

By Representatives Putnam and Dockery

1 A bill to be entitled
2 An act relating to drycleaning solvent cleanup;
3 amending s. 376.30, F.S.; providing legislative
4 intent regarding drycleaning solvents; amending
5 s. 376.301, F.S.; providing definitions;
6 amending s. 376.303, F.S.; providing for late
7 fees for registration renewals; amending s.
8 376.3078, F.S.; providing legislative intent
9 regarding voluntary cleanup; providing that
10 certain deductibles must be deposited into the
11 Water Quality Assurance Trust Fund; clarifying
12 circumstances under which drycleaning
13 restoration fund may not be used; providing
14 additional criteria for determining eligibility
15 for rehabilitation; specifying when certain
16 deductibles must be paid; amending the date
17 after which no restoration funds may be used
18 for drycleaning site rehabilitation; clarifying
19 who may apply jointly for participation in the
20 program; providing certain liability immunity
21 for certain adjacent landowners; providing for
22 contamination cleanup criteria that incorporate
23 risk-based corrective action principles to be
24 adopted by rule; requiring certain third-party
25 liability insurance coverage for each operating
26 facility; specifying the circumstances under
27 which work may proceed on the next site
28 rehabilitation task without prior approval;
29 requiring the Department of Environmental
30 Protection to give priority consideration to
31 the processing and approval of permits for

1 voluntary cleanup projects; providing the
2 conditions under which further rehabilitation
3 may be required; providing for continuing
4 application of certain immunity for real
5 property owners; requiring the Department of
6 Environmental Protection to attempt to
7 negotiate certain agreements with the U.S.
8 Environmental Protection Agency; amending s.
9 376.308, F.S.; protecting certain immunity for
10 real property owners; amending s. 376.313,
11 F.S.; correcting a statutory cross-reference;
12 amending s. 376.70, F.S.; clarifying certain
13 registration provisions; requiring certain
14 facilities to pay the gross receipts tax;
15 deleting a requirement that certain information
16 must be disclosed on the drycleaning receipt;
17 providing for the payment of taxes and the
18 determination of eligibility in the program;
19 amending s. 376.75, F.S.; deleting a
20 requirement that certain information must be
21 disclosed on the drycleaning receipt; amending
22 ss. 287.0595, 316.302, F.S.; correcting
23 statutory cross-references; providing an
24 effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsection (2) of section 376.30, Florida
29 Statutes, is amended to read:

30 376.30 Legislative intent with respect to pollution of
31 surface and ground waters.--

1 (2) The Legislature further finds and declares that:

2 (a) The storage, transportation, and disposal of
3 pollutants, drycleaning solvents, and hazardous substances
4 within the jurisdiction of the state and state waters is a
5 hazardous undertaking;

6 (b) Spills, discharges, and escapes of pollutants, drycleaning solvents, and hazardous substances that occur as a
7 result of procedures taken by private and governmental
8 entities involving the storage, transportation, and disposal
9 of such products pose threats of great danger and damage to
10 the environment of the state, to citizens of the state, and to
11 other interests deriving livelihood from the state;

12 (c) Such hazards have occurred in the past, are
13 occurring now, and present future threats of potentially
14 catastrophic proportions, all of which are expressly declared
15 to be inimical to the paramount interests of the state as set
16 forth in this section; and

17 (d) Such state interests outweigh any economic burdens
18 imposed by the Legislature upon those engaged in storing,
19 transporting, or disposing of pollutants, drycleaning
20 solvents, and hazardous substances and related activities.

21 Section 2. Section 376.301, Florida Statutes, is
22 amended to read:

23 376.301 Definitions of terms used in ss.
24 376.30-376.319, 376.70, and 376.75.--When used in ss.
25 376.30-376.319, 376.70, and 376.75, unless the context clearly
26 requires otherwise, the term:

27 (1) "Aboveground hazardous substance tank" means any
28 stationary aboveground storage tank and onsite integral piping
29 that contains hazardous substances which are liquid at
30

31

1 standard temperature and pressure and has an individual
2 storage capacity greater than 110 gallons.

3 (2) "Additive effects" means a scientific principle
4 that theory under which the toxicity that occurs as a result
5 of exposure is the sum of the toxicities of the individual
6 chemicals to which the individual is exposed ~~of chemicals~~
7 ~~increases in linear proportion to the increase in the number~~
8 ~~of substances.~~

9 (3) "Antagonistic effects" means a scientific
10 principle that the toxicity that occurs is less than the sum
11 of the toxicities of the individual chemicals to which the
12 individual is exposed.

13 (4)~~(3)~~ "Backlog" means reimbursement obligations
14 incurred pursuant to s. 376.3071(12), prior to March 29, 1995,
15 or authorized for reimbursement under the provisions of s.
16 376.3071(12), pursuant to chapter 95-2, Laws of Florida.
17 Claims within the backlog are subject to adjustment, where
18 appropriate.

19 (5)~~(4)~~ "Barrel" means 42 U.S. gallons at 60 degrees
20 Fahrenheit.

21 (6)~~(5)~~ "Bulk product facility" means a waterfront
22 location with at least one aboveground tank with a capacity
23 greater than 30,000 gallons which is used for the storage of
24 pollutants.

25 (7)~~(6)~~ "Cattle-dipping vat" means any structure,
26 excavation, or other facility constructed by any person, or
27 the site where such structure, excavation, or other facility
28 once existed, for the purpose of treating cattle or other
29 livestock with a chemical solution pursuant to or in
30 compliance with any local, state, or federal governmental
31 program for the prevention, suppression, control, or

1 eradication of any dangerous, contagious, or infectious
2 diseases.

3 (8)~~(7)~~ "Compression vessel" means any stationary
4 container, tank, or onsite integral piping system, or
5 combination thereof, which has a capacity of greater than 110
6 gallons, that is primarily used to store pollutants or
7 hazardous substances above atmospheric pressure or at a
8 reduced temperature in order to lower the vapor pressure of
9 the contents. Manifold compression vessels that function as a
10 single vessel shall be considered as one vessel.

11 (9) "Contaminated site" means any contiguous land,
12 surface water, or groundwater areas that contain contaminants
13 that may be harmful to human health or the environment.

14 (10)~~(8)~~ "Department" means the Department of
15 Environmental Protection.

16 (11)~~(9)~~ "Discharge" includes, but is not limited to,
17 any spilling, leaking, seeping, pouring, misapplying,
18 emitting, emptying, or dumping of any pollutant which occurs
19 and which affects lands and the surface and ground waters of
20 the state not regulated by ss. 376.011-376.21.

21 (12)~~(10)~~ "Drycleaning facility" means a commercial
22 establishment that operates or has at some time in the past
23 operated for the primary purpose of drycleaning clothing and
24 other fabrics utilizing a process that involves any use of
25 drycleaning solvents. The term "drycleaning facility" includes
26 laundry facilities that use drycleaning solvents as part of
27 their cleaning process. The term does not include a facility
28 that operates or has at some time in the past operated as a
29 uniform rental company or a companies, and linen supply
30 company companies regardless of whether the facility operates
31 as or was previously operated as a drycleaning facility.

1 ~~(11)~~ (13) "Drycleaning solvents" means any and all
2 nonaqueous solvents used in the cleaning of clothing and other
3 fabrics and includes perchloroethylene (also known as
4 tetrachloroethylene) and petroleum-based solvents, and their
5 breakdown products. For purposes of this definition,
6 "drycleaning solvents" only includes those drycleaning
7 solvents originating from use at a drycleaning facility or by
8 a wholesale supply facility.

9 ~~(12)~~ (14) "Dry drop-off facility" means any commercial
10 retail store that receives from customers clothing and other
11 fabrics for drycleaning or laundering at an offsite
12 drycleaning facility and that does not clean the clothing or
13 fabrics at the store utilizing drycleaning solvents.

14 ~~(13)~~ (15) "Engineering controls" means modifications to
15 a site to reduce or eliminate the potential for exposure to
16 petroleum products' chemicals of concern, drycleaning
17 solvents, or other contaminants. Such modifications may
18 include, but are not limited to, physical or hydraulic control
19 measures, capping, point of use treatments, or slurry walls.

20 ~~(14)~~ (16) "Wholesale supply facility" means a
21 commercial establishment that supplies drycleaning solvents to
22 drycleaning facilities.

23 ~~(15)~~ (17) "Facility" means a nonresidential location
24 containing, or which contained, any underground stationary
25 tank or tanks which contain hazardous substances or pollutants
26 and have individual storage capacities greater than 110
27 gallons, or any aboveground stationary tank or tanks which
28 contain pollutants which are liquids at standard ambient
29 temperature and pressure and have individual storage
30 capacities greater than 550 gallons. This subsection shall not
31 apply to facilities covered by chapter 377, or containers

1 storing solid or gaseous pollutants, and agricultural tanks
2 having storage capacities of less than 550 gallons.

3 (18)~~(16)~~ "Flow-through process tank" means an
4 aboveground tank that contains hazardous substances or
5 specified mineral acids as defined in s. 376.321 and that
6 forms an integral part of a production process through which
7 there is a steady, variable, recurring, or intermittent flow
8 of materials during the operation of the process.

