to meet the requirement.

1323 (II) For an individual application relying on a  
1324 demonstrated cost savings to the department, the applicant  
1325 shall, in conjunction with the proposed agency term contractor,  
1326 establish and provide in the application a 25-percent cost  
1327 savings to the department for cleanup of the site under the  
1328 application compared to the cost of cleanup of the same site  
1329 using the current rates provided to the department by the  
1330 proposed agency term contractor.

1331 2. A nonrefundable review fee of \$250 to cover the  
1332 administrative costs associated with the department's review of  
1333 the application.

1334 3. A limited contamination assessment report.

2016100e2

1335 4. A proposed course of action.

1336 5. A department site access agreement, or similar  
1337 agreements approved by the department that do not violate state  
1338 law, entered into with the property owner or owners, as  
1339 applicable, and evidence of authorization from such owner or  
1340 owners for petroleum site rehabilitation program tasks  
1341 consistent with the proposed course of action where the  
1342 applicant is not the property owner for any of the sites  
1343 contained in the application.

1344  
1345 The limited contamination assessment report must be sufficient  
1346 to support the proposed course of action and to estimate the  
1347 cost of the proposed course of action. Costs incurred related to  
1348 conducting the limited contamination assessment report are not  
1349 refundable from the Inland Protection Trust Fund. Site  
1350 eligibility under this subsection or any other provision of this  
1351 section is not an entitlement to advanced cleanup or continued  
1352 restoration funding. The applicant shall certify to the  
1353 department that the applicant has the prerequisite authority to  
1354 enter into an advanced cleanup contract with the department. The  
1355 certification must be submitted with the application.

1356 (4) The department may enter into contracts for a total of  
1357 up to \$25 ~~\$15~~ million of advanced cleanup work in each fiscal  
1358 year. However, a facility or an applicant who bundles multiple  
1359 sites as specified in subparagraph (2) (a)1. may not be approved  
1360 for more than \$5 million of cleanup activity in each fiscal  
1361 year. A property owner or responsible party may enter into a  
1362 voluntary cost-share agreement in which the property owner or  
1363 responsible party commits to bundle multiple sites and lists the

2016100e2

1364 facilities that will be included in those future bundles. The  
1365 facilities listed are not subject to agency term contractor  
1366 assignment pursuant to department rule. The department reserves  
1367 the right to terminate or amend the voluntary cost-share  
1368 agreement for any identified site under the voluntary cost-share  
1369 agreement if the property owner or responsible party fails to  
1370 submit an application to bundle any site, not already covered by  
1371 an advance cleanup contract, under such voluntary cost-share  
1372 agreement within a subsequent open application period during  
1373 which it is eligible to participate. For the purposes of this  
1374 section, the term "facility" includes, but is not limited to,  
1375 multiple site facilities such as airports, port facilities, and  
1376 terminal facilities even though such enterprises may be treated  
1377 as separate facilities for other purposes under this chapter.

1378 Section 11. This act shall take effect July 1, 2016.