

By the Committee on Environmental Protection and  
Representative Dockery

1                                   A bill to be entitled  
2           An act relating to petroleum contamination site  
3           rehabilitation; amending s. 376.3071, F.S.;  
4           revising authority and procedures relating to  
5           source removal and site cleanup activities  
6           funded from the Inland Protection Trust Fund;  
7           providing an annual funding limitation for  
8           certain source removal activities; providing a  
9           time limit for negotiation of site  
10          rehabilitation and cost-sharing agreements;  
11          authorizing the Department of Environmental  
12          Protection to terminate negotiations and revoke  
13          funding eligibility and liability protections,  
14          if time limits are not met; eliminating funding  
15          ineligibility for persons who knowingly acquire  
16          title to contaminated property; amending s.  
17          376.30711, F.S.; requiring the department to  
18          select five sites for restoration funding under  
19          an innovative technology pilot program;  
20          providing selection criteria; providing for use  
21          of certain innovative products and processes,  
22          based on competitive bid; amending s.  
23          376.30713, F.S.; removing repeal of the  
24          preapproved advanced cleanup program;  
25          rescheduling legislative review; creating s.  
26          376.30714, F.S.; authorizing the department to  
27          negotiate site rehabilitation agreements at  
28          certain sites with new discharges; providing  
29          legislative findings; providing definitions;  
30          providing application procedures; providing for  
31          apportionment of funding responsibilities;

1 specifying excluded new discharges; providing  
2 negotiation procedures and timeframe; providing  
3 liability protections covered by such  
4 agreements; providing retroactive effect of the  
5 section; providing an effective date.  
6

7 Be It Enacted by the Legislature of the State of Florida:  
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9 Section 1. Paragraph (c) of subsection (5) and  
10 paragraphs (c) and (g) of subsection (13) of section 376.3071,  
11 Florida Statutes, are amended to read:

12 376.3071 Inland Protection Trust Fund; creation;  
13 purposes; funding.--

14 (5) SITE SELECTION AND CLEANUP CRITERIA.--

15 (c) The department shall require source removal, if  
16 warranted and cost-effective, at each site eligible for  
17 restoration funding from the Inland Protection Trust Fund.  
18 Funding for free product recovery may be provided in advance  
19 of in the order established by the priority ranking system  
20 pursuant to paragraph (a) for site cleanup activities.  
21 However, a separate prioritization for free product recovery  
22 shall be established consistent with the provisions of  
23 paragraph (a). No more than \$5 million shall be encumbered  
24 from the Inland Protection Trust Fund in any fiscal year for  
25 free product recovery conducted in advance of the priority  
26 order pursuant to paragraph (a) established for site cleanup  
27 activities. Once free product ~~source~~ removal at a site is  
28 complete, the department shall reevaluate the site to  
29 determine the degree of active cleanup needed to continue.  
30 Further, the department shall determine if the reevaluated  
31 site qualifies for monitoring only or if no further action is

1 required to rehabilitate the site. If additional site  
2 rehabilitation is necessary to reach no further action status,  
3 the department is encouraged to utilize natural attenuation  
4 and monitoring where site conditions warrant.

5 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.--To  
6 encourage detection, reporting, and cleanup of contamination  
7 caused by discharges of petroleum or petroleum products, the  
8 department shall, within the guidelines established in this  
9 subsection, implement a cost-sharing cleanup program to  
10 provide rehabilitation funding assistance for all property  
11 contaminated by discharges of petroleum or petroleum products  
12 occurring before January 1, 1995, subject to a copayment  
13 provided for in a preapproved site rehabilitation agreement.  
14 Eligibility shall be subject to an annual appropriation from  
15 the Inland Protection Trust Fund. Additionally, funding for  
16 eligible sites shall be contingent upon annual appropriation  
17 in subsequent years. Such continued state funding shall not  
18 be deemed an entitlement or a vested right under this  
19 subsection. Eligibility in the program shall be  
20 notwithstanding any other provision of law, consent order,  
21 order, judgment, or ordinance to the contrary.