9 Flow-through process tanks include, but are not limited to,
10 seal tanks, vapor recovery units, surge tanks, blend tanks,
11 feed tanks, check and delay tanks, batch tanks, oil-water
12 separators, or tanks in which mechanical, physical, or
13 chemical change of a material is accomplished.

14 (19)~~(17)~~ "Hazardous substances" means those substances
15 defined as hazardous substances in the Comprehensive
16 Environmental Response, Compensation and Liability Act of
17 1980, Pub. L. No. 96-510, 94 Stat. 2767, as amended by the
18 Superfund Amendments and Reauthorization Act of 1986.

19 (20)~~(18)~~ "Institutional controls" means the
20 restriction on use or access to a site to eliminate or
21 minimize exposure to petroleum products' chemicals of concern,
22 drycleaning solvents, or other contaminants. Such
23 restrictions may include, but are not limited to, deed
24 restrictions, use restrictions, or restrictive zoning.

25 (21)~~(19)~~ "Marine fueling facility" means a commercial
26 or recreational coastal facility, excluding a bulk product
27 facility, providing fuel to vessels.

28 (22)~~(20)~~ "Natural attenuation" means the verifiable
29 reduction of petroleum products' chemicals of concern,
30 drycleaning solvents, or other contaminants through natural
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1 processes which may include diffusion, dispersion, absorption,
2 and biodegradation.

3 (23)~~(21)~~ "Operator" means any person operating a
4 facility, whether by lease, contract, or other form of
5 agreement.

6 (24)~~(22)~~ "Owner" means any person owning a facility.

7 (25)~~(23)~~ "Person" means any individual, partner, joint
8 venture, or corporation; any group of the foregoing, organized
9 or united for a business purpose; or any governmental entity.

10 (26)~~(24)~~ "Person in charge" means the person on the
11 scene who is in direct, responsible charge of a facility from
12 which pollutants are discharged, when the discharge occurs.

13 (27)~~(25)~~ "Person responsible for conducting site
14 rehabilitation" means the site owner, operator, or the person
15 designated by the site owner or operator on the reimbursement
16 application. Mortgage holders and trust holders may be
17 eligible to participate in the reimbursement program pursuant
18 to s. 376.3071(12).

19 (28)~~(26)~~ "Petroleum" includes:

20 (a) Oil, including crude petroleum oil and other
21 hydrocarbons, regardless of gravity, which are produced at the
22 well in liquid form by ordinary methods and which are not the
23 result of condensation of gas after it leaves the reservoir;
24 and

25 (b) All natural gas, including casinghead gas, and all
26 other hydrocarbons not defined as oil in paragraph (a).

27 (29)~~(27)~~ "Petroleum product" means any liquid fuel
28 commodity made from petroleum, including, but not limited to,
29 all forms of fuel known or sold as diesel fuel, kerosene, all
30 forms of fuel known or sold as gasoline, and fuels containing
31 a mixture of gasoline and other products, excluding liquefied

1 petroleum gas and American Society for Testing and Materials
2 (ASTM) grades no. 5 and no. 6 residual oils, bunker C residual
3 oils, intermediate fuel oils (IFO) used for marine bunkering
4 with a viscosity of 30 and higher, asphalt oils, and
5 petrochemical feedstocks.

6 (30)~~(28)~~ "Petroleum products' chemicals of concern"
7 means the constituents of petroleum products, including, but
8 not limited to, xylene, benzene, toluene, ethylbenzene,
9 naphthalene, and similar chemicals, and constituents in
10 petroleum products, including, but not limited to, methyl
11 tert-butyl ether (MTBE), lead, and similar chemicals found in
12 additives, provided the chemicals of concern are present as a
13 result of a discharge of petroleum products.

14 (31)~~(29)~~ "Petroleum storage system" means a stationary
15 tank not covered under the provisions of chapter 377, together
16 with any onsite integral piping or dispensing system
17 associated therewith, which is used, or intended to be used,
18 for the storage or supply of any petroleum product. Petroleum
19 storage systems may also include oil/water separators, and
20 other pollution control devices installed at petroleum product
21 terminals as defined in this chapter and bulk product
22 facilities pursuant to, or required by, permits or best
23 management practices in an effort to control surface discharge
24 of pollutants. Nothing herein shall be construed to allow a
25 continuing discharge in violation of department rules.

26 (32)~~(30)~~ "Pollutants" includes any "product" as
27 defined in s. 377.19(11), pesticides, ammonia, chlorine, and
28 derivatives thereof, excluding liquefied petroleum gas.

29 (33)~~(31)~~ "Pollution" means the presence on the land or
30 in the waters of the state of pollutants in quantities which
31 are or may be potentially harmful or injurious to human health

1 or welfare, animal or plant life, or property or which may
2 unreasonably interfere with the enjoyment of life or property,
3 including outdoor recreation.

4 (34)~~(32)~~ "Real property owner" means the individual or
5 entity that is vested with ownership, dominion, or legal or
6 rightful title to the real property, or which has a ground
7 lease interest in the real property, on which a drycleaning
8 facility or wholesale supply facility is or has ever been
9 located.

10 (35)~~(33)~~ "Response action" means any activity,
11 including evaluation, planning, design, engineering,
12 construction, and ancillary services, which is carried out in
13 response to any discharge, release, or threatened release of a
14 hazardous substance, pollutant, or other contaminant from a
15 facility or site identified by the department under the
16 provisions of ss. 376.30-376.319.

17 (36)~~(34)~~ "Response action contractor" means a person
18 who is carrying out any response action, including a person
19 retained or hired by such person to provide services relating
20 to a response action.

21 (37)~~(35)~~ "Secretary" means the Secretary of
22 Environmental Protection.

23 (38)~~(36)~~ "Site rehabilitation" means the assessment of
24 site contamination and the remediation activities that reduce
25 the levels of contaminants at a site through accepted
26 treatment methods to meet the cleanup target levels
27 established for that site.

28 (39)~~(37)~~ "Source removal" means the removal of free
29 product or contaminants from soil that has been contaminated
30 by petroleum or petroleum products, drycleaning solvents, or
31

1 other contaminants to the extent that petroleum products'
2 chemicals of concern leach into groundwater.

3 (40)~~(38)~~ "Storage system" means a stationary tank not
4 covered under the provisions of chapter 377, together with any
5 onsite integral piping or dispensing system associated
6 therewith, which is or has been used for the storage or supply
7 of any petroleum product, pollutant, or hazardous substance as
8 defined herein, and which is registered with the Department of
9 Environmental Protection under this chapter or any rule
10 adopted pursuant hereto.

11 (41)~~(39)~~ "Synergistic effects" means a scientific
12 principle that the toxicity that occurs as a result of
13 exposure is more than the sum of the toxicities of the
14 individual chemicals to which the individual is exposed ~~theory~~
15 ~~under which the toxicity of chemicals exponentially increases~~
16 ~~as the number of chemicals in a combination increases.~~

17 (42)~~(40)~~ "Terminal facility" means any structure,
18 group of structures, motor vehicle, rolling stock, pipeline,
19 equipment, or related appurtenances which are used or capable
20 of being used for one or more of the following purposes:
21 pumping, refining, drilling for, producing, storing, handling,
22 transferring, or processing pollutants, provided such
23 pollutants are transferred over, under, or across any water,
24 estuaries, tidal flats, beaches, or waterfront lands,
25 including, but not limited to, any such facility and related
26 appurtenances owned or operated by a public utility or a
27 governmental or quasi-governmental body. In the event of a
28 ship-to-ship transfer of pollutants, the vessel going to or
29 coming from the place of transfer and a terminal facility
30 shall also be considered a terminal facility. For the
31 purposes of ss. 376.30-376.319, the term "terminal facility"

1 shall not be construed to include spill response vessels
2 engaged in response activities related to removal of
3 pollutants, or temporary storage facilities created to
4 temporarily store recovered pollutants and matter, or
5 waterfront facilities owned and operated by governmental
6 entities acting as agents of public convenience for persons
7 engaged in the drilling for or pumping, storing, handling,
8 transferring, processing, or refining of pollutants. However,
9 each person engaged in the drilling for or pumping, storing,
10 handling, transferring, processing, or refining of pollutants
11 through a waterfront facility owned and operated by such a
12 governmental entity shall be construed as a terminal facility.

13 (43)~~(41)~~ "Transfer" or "transferred" includes
14 onloading, offloading, fueling, bunkering, lightering, removal
15 of waste pollutants, or other similar transfers, between
16 terminal facility and vessel or vessel and vessel.

17 Section 3. Paragraph (d) of subsection (1) of section
18 376.303, Florida Statutes, is amended to read:

19 376.303 Powers and duties of the Department of
20 Environmental Protection.--

21 (1) The department has the power and the duty to:

22 (d) Establish a registration program for drycleaning
23 facilities and wholesale supply facilities.

24 1. Owners or operators of drycleaning facilities and
25 wholesale supply facilities and real property owners ~~suppliers~~
26 shall jointly register each facility owned and in operation
27 with the department by June 30, 1995, pay initial registration
28 fees by December 31, 1995, and pay annual renewal registration
29 fees by December 31, 1996, and each year thereafter, in
30 accordance with this subsection. If the registration form
31 cannot be jointly submitted, then the applicant shall provide

1 notice of the registration to other interested parties. The
2 department shall establish reasonable requirements for the
3 registration of such facilities. The department shall use
4 reasonable efforts to identify and notify drycleaning
5 facilities and wholesale supply facilities of the registration
6 requirements by certified mail, return receipt requested. The
7 department shall provide to the Department of Revenue a copy
8 of each applicant's registration materials, within 30 working
9 days of the receipt of the materials. This copy may be in such
10 electronic format as the two agencies mutually designate.

11 2.a. The department shall issue an invoice for annual
12 registration fees to each registered drycleaning facility or
13 wholesale supply facility by December 31 of each year. Owners
14 of drycleaning facilities and wholesale supply facilities
15 shall submit to the department an initial fee of \$100 and an
16 annual renewal registration fee of \$100 for each drycleaning
17 facility or wholesale supply facility owned and in operation.
18 The fee shall be paid within 30 days after receipt of billing
19 by the department. Facilities that fail to pay their renewal
20 fee within 30 days after receipt of billing are subject to a
21 late fee of \$75.

22 b. Revenues derived from registration and renewal fees
23 shall be deposited into the Water Quality Assurance Trust Fund
24 to be used as provided in s. 376.3078.

25 Section 4. Section 376.3078, Florida Statutes, is
26 amended to read:

27 376.3078 Drycleaning facility restoration; funds;
28 uses; liability; recovery of expenditures.--

29 (1) FINDINGS.--In addition to the legislative findings
30 set forth in s. 376.30, the Legislature finds and declares
31 that:

1 (a) Significant quantities of drycleaning solvents
2 have been discharged in the past at drycleaning facilities as
3 part of the normal operation of these facilities.

4 (b) Discharges of drycleaning solvents at such
5 drycleaning facilities have occurred and are occurring, and
6 pose a significant threat to the quality of the groundwaters
7 and inland surface waters of this state.

8 (c) Where contamination of the groundwater or surface
9 water has occurred, remedial measures have often been delayed
10 for long periods while determinations as to liability and the
11 extent of liability are made, and such delays result in the
12 continuation and intensification of the threat to the public
13 health, safety, and welfare; in greater damage to the
14 environment; and in significantly higher costs to contain and
15 remove the contamination.

16 (d) Adequate financial resources must be readily
17 available to provide for the expeditious supply of safe and
18 reliable alternative sources of potable water to affected
19 persons and to provide a means for investigation and
20 rehabilitation of contaminated sites without delay.

21 (e) It is the intent of the Legislature to encourage
22 real property owners to undertake the voluntary cleanup of
23 property contaminated with drycleaning solvents and that the
24 immunity provisions of this section and all other available
25 defenses be construed in favor of real property owners.

26 (2) FUNDS; USES.--

27 (a) All penalties, judgments, recoveries,
28 reimbursements, loans, and other fees and charges related to
29 the implementation of this section and the tax revenues
30 levied, collected, and credited pursuant to ss. 376.70 and
31 376.75, and registration fees collected pursuant to s.

1 376.303(1)(d), and deductibles collected pursuant to paragraph
2 (3)(d), shall be deposited into the Water Quality Assurance
3 Trust Fund, to be used upon appropriation as provided in this
4 section. Charges against the funds for drycleaning facility
5 or wholesale supply site rehabilitation shall be made in
6 accordance with the provisions of this section.

7 (b) Whenever, in its determination, incidents of
8 contamination by drycleaning solvents related to the operation
9 of drycleaning facilities and wholesale supply facilities may
10 pose a threat to the environment or the public health, safety,
11 or welfare, the department shall obligate moneys available
12 pursuant to this section to provide for:

13 1. Prompt investigation and assessment of the
14 contaminated drycleaning facility or wholesale supply facility
15 sites.

16 2. Expeditious treatment, restoration, or replacement
17 of potable water supplies as provided in s. 376.30(3)(c)1.

18 3. Rehabilitation of contaminated drycleaning facility
19 or wholesale supply facility sites, which shall consist of
20 rehabilitation of affected soil, groundwater, and surface
21 waters, using the most cost-effective alternative that is
22 technologically feasible and reliable and that provides
23 adequate protection of the public health, safety, and welfare
24 and minimizes environmental damage, in accordance with the
25 site selection and rehabilitation criteria established by the
26 department under subsection (4), except that nothing in this
27 subsection shall be construed to authorize the department to
28 obligate drycleaning facility restoration funds for payment of
29 costs that may be associated with, but are not integral to,
30 drycleaning facility or wholesale supply facility site
31 rehabilitation.

1 4. Maintenance and monitoring of contaminated
2 drycleaning facility or wholesale supply facility sites.

3 5. Inspection and supervision of activities described
4 in this subsection.

5 6. Payment of expenses incurred by the department in
6 its efforts to obtain from responsible parties the payment or
7 recovery of reasonable costs resulting from the activities
8 described in this subsection.

9 7. Payment of any other reasonable costs of
10 administration, including those administrative costs incurred
11 by the Department of Children and Family Health and
12 ~~Rehabilitative~~ Services in providing field and laboratory
13 services, toxicological risk assessment, and other assistance
14 to the department in the investigation of drinking water
15 contamination complaints and costs associated with public
16 information and education activities.

17 8. Reasonable costs of restoring property as nearly as
18 practicable to the conditions that existed prior to activities
19 associated with contamination assessment or remedial action.

20
21 The department shall not obligate funds in excess of the
22 annual appropriation.

23 (c) Drycleaning facility restoration funds may not be
24 used to:

25 1. Restore sites that are contaminated by solvents
26 normally used in drycleaning operations where the
27 contamination at such sites did not result from the operation
28 of a drycleaning facility or wholesale supply facility.

29 2. Restore sites that are contaminated by drycleaning
30 solvents being transported to or from a drycleaning facility
31 or wholesale supply facility.

1 3. Fund any costs related to the restoration of any
2 site that has been identified to qualify for listing, or is
3 listed, on the National Priority List pursuant to the
4 Comprehensive Environmental Response, Compensation, and
5 Liability Act of 1980 as amended by the Superfund Amendments
6 and Reauthorization Act of 1986, or that is under an order
7 from the United States Environmental Protection Agency
8 pursuant to s. 3008(h) of the Resource Conservation and
9 Recovery Act as amended, or has obtained, or is required to
10 obtain a permit for the operation of a hazardous waste
11 treatment, storage, or disposal facility, a postclosure
12 permit, or a permit pursuant to the federal Hazardous and
13 Solid Waste Amendments of 1984.

14 4. Pay any costs associated with any fine, penalty, or
15 action brought against a drycleaning facility owner or
16 operator or wholesale supply facility or real property owner
17 under local, state, or federal law.

18 5. Pay any costs related to the restoration of any
19 site that is operated or has at some time in the past operated
20 as a uniform rental or linen supply facility, regardless of
21 whether the site was previously operated as a drycleaning
22 facility or wholesale supply facility.

23 (3) REHABILITATION LIABILITY.--In accordance with the
24 eligibility provisions of this section, no real property owner
25 or no person who owns or operates, or who otherwise could be
26 liable as a result of the operation of, a drycleaning facility
27 or a wholesale supply facility shall be subject to
28 administrative or judicial action brought by or on behalf of
29 any state or local government or agency thereof or by or on
30 behalf of any person to compel rehabilitation or pay for the
31 costs of rehabilitation of environmental contamination

1 resulting from the discharge of drycleaning solvents. Subject
2 to the delays that may occur as a result of the prioritization
3 of sites under this section for any qualified site, costs for
4 activities described in paragraph (2)(b) shall be absorbed at
5 the expense of the drycleaning facility restoration funds,
6 without recourse to reimbursement or recovery from the real
7 property owner or the owner or operator of the drycleaning
8 facility or the wholesale supply facility.

9 (a) With regard to drycleaning facilities or wholesale
10 supply facilities that have operated as drycleaning facilities
11 or wholesale supply facilities on or after October 1, 1994,
12 any such drycleaning facility or wholesale supply facility at
13 which there exists contamination by drycleaning solvents shall
14 be eligible under this subsection regardless of when the
15 drycleaning contamination was discovered, provided that the
16 drycleaning facility or the wholesale supply facility:

- 17 1. Has been registered with the department;
- 18 2. Is determined by the department to be in compliance
19 with the department's rules regulating drycleaning solvents,
20 drycleaning facilities, or wholesale supply facilities on or
21 after November 19, 1980;
- 22 3. Has not been operated in a grossly negligent manner
23 at any time on or after November 19, 1980;
- 24 4. Has not been identified to qualify for listing, nor
25 is listed, on the National Priority List pursuant to the
26 Comprehensive Environmental Response, Compensation, and
27 Liability Act of 1980 as amended by the Superfund Amendments
28 and Reauthorization Act of 1986, and as subsequently amended;
- 29 5. Is not under an order from the United States
30 Environmental Protection Agency pursuant to s. 3008(h) of the
31 Resource Conservation and Recovery Act as amended (42 U.S.C.A.