22 (c) Upon notification by the department that  
23 rehabilitation funding assistance is available for the site  
24 pursuant to subsection (5) and s. 376.30711, the owner,  
25 operator, or person otherwise responsible for site  
26 rehabilitation shall provide the department with a limited  
27 contamination assessment report and shall enter into a  
28 preapproved site rehabilitation agreement with the department  
29 and a contractor qualified under s. 376.30711(2)(b). The  
30 agreement shall provide for a 25-percent copayment by the  
31 owner, operator, or person otherwise responsible for

1 conducting site rehabilitation. The owner, operator, or  
2 person otherwise responsible for conducting site  
3 rehabilitation shall adequately demonstrate the ability to  
4 meet the copayment obligation. The limited contamination  
5 assessment report and the copayment costs may be reduced or  
6 eliminated if the owner and all operators responsible for  
7 restoration under s. 376.308 demonstrate that they are  
8 financially unable to comply with the copayment and limited  
9 contamination assessment report requirements. The department  
10 shall take into consideration the owner's and operator's net  
11 worth in making the determination of financial ability. In the  
12 event the department and the owner, operator, or person  
13 otherwise responsible for site rehabilitation are unable to  
14 complete negotiation of the cost-sharing agreement within 120  
15 days after commencing negotiations, the department shall  
16 terminate negotiations and the site shall be deemed ineligible  
17 for state funding under this subsection and all liability  
18 protections provided for in this subsection shall be revoked.

19 (g) The following shall be excluded from participation  
20 in the program:

21 1. Sites at which the department has been denied  
22 reasonable site access to implement the provisions of this  
23 section.

24 2. Sites that were active facilities when owned or  
25 operated by the Federal Government.

26 3. Sites that are identified by the United States  
27 Environmental Protection Agency to be on, or which qualify for  
28 listing on, the National Priorities List under Superfund.  
29 This exception does not apply to those sites for which  
30 eligibility has been requested or granted as of the effective  
31 date of this act under the Early Detection Incentive Program

1 established pursuant to s. 15, chapter 86-159, Laws of  
2 Florida.

3 4. The contamination is covered under the Early  
4 Detection Incentive Program, the Abandoned Tank Restoration  
5 Program or the Petroleum Liability and Restoration Insurance  
6 Program, in which case site rehabilitation funding assistance  
7 shall continue under the respective program.

8 ~~5. Any person who knowingly acquires title to  
9 contaminated property shall not be eligible for restoration  
10 funding pursuant to this subsection. The provisions of this  
11 subsection do not relieve any person who has acquired title  
12 subsequent to July 1, 1992, from the duty to establish by a  
13 preponderance of the evidence that he or she undertook, at the  
14 time of acquisition, all appropriate inquiry into the previous  
15 ownership and use of the property consistent with good  
16 commercial or customary practice in an effort to minimize  
17 liability, as required by s. 376.308(1)(c). The provisions of  
18 this subparagraph do not apply to any person who acquires  
19 title by succession or devise.~~

20 Section 2. Subsection (8) is added to section  
21 376.30711, Florida Statutes, to read:

22 376.30711 Preapproved site rehabilitation, effective  
23 March 29, 1995.--

24 (8) The department shall select five sites eligible  
25 for state restoration funding assistance under this section,  
26 each having a low-priority ranking score pursuant to s.  
27 376.3071(5), for an innovative technology pilot program. Such  
28 sites shall be representative of varying geographic,  
29 geophysical, and petroleum-contaminated conditions. Utilizing  
30 the department's list of mechanical, chemical, and biological  
31 products and processes which have already been deemed

1 acceptable from an environmental, regulatory, and safety  
2 standpoint, the department shall select innovative products  
3 and processes, based upon competitive bid procedures per  
4 subsection (2), to be utilized on pilot project sites.

5 Section 3. Subsection (7) of section 376.30713,  
6 Florida Statutes, is amended to read:

7 376.30713 Preapproved advanced cleanup.--

8 (7) This section shall be subject to legislative  
9 review prior to March 1, 2001.~~This section is repealed~~  
10 ~~effective October 1, 1999, and shall be subject to legislative~~  
11 ~~review prior to that date.~~

12 Section 4. Section 376.30714, Florida Statutes, is  
13 created to read:

14 376.30714 Site rehabilitation agreements.--

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

17 (a) The provisions of ss. 376.3071(5)(a) and 376.30711  
18 have delayed cleanup of low-priority sites determined to be  
19 eligible for state funding under ss. 376.305, 376.3071, and  
20 376.3072.

21 (b) While compliance with the department's rules  
22 pertaining to storage tank systems is expected to  
23 significantly diminish the occurrence and extent of discharges  
24 of petroleum products from petroleum storage systems,  
25 discharges from these systems and discharges at sites with  
26 existing contamination which have been determined to be  
27 eligible for state-funded cleanup may still occur. In some  
28 cases, it may be difficult to distinguish between discharges  
29 that have been determined to be eligible for state funding  
30 from those discharges reported after December 31, 1998, which  
31 are not eligible for state funding.