1 s. 6928(h)), or has not obtained and is not required to obtain
2 a permit for the operation of a hazardous waste treatment,
3 storage, or disposal facility, a postclosure permit, or a
4 permit pursuant to the federal Hazardous and Solid Waste
5 Amendments of 1984;

6
7 and provided that the real property owner or the owner or
8 operator of the drycleaning facility or the wholesale supply
9 facility has not willfully concealed the discharge of
10 drycleaning solvents and has remitted all taxes due pursuant
11 to ss. 376.70 and 376.75, has provided documented evidence of
12 contamination by drycleaning solvents as required by the rules
13 developed pursuant to this section, has reported the
14 contamination prior to December 31, 1998 ~~2005~~, and has not
15 denied the department access to the site.

16 (b) With regard to drycleaning facilities or wholesale
17 supply facilities that cease to be operated as drycleaning
18 facilities or wholesale supply facilities prior to October 1,
19 1994, such facilities, at which there exists contamination by
20 drycleaning solvents, shall be eligible under this subsection
21 regardless of when the contamination was discovered, provided
22 that the drycleaning facility or wholesale supply facility:

23 1. Was not determined by the department, within a
24 reasonable time after the department's discovery, to have been
25 out of compliance with the department rules regulating
26 drycleaning solvents, drycleaning facilities, or wholesale
27 supply facilities implemented ~~which were in effect at the time~~
28 ~~of operation~~ at any time on or after November 19, 1980;

29 2. Was not operated in a grossly negligent manner at
30 any time on or after November 19, 1980;

31

1 3. Has not been identified to qualify for listing, nor
2 is listed, on the National Priority List pursuant to the
3 Comprehensive Environmental Response, Compensation, and
4 Liability Act of 1980, as amended by the Superfund Amendments
5 and Reauthorization Act of 1986, and as subsequently amended;
6 and

7 4. Is not under an order from the United States
8 Environmental Protection Agency pursuant to s. 3008(h) of the
9 Resource Conservation and Recovery Act, as amended, or has not
10 obtained and is not required to obtain a permit for the
11 operation of a hazardous waste treatment, storage, or disposal
12 facility, a postclosure permit, or a permit pursuant to the
13 federal Hazardous and Solid Waste Amendments of 1984;

14
15 and provided that the real property owner or the owner or
16 operator of the drycleaning facility or the wholesale supply
17 facility has not willfully concealed the discharge of
18 drycleaning solvents, has provided documented evidence of
19 contamination by drycleaning solvents as required by the rules
20 developed pursuant to this section, has reported the
21 contamination prior to December 31, 2005, and has not denied
22 the department access to the site.

23 (c) For purposes of determining eligibility, a
24 drycleaning facility or wholesale supply facility was operated
25 in a grossly negligent manner if the department determines
26 that the owner or operator of the drycleaning facility or the
27 wholesale supply facility:

28 1. Willfully discharged drycleaning solvents onto the
29 soils or into the waters of the state after November 19, 1980,
30 with the knowledge, intent, and purpose that the discharge
31

1 would result in harm to the environment or to public health or
2 result in a violation of the law;

3 2. Willfully concealed a discharge of drycleaning
4 solvents with the knowledge, intent, and purpose that the
5 concealment would result in harm to the environment or to
6 public health or result in a violation of the law; or

7 3. Willfully violated a local, state, or federal law
8 or rule regulating the operation of drycleaning facilities or
9 wholesale supply facilities with the knowledge, intent, and
10 purpose that the act would result in harm to the environment
11 or to public health or result in a violation of the law.

12 ~~For purposes of this subsection, the willful discharge of~~
13 ~~drycleaning solvents onto the soils or into the waters of the~~
14 ~~state after November 19, 1980, or the willful concealment of a~~
15 ~~discharge of drycleaning solvents, or a willful violation of~~
16 ~~local, state, or federal law or rule regulating the operation~~
17 ~~of drycleaning facilities or wholesale supply facilities shall~~
18 ~~be construed to be gross negligence in the operation of a~~
19 ~~drycleaning facility or wholesale supply facility.~~

20 (d)1. With respect to eligible drycleaning solvent
21 contamination reported to the department as part of a
22 completed application as required by the rules developed
23 pursuant to this section by June 30, 1997, the costs of
24 activities described in paragraph (2)(b) shall be absorbed at
25 the expense of the drycleaning facility restoration funds,
26 less a \$1,000 deductible per incident, which shall be paid by
27 the applicant or current property owner. The deductible shall
28 be paid within 60 days after receipt of billing by the
29 department.

30 2. For contamination reported to the department from
31 July 1, 1997, through September 30, 1998 ~~June 30, 2001~~, the

1 costs shall be absorbed at the expense of the drycleaning
2 facility restoration funds, less a \$5,000 deductible per
3 incident. The deductible shall be paid within 60 days after
4 receipt of billing by the department.

5 3. For contamination reported to the department as
6 part of a completed application as required by the rules
7 developed pursuant to this section from October 1, 1998 ~~July~~
8 ~~1, 2001~~, through December 31, 1998 ~~2005~~, the costs shall be
9 absorbed at the expense of the drycleaning facility
10 restoration funds, less a \$10,000 deductible per incident. The
11 deductible shall be paid within 60 days after receipt of
12 billing by the department.

13 4. For contamination reported after December 31, 1998
14 ~~2005~~, no costs will be absorbed at the expense of the
15 drycleaning facility restoration funds.

16 (e) The provisions of this subsection shall not apply
17 to any site where the department has been denied site access
18 to implement the provisions of this section.

19 (f) In order to identify those drycleaning facilities
20 and wholesale supply facilities that have experienced
21 contamination resulting from the discharge of drycleaning
22 solvents and to ensure the most expedient rehabilitation of
23 such sites, the owners and operators of drycleaning facilities
24 and wholesale supply facilities are encouraged to detect and
25 report contamination from drycleaning solvents related to the
26 operation of drycleaning facilities and wholesale supply
27 facilities. The department shall establish reasonable
28 guidelines for the written reporting of drycleaning
29 contamination and shall distribute forms to registrants under
30 s. 376.303(1)(d), and to other interested parties upon
31 request, to be used for such purpose.

1 (g) A report of drycleaning solvent contamination at a
2 drycleaning facility or wholesale supply facility made to the
3 department by any person in accordance with this subsection,
4 or any rules promulgated pursuant hereto, may not be used
5 directly as evidence of liability for such discharge in any
6 civil or criminal trial arising out of the discharge.

7 (h) The provisions of this subsection shall not apply
8 to drycleaning facilities owned or operated by the state or
9 Federal Government.

10 (i) Due to the value of Florida's potable water, it is
11 the intent of the Legislature that the department initiate and
12 facilitate as many cleanups as possible utilizing the
13 resources of the state, local governments, and the private
14 sector. The department is authorized to adopt necessary rules
15 and enter into contracts to carry out the intent of this
16 subsection and to limit or prevent future contamination from
17 the operation of drycleaning facilities and wholesale supply
18 facilities.

19 (j) It is not the intent of the Legislature that the
20 state become the owner or operator of a drycleaning facility
21 or wholesale supply facility by engaging in state-conducted
22 cleanup.

23 (k) The owner, operator, ~~and~~ real property owner, or
24 agent of the real property owner, may apply for the
25 Drycleaning Contamination Cleanup Program by jointly
26 submitting a completed application package to the department
27 pursuant to the rules that shall be adopted by the department.
28 If the application cannot be jointly submitted, then the
29 applicant shall provide notice of the application to other
30 interested parties. After reviewing the completed application
31 package, the department shall notify the applicant in writing

1 as to whether the drycleaning facility or wholesale supply
2 facility is eligible for the program. If the department denies
3 eligibility for a completed application package, the notice of
4 denial shall specify the reasons for the denial, including
5 specific and substantive findings of fact, and shall
6 constitute agency action subject to the provisions of chapter
7 120. For the purposes of ss. 120.569 and 120.57, the real
8 property owner and the owner and operator of a drycleaning
9 facility or wholesale supply facility which is the subject of
10 a decision by the department with regard to eligibility shall
11 be deemed to be parties whose substantial interests are
12 determined by the department's decision to approve or deny
13 eligibility.

14 (l) Eligibility under this subsection applies to the
15 drycleaning facility or wholesale supply facility. A
16 determination of eligibility or ineligibility shall not be
17 affected by any conveyance of the ownership of the drycleaning
18 facility, wholesale supply facility, or the real property on
19 which such facility is located. Nothing contained in this
20 chapter shall be construed to allow a drycleaning facility or
21 wholesale supply facility which would not be eligible under
22 this subsection to become eligible as a result of the
23 conveyance of the ownership of the ineligible drycleaning
24 facility or wholesale supply facility to another owner.

25 (m) If funding for the drycleaning contamination
26 rehabilitation program is eliminated, the provisions of this
27 subsection shall not apply.

28 (n)1. The department shall have the authority to
29 cancel the eligibility of any drycleaning facility or
30 wholesale supply facility that submits fraudulent information
31 in the application package or that fails to continuously

1 comply with the conditions of eligibility set forth in this
2 subsection, or has not remitted all fees pursuant to s.
3 376.303(1)(d), or has not remitted the deductible payments
4 pursuant to paragraph (d).

5 2. If the program eligibility of a drycleaning
6 facility or wholesale supply facility is subject to
7 cancellation pursuant to this section, then the department
8 shall notify the applicant in writing of its intent to cancel
9 program eligibility and shall state the reason or reasons for
10 cancellation. The applicant shall have 45 days to resolve the
11 reason or reasons for cancellation to the satisfaction of the
12 department. If, after 45 days, the applicant has not resolved
13 the reason or reasons for cancellation to the satisfaction of
14 the department, the order of cancellation shall become final
15 and shall be subject to the provisions of chapter 120.

16 (o) A real property owner shall not be subject to
17 administrative or judicial action brought by or on behalf of
18 any person or local or state government, or agency thereof,
19 for gross negligence or violations of department rules prior
20 to January 1, 1990, which resulted from the operation of a
21 drycleaning facility, provided that the real property owner
22 demonstrates that:

23 1. The real property owner had ownership in the
24 property at the time of the gross negligence or violation of
25 department rules and did not cause or contribute to
26 contamination on the property;

27 2. The real property owner was a distinct and separate
28 entity from the owner and operator of the drycleaning
29 facility, and did not have an ownership interest in or share
30 in the profits of the drycleaning facility;

31

1 3. The real property owner did not participate in the
2 operation or management of the drycleaning facility;

3 4. The real property owner complied with all discharge
4 reporting requirements, and did not conceal any contamination;
5 and

6 5. The department has not been denied access.
7

8 This defense shall not apply to any liability pursuant to a
9 federally delegated program.

10 (p) A landowner or person who owns or operates a
11 business that is not a drycleaning facility or wholesale
12 supply facility whose sites become contaminated due to
13 geophysical or hydrologic reasons from the operation of a
14 nearby drycleaning or wholesale supply facility is not subject
15 to administrative or judicial action brought by or on behalf
16 of any person to compel rehabilitation or pay for the costs of
17 rehabilitation of sites contaminated by drycleaning solvents
18 if:

19 1. The landowner or person who owns and operates a
20 business that is not a drycleaning facility or wholesale
21 supply facility does not own and has never held an ownership
22 interest in or shared in the profits of a drycleaning facility
23 operated at the source location;

24 2. The landowner or person who owns and operates a
25 business that is not a drycleaning facility or wholesale
26 supply facility did not participate in the operation of or
27 management of the drycleaning facility; and

28 3. The landowner or person who owns and operates a
29 business that is not a drycleaning facility or wholesale
30 supply facility did not cause, contribute, to or exacerbate
31 the release or threat of release of any hazardous substance,

1 through any act or omission. This defense does not apply to
2 any liability pursuant to a federally delegated program.

3 (q) Nothing in this subsection precludes the
4 department from considering information and documentation
5 provided by private consultants, local government programs,
6 federal agencies, or any individual which is relevant to an
7 eligibility determination if the department provides the
8 applicant with reasonable access to the information and its
9 origin.

10 (4) ~~SITE SELECTION AND REHABILITATION CRITERIA.~~--It is
11 the intent of the Legislature to protect the health of all
12 people under actual circumstances of exposure. By April 1,
13 1999, the secretary of the department shall establish criteria
14 by rule for the purpose of determining, on a site-specific
15 basis, the rehabilitation program tasks that comprise a site
16 rehabilitation program, including a voluntary site
17 rehabilitation program, and the level at which a
18 rehabilitation program task and a site rehabilitation program
19 may be deemed completed. In establishing the rule, the
20 department shall incorporate, to the maximum extent feasible,
21 risk-based corrective action principles to achieve protection
22 of human health and safety and the environment in a
23 cost-effective manner as provided in this subsection. The
24 rule shall also include protocols for the use of natural
25 attenuation and the issuance of "no further action" letters.
26 The criteria for determining what constitutes a rehabilitation
27 program task or completion of a site rehabilitation program
28 task or site rehabilitation program, including a voluntary
29 site rehabilitation program, must:

30 (a) Consider the current exposure and potential risk
31 of exposure to humans and the environment, including multiple

1 pathways of exposure. The physical, chemical, and biological
2 characteristics of each contaminant must be considered in
3 order to determine the feasibility of risk-based corrective
4 action assessment.
5 (b) Establish the point of compliance at the source of
6 the contamination. However, the department is authorized to
7 temporarily move the point of compliance to the boundary of
8 the property, or to the edge of the plume when the plume is
9 within the property boundary, while cleanup, including cleanup
10 through natural attenuation processes in conjunction with
11 appropriate monitoring, is proceeding. The department also is
12 authorized, pursuant to criteria provided for in this section,
13 to temporarily extend the point of compliance beyond the
14 property boundary with appropriate monitoring, if such
15 extension is needed to facilitate natural attenuation or to
16 address the current conditions of the plume, provided human
17 health, public safety, and the environment are protected.
18 When temporarily extending the point of compliance beyond the
19 property boundary, it cannot be extended further than the
20 lateral extent of the plume at the time of execution of the
21 voluntary cleanup agreement, if known, or the lateral extent
22 of the plume as defined at the time of site assessment.
23 Temporary extension of the point of compliance beyond the
24 property boundary, as provided in this paragraph, must include
25 actual notice by the person responsible for site
26 rehabilitation to local governments and the owners of any
27 property into which the point of compliance is allowed to
28 extend and constructive notice to residents and business
29 tenants of the property into which the point of compliance is
30 allowed to extend. Persons receiving notice pursuant to this
31

1 paragraph shall have the opportunity to comment within 30 days
2 of receipt of the notice.

3 (c) Ensure that the site-specific cleanup goal is that
4 all sites contaminated with drycleaning solvents ultimately
5 achieve the applicable cleanup target levels provided in this
6 section. In the circumstances provided below, and after
7 constructive notice and opportunity to comment within 30 days
8 from receipt of the notice to local government, to owners of
9 any property into which the point of compliance is allowed to
10 extend, and to residents on any property into which the point
11 of compliance is allowed to extend, the department may allow
12 concentrations of contaminants to temporarily exceed the
13 applicable cleanup target levels while cleanup, including
14 cleanup through natural attenuation processes in conjunction
15 with appropriate monitoring, is proceeding, if human health,
16 public safety, and the environment are protected.

17 (d) Allow the use of institutional or engineering
18 controls at sites contaminated with drycleaning solvents,
19 where appropriate, to eliminate or control the potential
20 exposure to contaminants of humans or the environment. The use
21 of controls must be preapproved by the department and only
22 after constructive notice and opportunity to comment within 30
23 days from receipt of notice is provided to local governments,
24 to owners of any property into which the point of compliance
25 is allowed to extend, and to residents on any property into
26 which the point of compliance is allowed to extend. When
27 institutional or engineering controls are implemented to
28 control exposure, the removal of the controls must have prior
29 department approval and must be accompanied by the resumption
30 of active cleanup, or other approved controls, unless cleanup
31 target levels under this section have been achieved.

1 (e) Consider the additive effects of contaminants.
2 The synergistic and antagonistic effects shall also be
3 considered when the scientific data become available.
4 (f) Take into consideration individual site
5 characteristics, which shall include, but not be limited to,
6 the current and projected use of the affected groundwater and
7 surface water in the vicinity of the site, current and
8 projected land uses of the area affected by the contamination,
9 the exposed population, the degree and extent of
10 contamination, the rate of contaminant migration, the apparent
11 or potential rate of contaminant degradation through natural
12 attenuation processes, the location of the plume, and the
13 potential for further migration in relation to site property
14 boundaries.
15 (g) Apply state water quality standards as follows:
16 1. Cleanup target levels for each contaminant found in
17 groundwater shall be the applicable state water quality
18 standards. Where such standards do not exist, the cleanup
19 target levels for groundwater shall be based on the minimum
20 criteria specified in department rule. The department shall
21 consider the following, as appropriate, in establishing the
22 applicable minimum criteria: calculations using a lifetime
23 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
24 best achievable detection limit; the naturally occurring
25 background concentration; or nuisance, organoleptic, and
26 aesthetic considerations.
27 2. Where surface waters are exposed to contaminated
28 groundwater, the cleanup target levels for the contaminants
29 shall be based on the surface water standards as established
30 by department rule. The point of measuring compliance with
31

1 the surface water standards shall be in the groundwater
2 immediately adjacent to the surface water body.

3 3. The department may set alternative cleanup target
4 levels based upon the person responsible for site
5 rehabilitation demonstrating, using site-specific modeling and
6 risk assessment studies, that human health, public safety, and
7 the environment are protected to the same degree as provided
8 in subparagraphs 1. and 2. Where a state water quality
9 standard is applicable, a deviation may not result in the
10 application of cleanup target levels more stringent than the
11 standard. In determining whether it is appropriate to
12 establish alternative cleanup target levels at a site, the
13 department must consider the effectiveness of source removal
14 that has been completed at the site and the practical
15 likelihood of the use of low yield or poor quality
16 groundwater, the use of groundwater near marine surface water
17 bodies, the current and projected use of the affected
18 groundwater in the vicinity of the site, or the use of
19 groundwater in the immediate vicinity of the contaminated
20 area, where it has been demonstrated that the groundwater
21 contamination is not migrating away from such localized
22 source, provided human health, public safety, and the
23 environment are protected.

24 (h) Provide for the department to issue a "no further
25 action order" when alternative cleanup target levels
26 established pursuant to subparagraph (g)3. have been achieved.