1       (c) Restoration coverage under s. 376.3072(2)(d) is no  
2 longer provided for discharges of petroleum products from  
3 petroleum storage systems that are reported to the department  
4 after December 31, 1998. This situation may result in  
5 discharges that are not eligible for state-funded cleanup  
6 occurring on sites with existing contamination determined to  
7 be eligible for state-funded cleanup.

8       (d) It is necessary for the discharger, and may be  
9 desirable for the department, to address the cleanup of  
10 discharges of petroleum products reported to the department  
11 after December 31, 1998, including discharges that occur at  
12 sites with existing contamination determined to be eligible  
13 under ss. 376.305, 376.3071, and 376.3072.

14       (e) It is appropriate for persons assuming  
15 responsibility for cleanup of such discharges occurring after  
16 December 31, 1998, at sites with existing contamination  
17 determined to be eligible for state-funded cleanup, to share  
18 the costs associated with managing and conducting cleanup of  
19 those discharges upon application to the department and in  
20 accordance with a priority established for such cleanup in a  
21 negotiated site rehabilitation agreement.

22       (2) For the purposes of this section only, the term:

23       (a) "Applicant" means a facility owner, operator,  
24 discharger, or entity who accepts responsibility for cleanup  
25 of a new discharge on a qualified site and who applies for and  
26 enters into a site rehabilitation agreement with the  
27 department. Application for or execution of the site  
28 rehabilitation agreement shall not constitute an admission of  
29 liability for the new discharge by the applicant.

30       (b) "Existing contamination" means contamination that  
31 has been determined by the department to be eligible for

1 state-funded cleanup under ss. 376.305, 376.3071, or 376.3072  
2 prior to the new discharge.

3 (c) "New discharge" means a discharge of petroleum  
4 products reported after December 31, 1998, occurring at a site  
5 with existing contamination.

6 (d) "Qualified site" means a site with a new discharge  
7 and for which the applicant has entered into a site  
8 rehabilitation agreement with the department.

9 (3) Free product attributable to a new discharge shall  
10 be removed to the extent practicable and in accordance with  
11 department rules adopted pursuant to s. 376.3071(5) at the  
12 expense of the owner, operator, or other responsible party.  
13 Free product attributable to existing contamination shall be  
14 removed in accordance with s. 376.3071(5), or s.  
15 376.30711(1)(b), and department rules adopted pursuant  
16 thereto.

17 (4) Beginning January 1, 1999, the department is  
18 authorized to negotiate and enter into site rehabilitation  
19 agreements with applicants at sites with eligible existing  
20 contamination at which a new discharge occurs. The site  
21 rehabilitation agreement shall include, but not be limited to,  
22 allocation of the funding responsibilities of the department  
23 and the applicant for cleanup of the qualified site,  
24 establishment of a mechanism to guarantee the applicant's  
25 commitment to pay its agreed amount of site rehabilitation as  
26 set forth in the agreement, and establishment of the priority  
27 in which cleanup of the qualified site will occur. Under any  
28 such negotiated site rehabilitation agreement, the applicant  
29 shall be responsible for no more than the cleanup costs that  
30 are attributable to the new discharge. However, the payment of  
31 any applicable deductibles, copayments, or other program



1 eligibility requirements under ss. 376.305, 376.3071, and  
2 376.3072 shall continue to apply to the existing contamination  
3 and must be accounted for in the negotiated site  
4 rehabilitation agreement. The department is further  
5 authorized, pursuant to this section, to preapprove or conduct  
6 additional assessment activities at the site.

7 (5)(a) Applications for such site rehabilitation  
8 agreements may be submitted to the department not later than  
9 120 days after discovery of the new discharge, on forms and  
10 instructions provided by the department, and shall include,  
11 but not be limited to:

12 1. A limited contamination assessment report, which  
13 shall be sufficient to demonstrate the extent of the new  
14 discharge and which may include any other evidence relevant to  
15 establish the extent or volume of the new discharge, or the  
16 impact of the new discharge relative to the existing  
17 contamination, in order to allocate the appropriate funding  
18 responsibilities of the applicant and the department. The  
19 limited contamination assessment report shall be used as a  
20 basis for establishing the respective site rehabilitation  
21 funding responsibilities of the applicant and the department  
22 for the new discharge and the existing contamination and for  
23 establishing the priority in which cleanup of the new  
24 discharge and the existing contamination will occur, based on  
25 the provisions of s. 376.3071(5)(a) and taking into  
26 consideration the cost-effectiveness associated with the  
27 timing of site rehabilitation activities.