27 (i) Provide for the department to issue a "no further
28 action order" with conditions, where appropriate, when
29 alternative cleanup target levels established pursuant to
30 subparagraph (g)3. have been achieved, or when the person
31 responsible for site rehabilitation can demonstrate that the

1 cleanup target level is unachievable within available
2 technologies. Prior to issuing such an order, the department
3 shall consider the feasibility of an alternative site
4 rehabilitation technology in the area.

5 (j) Establish appropriate cleanup target levels for
6 soils.

7 1. In establishing soil cleanup target levels for
8 human exposure to each contaminant found in soils from the
9 land surface to 2 feet below land surface, the department
10 shall consider the following, as appropriate: calculations
11 using a lifetime cancer risk level of 1.0E-6; a hazard index
12 of 1 or less; the best achievable detection limit; or the
13 naturally occurring background concentration. Institutional
14 controls or other methods shall be used to prevent human
15 exposure to contaminated soils more than 2 feet below the land
16 surface. Any removal of such institutional controls shall
17 require such contaminated soils to be remediated.

18 2. Leachability-based soil target levels shall be
19 based on protection of the groundwater cleanup target levels
20 or the alternate cleanup target levels for groundwater
21 established pursuant to this paragraph, as appropriate. Source
22 removal and other cost-effective alternatives that are
23 technologically feasible shall be considered in achieving the
24 leachability soil target levels established by the department.
25 The leachability goals shall not be applicable if the
26 department determines, based upon individual site
27 characteristics, that contaminants will not leach into the
28 groundwater at levels which pose a threat to human health,
29 public safety, and the environment.

30 3. The department may set alternative cleanup target
31 levels based upon the person responsible for site

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1 rehabilitation using site-specific modeling and risk
2 assessment studies, that human health, public safety, and the
3 environment are protected.

4
5 The department shall require source removal, if warranted and
6 cost-effective. Once source removal at a site is complete,
7 the department shall reevaluate the site to determine the
8 degree of active cleanup needed to continue. Further, the
9 department shall determine if the reevaluated site qualifies
10 for monitoring only or if no further action is required to
11 rehabilitate the site. If additional site rehabilitation is
12 necessary to reach "no further action" status, the department
13 is encouraged to utilize natural attenuation and monitoring
14 where site conditions warrant.~~that drycleaning facility~~
15 ~~restoration funds in the Water Quality Assurance Trust Fund be~~
16 ~~used to fund the rehabilitation of sites that pose a~~
17 ~~significant threat to the public health, safety, or welfare.~~

18 ~~(a) The department shall adopt rules to establish~~
19 ~~priorities for state-conducted rehabilitation at contaminated~~
20 ~~drycleaning facility or wholesale supply facility sites based~~
21 ~~upon factors that include, but need not be limited to:~~

22 ~~1. The degree to which human health, safety, or~~
23 ~~welfare may be affected by exposure to the contamination.~~

24 ~~2. The size of the population or area affected by the~~
25 ~~contamination.~~

26 ~~3. The present and future uses of the affected aquifer~~
27 ~~or surface waters, with particular consideration as to the~~
28 ~~probability that the contamination is substantially affecting,~~
29 ~~or will migrate to and substantially affect, a known public or~~
30 ~~private source of potable water.~~

31 ~~4. The effect of the contamination on the environment.~~

1
2 ~~Drycleaning facility restoration funds shall then be obligated~~
3 ~~for activities described in paragraph (2)(b) at individual~~
4 ~~sites in accordance with the criteria established in this~~
5 ~~subsection. However, nothing in this paragraph shall be~~
6 ~~construed to restrict the department from modifying the~~
7 ~~priority status of a drycleaning facility or wholesale supply~~
8 ~~facility rehabilitation site where conditions warrant.~~
9 ~~(b) Criteria for determining completion of site~~
10 ~~rehabilitation program tasks and site rehabilitation programs~~
11 ~~shall be based upon the factors set forth in paragraph (a) and~~
12 ~~the following additional factors:~~
13 ~~1. Individual site characteristics, including natural~~
14 ~~rehabilitation processes.~~
15 ~~2. Applicable state water quality standards.~~
16 ~~3. Whether deviation from state water quality~~
17 ~~standards or from established criteria is appropriate, based~~
18 ~~upon the degree to which the desired rehabilitation level is~~
19 ~~achievable and can be reasonably and cost-effectively~~
20 ~~implemented within available technologies or control~~
21 ~~strategies; except that, where a state water quality standard~~
22 ~~is applicable, such deviation may not result in the~~
23 ~~application of standards more stringent than said standard.~~
24 (5)(a)(c) It is recognized that restoration of
25 groundwater resources contaminated with certain drycleaning
26 solvents, such as perchloroethylene, may not be achievable
27 using currently available technology. In situations where the
28 use of available technology is not anticipated to achieve
29 water quality standards, the department, at its discretion,
30 may use innovative technology that has been field-tested
31

1 ~~through a federal innovative technology program~~ and that has
2 engineering and cost data available.

3 (b)~~(d)~~ Nothing in this subsection shall be construed
4 to restrict the department from temporarily postponing
5 completion of any site rehabilitation program for which
6 drycleaning facility restoration funds are being expended
7 whenever such postponement is deemed necessary in order to
8 make funds available for rehabilitation of a drycleaning
9 facility or wholesale supply facility contamination site with
10 a higher priority status.

11 (c)~~(e)~~ The department shall provide the rehabilitation
12 of eligible drycleaning facilities and wholesale supply
13 facilities consistent with this subsection. Nothing in this
14 chapter shall subject the department to liability for any
15 action that may be required of the owner, operator, or real
16 property owner by any private party or any local, state, or
17 federal government entity.

18 (6)~~(5)~~ SCORING SYSTEM.--The department shall use the
19 following scoring system to rank and prioritize sites for
20 rehabilitation that have been determined to be eligible for
21 the program pursuant to subsection (3). If the application
22 package documents that a site has one of the following
23 characteristics, then the site shall be allocated the
24 corresponding number of points.

25 (a) Any site having a condition that exhibits a fire
26 or explosion hazard shall be of highest priority.

27 (b) Threat to drinking water supply wells.

28 1. Capacity:

29 a. A site shall be awarded points based on the
30 permitted capacity of the largest uncontaminated public water
31 supply well or the capacity of the largest uncontaminated

1 private drinking water well constructed prior to the date of
2 contamination discovery that is located within 1 mile of the
3 site. If multiple uncontaminated wells of the same capacity
4 are present within 1 mile, then select the uncontaminated well
5 closest to the site. Points shall be awarded as follows:

6 For uncontaminated wells (only one shall apply):

7

8 Capacity (gallons per day)	Points
9 greater than 1,000,000	90
10 100,000 to 1,000,000	60
11 less than 100,000	30

12

13 b. If no points were awarded from sub-subparagraph a.,
14 and contaminated wells are present, then the site shall be
15 awarded points based on the permitted capacity of the largest
16 contaminated public water supply well or the capacity of the
17 largest contaminated private drinking water well constructed
18 prior to the date of contamination discovery that is located
19 within 1 mile of the site. If multiple contaminated wells of
20 the same capacity are present within 1 mile, then select the
21 contaminated well closest to the site. Points shall be
22 awarded as follows:

23 For contaminated wells (only one shall apply):

24

25 Capacity (gallons per day)	Points
26 greater than 1,000,000	25
27 100,000 to 1,000,000	15
28 less than 100,000	5

29

30 2. A site shall be awarded points based on the
31 proximity of the public water supply well or private well

1 selected in subparagraph 1. as follows. If the well selected
2 is an uncontaminated well, then select only one from
3 sub-subparagraph a. below. If the well selected is a
4 contaminated well, then select only one from sub-subparagraph
5 b. below:

6 a. For uncontaminated wells:

8	Distance	Points
9	within 500 feet	40
10	within 1/4 mile	30
11	within 1/2 mile	20
12	within 1 mile	10

14 b. For contaminated wells:

16	Distance	Points
17	within 500 feet	15
18	within 1/4 mile	10
19	within 1/2 mile	8
20	within 1 mile	5

22 (c) A site shall be awarded points based on
23 groundwater vulnerability to contamination using the
24 department's current DRASTIC Index (only one shall apply):

26	DRASTIC Index	Points
27	79 and below	3
28	80 to 99	6
29	100 to 119	9
30	120 to 139	12
31	140 to 159	15

1	160 to 179	18
2	180 to 199	21
3	200 to 266	24

4
5 (d) Aquifer Classification (select all that apply):

6 1. A site located in a G-I or F-I aquifer area shall
7 be awarded 3 points.

8 2. A site located in a G-II aquifer area shall be
9 awarded 2 points.

10 3. A site located in a United States Environmental
11 Protection Agency designated sole source aquifer area shall be
12 awarded 1 point.

13 (e) Conditions favoring a continual source (only one
14 shall apply):

15 1. If a site has chlorinated drycleaning solvents in
16 the soil at concentrations greater than or equal to 1
17 milligram per kilogram or in the groundwater at concentrations
18 greater than or equal to 1,500 micrograms per liter, then the
19 site shall be awarded 7 points.

20 2. If the site has chlorinated drycleaning solvents in
21 the soil at concentrations less than 1 milligram per kilogram
22 or in the groundwater at concentrations less than 1,500
23 micrograms per liter, then the site shall be awarded 2 points.

24 (f) Environmental Setting (select all that apply):

25 1. A site located within 1/2 mile of an
26 uncontaminated surface water body used as a permitted public
27 water system shall be awarded 10 points.

28 2. A site located within 1/2 mile of an Outstanding
29 Florida Water body shall be awarded 2 points.

30 3. A site located within 1/4 mile of a surface water
31 body shall be awarded 1 point.

1 4. A site located within 1/4 mile of an area of
2 critical state concern as defined in chapter 380 shall be
3 awarded 2 points.

4 (7)~~(6)~~ SCORING SYSTEM APPLICATION.--

5 (a) If the department determines that a site is
6 eligible for the program, pursuant to this section, then the
7 department shall develop a score for the site in accordance
8 with provisions of subsection (5).

9 (b) A priority list of eligible sites shall be
10 developed, by the department, based on an ordering of scored
11 sites such that the highest-scored sites shall be of highest
12 priority for rehabilitation.

13 (c) Scored sites shall be incorporated into the
14 priority list on a quarterly basis with the ranking of all
15 sites previously on the list being adjusted accordingly.

16 (d) Assignments for program tasks to be conducted by
17 state contractors shall be made according to the current
18 priority list and shall be based on the department
19 determination of contractor logistics, geographical
20 considerations, and other criteria the department determines
21 are necessary to achieve cost-effective site rehabilitation.

22 (e) Assignments for the program tasks shall be made
23 beginning with the highest-ranked sites on the priority list
24 at the effective date the assignment is made and proceed
25 through lower-ranked sites.

26 (f) All scored sites will be added to the priority
27 list on a quarterly basis until all the sites have been
28 assigned.

29 (g) Once an assignment is made, a subsequent quarterly
30 adjustment to the priority list shall not alter that
31 assignment unless a more cost-effective approach can be

1 achieved by reassignment, a compelling public health condition
2 or an environmental condition warrants a reassignment, or the
3 reassignment is otherwise in the public interest.

4 (h) Regardless of the score of a site, the department
5 may initiate emergency action for those sites that, in the
6 judgment of the department, are a threat to human health and
7 safety, or where failure to prevent migration of drycleaning
8 solvents would cause irreversible damage to the environment.

9 (8)~~(7)~~ REQUIREMENT FOR DRYCLEANING FACILITIES.--It is
10 the intent of the Legislature that the following drycleaning
11 solvent containment shall be required of the owners or
12 operators of drycleaning facilities, as follows:

13 (a) Owners or operators of drycleaning facilities
14 shall by January 1, 1997, install dikes or other containment
15 structures around each machine or item of equipment in which
16 drycleaning solvents are used and around any area in which
17 solvents or waste-containing solvents are stored. Such dikes
18 or containment structures shall be capable of containing 110
19 percent of the capacity of each such machine and each such
20 storage area. To the extent practicable, each owner or
21 operator of a drycleaning facility shall seal or otherwise
22 render impervious those portions of all dikes' floor surfaces
23 upon which any drycleaning solvents may leak, spill, or
24 otherwise be released.

25 (b) For drycleaning facilities that commence operating
26 subsequent to January 1, 1996, the owners or operators of such
27 facilities shall, prior to the commencement of operations,
28 install beneath each machine or item of equipment in which
29 drycleaning solvents are used a rigid and impermeable
30 containment vessel capable of containing 110 percent of the
31 total tank capacity of each machine.

1 (c) Notwithstanding the provisions of subsection (3),
2 the owner or operator of a drycleaning facility or wholesale
3 supply facility at which there is a spill of more than 1 quart
4 of drycleaning solvent outside of a containment structure, on
5 or after July 1, 1995, shall report the spill to the state
6 through the State Warning Point pursuant to s. 403.161(1)(d)
7 immediately upon the discovery of such spill, and immediately
8 initiate and complete actions to abate the source of the
9 spill, remove product from all indoor and outdoor surface
10 areas, remove product and dissolved product from any septic
11 tank or catch basin in which the solvent has accumulated, and
12 remove affected soils, if any. Costs incurred by an owner or
13 operator for such response actions, up to a maximum of \$10,000
14 in the aggregate for all spills at a single facility, shall be
15 credited to the owner or operator against the future gross
16 receipts tax set forth in s. 376.70 and, in the case of a
17 wholesale supply facility, against the future tax on
18 production or importation of perchloroethylene, as set forth
19 in s. 376.75.

20 (d) Failure to comply with the requirements of this
21 subsection shall constitute gross negligence with regard to
22 determining site eligibility in subsection (3).

23 ~~(9)(8)~~ The owner or operator of an operating
24 drycleaning facility or wholesale supply facility shall, by
25 January 1, 1998 ~~180 days after October 1, 1995~~, have purchased
26 third-party liability insurance for \$1 million of coverage for
27 each operating facility. The owner or operator shall maintain
28 such insurance while operating as a drycleaning facility or
29 wholesale supply facility and provide proof of such insurance
30 to the department upon registration renewal each year
31 thereafter. Such requirement applies only if such insurance

1 becomes available to the owner or operator at a reasonable
2 rate and covers liability for contamination subsequent to the
3 effective date of the policy and prior to the effective date,
4 retroactive to the commencement of operations at the
5 drycleaning facility or wholesale supply facility. Such
6 insurance may be offered in group coverage policies with a
7 shared aggregate of not less than \$15 million per year ~~that~~
8 ~~occurred both before and after the effective date of the~~
9 ~~policy.~~ For the purposes of this subsection, reasonable rate
10 means the rate developed based on exposure to loss and
11 underwriting and administrative costs as determined by the
12 Department of Insurance, in consultation with representatives
13 of the drycleaning industry. ~~Failure to comply with this~~
14 ~~subsection shall subject the owner and operator to the~~
15 ~~provisions of s. 376.302.~~

16 (10)(9) A real property owner is authorized to conduct
17 site rehabilitation activities at any time pursuant to
18 department rules, either through agents of the real property
19 owner or through responsible response action contractors or
20 subcontractors, whether or not the facility has been
21 determined by the department to be eligible for the
22 drycleaning solvent cleanup program. A real property owner or
23 any other person party that conducts site rehabilitation may
24 not seek cost recovery from the department or the Water
25 Quality Assurance Trust Fund for any such rehabilitation
26 activities. During the cleanup process, if the department
27 fails to complete review of a technical document in a timely
28 manner, the owner, operator, or real property owner may
29 proceed to the next site rehabilitation task. However, the
30 owner, operator, or real property owner does so at his or her
31 own risk and may be required by the department to complete

1 additional work on a previous task. Exceptions to this
2 subsection include requests for "no further action,"
3 "monitoring only proposals," and feasibility studies, which
4 must be approved prior to implementation. For rehabilitation
5 projects proceeding on a voluntary basis pursuant to these
6 provisions, the department shall give priority consideration
7 to processing and approving permits required for these
8 projects unless inconsistent with any federal delegation. A
9 real property owner that voluntarily conducts such site
10 rehabilitation, whether commenced before or on or after
11 October 1, 1995, shall be immune from liability to any person,
12 state or local government, or agency thereof to compel or
13 enjoin site rehabilitation or pay for the cost of
14 rehabilitation of environmental contamination, or to pay any
15 fines or penalties regarding rehabilitation, as soon so long
16 as the real property owner:
17 (a) Conducts contamination assessment and site
18 rehabilitation consistent with state and federal laws and
19 rules;
20 (b) Conducts such site rehabilitation in a timely
21 manner according to a rehabilitation schedule approved by the
22 department; and
23 (c) Does not deny the department access to the site.
24 Upon completion of such site rehabilitation activities in
25 accordance with the requirements of this subsection, the
26 department shall render a site rehabilitation completion
27 order.
28
29 This immunity shall continue to apply to any real property
30 owner who transfers, conveys, leases, or sells property on
31

1 which a drycleaning facility is located so long as the
2 voluntary cleanup activities continue.

3 (11) REOPENERS.--Upon completion of site
4 rehabilitation in compliance with subsection (10), additional
5 site rehabilitation is not required unless it is demonstrated:

6 (a) That fraud was committed in demonstrating site
7 conditions or completion of site rehabilitation;

8 (b) That the remediation efforts failed to achieve the
9 site rehabilitation criteria established under this section;
10 or

11 (c) That a new release occurs at the drycleaning site
12 subsequent to a determination of eligibility for participation
13 in the drycleaning program established under this section.

14 (12)~~(10)~~ DEPARTMENTAL DUTY TO SEEK RECOVERY AND
15 REIMBURSEMENT.--

16 (a) Except as provided in subsection (3) and as
17 otherwise provided by law, the department shall recover from
18 any person causing or having caused the discharge of
19 drycleaning solvents in relation to the operation of a
20 drycleaning facility or wholesale supply facility, jointly and
21 severally, all sums owed or expended from drycleaning facility
22 restoration funds, pursuant to s. 376.308, except that the
23 department may decline to pursue such recovery if it finds the
24 amount involved to be too small or the likelihood of recovery
25 too uncertain.

26 (b) Except as provided in subsection (3) and as
27 otherwise provided by law, it is the duty of the department in
28 administering the drycleaning facility restoration funds to
29 diligently pursue the reimbursement to the Water Quality
30 Assurance Trust Fund of any sum expended from the fund for
31 rehabilitation in accordance with the provisions of this

1 section, unless the department finds the amount involved to be
2 too small or the likelihood of recovery too uncertain. For
3 the purposes of s. 95.11, the limitation period within which
4 to institute an action to recover such sums shall commence on
5 the last date on which any such sums were expended, and not
6 the date that the discharge occurred.