28 2. Certification by the applicant that the applicant  
29 has the prerequisite authority to enter into the site  
30 rehabilitation agreement.

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1       (b) Any costs incurred by the applicant to comply with  
2 this subsection are not refundable from the Inland Protection  
3 Trust Fund.

4       (c) Only one application may be submitted for any new  
5 discharge under this section.

6       (d) The application forms and instructions, and the  
7 terms and conditions of the site rehabilitation agreement,  
8 except as set forth in subsection (6), shall not be subject to  
9 the provisions of chapter 120.

10       (6) In the event the department and the applicant are  
11 unable to agree on the apportionment of the funding  
12 responsibilities and on the establishment of priority of  
13 cleanup for a site otherwise qualified under this section, the  
14 provisions of ss. 120.569 and 120.57 shall apply. The  
15 administrative law judge shall, in making any determinations  
16 or recommendations about the apportionment of the funding  
17 responsibilities of the department and the applicant for the  
18 new discharge and the existing contamination, consider any  
19 admissible evidence relating to apportionment of the  
20 discharges.

21       (7) The following shall be excluded from participation  
22 under this section:

23       (a) New discharges from storage systems owned or  
24 operated by the Federal Government when the new discharge  
25 occurred.

26       (b) New discharges at facilities which failed to  
27 correct a violation cited at a previous compliance inspection  
28 and at which the failure to correct the violation contributed  
29 to or caused the new discharge.

30       (c) New discharges intentionally caused by the owner,  
31 operator, responsible party, or applicant.

1       (d) Sites at which the department has been denied site  
2 access.

3       (e) New discharges at sites that are identified by the  
4 United States Environmental Protection Agency to be on, or  
5 which qualify for listing on, the National Priorities List  
6 under Superfund. This exception does not apply to those sites  
7 for which eligibility has been requested or granted as of the  
8 effective date of this act under the Early Detection Incentive  
9 Program.

10       (f) New discharges at sites where the person or entity  
11 required to report the new discharge upon its discovery as  
12 required by department rule, or where the person or entity  
13 required to initiate free product recovery upon discovery as  
14 required by department rule, adopted pursuant to ss. 376.303  
15 and 376.3071(5), failed to do so.

16       (8) If the department, at its discretion, determines  
17 that it is not able to complete negotiation of the agreement  
18 within 90 days after commencing negotiations, except as set  
19 forth in subsection (6), the department shall terminate  
20 negotiations with the applicant and the site shall receive no  
21 further consideration under this section. However, if the  
22 parties are negotiating in good faith and require additional  
23 time in which to continue negotiations, then the parties may  
24 mutually agree to continue negotiations.

25       (9) Site rehabilitation conducted at qualified sites  
26 shall be conducted under the provisions of ss. 376.3071(5)(b)  
27 and 376.30711. If the terms of the agreement are not fulfilled  
28 by the applicant, the applicant forfeits any right to  
29 continued funding for any site rehabilitation work under the  
30 agreement and shall be subject to enforcement action by the  
31

1 department or local government to compel cleanup of the new  
2 discharge.

3 (10) New discharges otherwise meeting the criteria of  
4 this section, or any site rehabilitation agreement made under  
5 this section, shall not constitute an independent entitlement  
6 to continued restoration funding or to cleanup of the existing  
7 contamination in advance of its previous priority order.

8 (11) Upon execution of the site rehabilitation  
9 agreement, retroactive to the date of discovery of the new  
10 discharge, the provisions of s. 376.308(5) shall extend to  
11 contamination covered by a site rehabilitation agreement as  
12 long as the applicant remains in compliance with the terms and  
13 conditions of the agreement. However, if state funding of any  
14 agreement entered into under this section is discontinued, the  
15 provisions of this subsection shall no longer apply to the new  
16 discharge. For purposes of chapter 95, a cause of action to  
17 compel cleanup of the new discharge or to compel payment of  
18 costs of the new discharge shall not accrue during the time  
19 that the site rehabilitation agreement is in effect.

20 (12) Nothing in this section shall be construed to  
21 preclude the department from pursuing penalties in accordance  
22 with ss. 376.303(1)(k) and 376.311 for violations of any law  
23 or any rule, order, permit, registration, or certification  
24 adopted or issued by the department pursuant to its lawful  
25 authority.

26 (13) The provisions of this section shall be  
27 retroactive to January 1, 1999, except as provided by  
28 subsection (11).

29 Section 5. Subsection (7) of section 376.30713,  
30 Florida Statutes, is repealed.

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