7 (c) The Legislature recognizes its limitations in
8 addressing cleanup liability under federal pollution control
9 programs. In an effort to secure federal liability protection
10 for persons willing to undertake remediation responsibility at
11 a drycleaning site, the department shall attempt to negotiate
12 a memorandum of agreement or similar document with the United
13 States Environmental Protection Agency, whereby the United
14 States Environmental Protection Agency agrees to forego
15 enforcement of federal corrective action authority at
16 drycleaning sites that have received a site rehabilitation
17 completion or "no further action" determination from the
18 department or that are in the process of implementing a
19 voluntary cleanup agreement in accordance with this section.

20 Section 5. Subsection (6) of section 376.308, Florida
21 Statutes, is amended to read:

22 376.308 Liabilities and defenses of facilities.--

23 (6) Nothing herein shall be construed to affect
24 cleanup program eligibility under ss. 376.305(6), 376.3071,
25 376.3072, 376.3078, and 376.3079. Except as otherwise
26 expressly provided in this chapter, nothing in this chapter
27 shall affect, void, or defeat any immunity of any real
28 property under s. 376.3078.

29 Section 6. Paragraph (a) of subsection (5) of section
30 376.313, Florida Statutes, is amended to read:

31

1 376.313 Nonexclusiveness of remedies and individual
2 cause of action for damages under ss. 376.30-376.319.--
3 (5)(a) In any civil action against the owner or
4 operator of a drycleaning facility or a wholesale supply
5 facility, or the owner of the real property on which such
6 facility is located, if such facility is not eligible under s.
7 376.3078(3)~~s. 376.3978(3)~~, for damages arising from the
8 discharge of drycleaning solvents from a drycleaning facility
9 or wholesale supply facility, the provisions of subsection (3)
10 shall not apply if it can be proven that, at the time of the
11 discharge the alleged damages resulted solely from a discharge
12 from a drycleaning facility or wholesale supply facility that
13 was in compliance with department rules regulating drycleaning
14 facilities or wholesale supply facilities.

15 Section 7. Section 376.70, Florida Statutes, is
16 amended to read:

17 376.70 Tax on gross receipts of drycleaning
18 facilities.--

19 (1) There is levied a gross receipts tax on each
20 drycleaning facility and dry drop-off facility, as defined in
21 s. 376.301, for the privilege of engaging in the business of
22 laundering and drycleaning clothing and other fabrics in this
23 state. The tax shall be at a rate of 2 ~~1.5~~ percent of all
24 charges imposed by the drycleaning facility or the dry
25 drop-off facility for the drycleaning or laundering of
26 clothing or other fabrics. ~~Beginning January 1, 1996, the tax~~
27 ~~rate shall be 2 percent of such charges.~~Gross receipts from
28 coin-operated laundry machines and from laundry done on a
29 wash, dry, and fold basis shall not be subject to tax.

30 (2) Each drycleaning facility or dry drop-off facility
31 imposing a charge for the drycleaning or laundering of

1 clothing or other fabrics is required to register with the
2 Department of Revenue and become licensed for the purposes of
3 this section. The owner or operator of the facility shall
4 register the facility with the Department of Revenue.
5 Drycleaning facilities or dry drop-off facilities operating at
6 more than one location are only required to have a single
7 registration. The fee for registration is \$30. The owner or
8 operator of the facility shall pay the registration fee to the
9 Department of Revenue.

10 (3) The tax imposed by this section is due on the 1st
11 day of the month succeeding the month in which the charge is
12 imposed and shall be paid on or before the 20th day of each
13 month. The tax shall be reported on forms and in the manner
14 prescribed by the Department of Revenue by rule. The proceeds
15 of the taxes, after deducting the administrative costs
16 incurred by the Department of Revenue in administering,
17 auditing, collecting, distributing, and enforcing the tax,
18 shall be transferred by the Department of Revenue into the
19 Water Quality Assurance Trust Fund and shall be used as
20 provided in s. 376.3078. For the purposes of this section,
21 the proceeds of the tax include all funds collected and
22 received by the Department of Revenue, including interest and
23 penalties on delinquent taxes.

24 (4) Any drycleaning facility which includes in the
25 total retail charge to a consumer of drycleaning services any
26 portion of the tax imposed pursuant to this section shall
27 disclose on the receipt for the amount charged for such
28 services the amount of such tax ~~and a statement that the~~
29 ~~imposition of the tax was requested by the Florida Dry~~
30 ~~Cleaners Coalition.~~

31

1 (5) Gross receipts arising from charges for services
2 taxable pursuant to this section to persons who also impose
3 charges to others for those same services are exempt from the
4 tax imposed pursuant to this section.

5 ~~(6)~~⁽⁵⁾(a) The Department of Revenue shall administer,
6 collect, and enforce the tax imposed under this section
7 pursuant to the procedures for administration, collection, and
8 enforcement of the general state sales tax imposed under
9 chapter 212, except as provided in this subsection. Such
10 procedures include, but are not limited to, those regarding
11 the filing of consolidated returns, the granting of sale for
12 resale exemptions, and the interest and penalties on
13 delinquent taxes. The tax shall not be included in the
14 computation of estimated taxes pursuant to s. 212.11, nor
15 shall the dealer's credit for collecting taxes or fees in s.
16 212.12 apply. The provisions of s. 212.07(4) shall not apply
17 to the tax imposed by this section.

18 (b) The Department of Revenue, under the applicable
19 rules of the Public Employees Relations Commission, is
20 authorized to employ persons and incur other expenses for
21 which funds are appropriated by the Legislature. The
22 Department of Revenue is empowered to adopt such rules and
23 shall prescribe and publish such forms as may be necessary to
24 effectuate the purposes of this section.

25 (c) The Department of Revenue is authorized to
26 establish audit procedures and to assess delinquent taxes.

27 (7) The department shall not deny eligibility in the
28 drycleaning solvent cleanup program solely because of the
29 facility's or operator's failure to remit all taxes due
30 pursuant to ss. 376.70 and 376.75, unless the Department of
31 Revenue:

1 (a) Ascertains the amount of the delinquent tax, if
2 any, and communicates this amount in writing to the
3 drycleaning solvent cleanup program applicant and the real
4 property owner;
5 (b) Provides a procedure to the facility owner, the
6 facility operator, and the real property owner for the payment
7 of the taxes;
8 (c) Allows the facility owner, the facility operator,
9 and the real property owner a reasonable time, not less than
10 60 days, to pay the taxes; and the taxes are not paid before
11 such reasonable time, or extension thereof, elapses.
12
13 The owner or operator of a drycleaning facility must
14 demonstrate to the satisfaction of the department that failure
15 to remit all taxes due in a timely manner was not due to
16 willful and overt actions to avoid payment of taxes.
17 ~~(8)(6)~~ The Legislature declares that the failure to
18 promptly implement the provisions of this section would
19 present an immediate threat to the welfare of the state.
20 Therefore, the executive director of the Department of Revenue
21 is authorized to adopt emergency rules pursuant to s.
22 120.54(4) to implement this section. Notwithstanding any other
23 provision of law, such emergency rules shall remain effective
24 for 180 days from the date of adoption. Other rules of the
25 Department of Revenue related to and in furtherance of the
26 orderly implementation of this section shall not be subject to
27 a s. 120.56(2) rule challenge or a s. 120.54(3)(c)2. drawout
28 proceeding, but, once adopted, shall be subject to a s.
29 120.56(3) invalidity challenge. Such rules shall be adopted by
30 the Governor and Cabinet and shall become effective upon
31

1 filing with the Department of State, notwithstanding the
2 provisions of s. 120.54(3)(e)6.

3 Section 8. Subsection (12) of section 376.75, Florida
4 Statutes, is amended to read:

5 376.75 Tax on production or importation of
6 perchloroethylene.--

7 (12) Any drycleaning facility which includes in the
8 total retail charge to a consumer of drycleaning services any
9 portion of the tax imposed pursuant to this section shall
10 disclose on the receipt for the amount charged for such
11 services the amount of such tax ~~and a statement that the~~
12 ~~imposition of the tax was requested by the Florida Dry~~
13 ~~Cleaners Coalition.~~

14 Section 9. Paragraph (a) of subsection (1) of section
15 287.0595, Florida Statutes, is amended to read:

16 287.0595 Pollution response action contracts;
17 department rules.--

18 (1) The Department of Environmental Protection shall
19 establish, through the promulgation of administrative rules as
20 provided in chapter 120:

21 (a) Procedures for determining the qualifications of
22 responsible potential bidders prior to advertisement for and
23 receipt of bids for pollution response action contracts,
24 including procedures for the rejection of unqualified bidders.
25 Response actions are those activities described in s.
26 376.301(35)~~s. 376.301(33)~~.

27 Section 10. Paragraph (f) of subsection (2) of section
28 316.302, Florida Statutes, is amended to read:

29 316.302 Commercial motor vehicles; safety regulations;
30 transporters and shippers of hazardous materials;
31 enforcement.--

