

By the Committee on Natural Resources and Senator Diaz-Balart

312-2001-99

1 A bill to be entitled
2 An act relating to underground storage tank
3 systems and the petroleum contamination cleanup
4 program; amending s. 376.3071, F.S.; providing
5 for funding of source-removal activities;
6 providing for the termination of negotiations
7 after a specified time; deleting provisions
8 relating to an exclusion from participation in
9 the petroleum contamination participation
10 program for persons who knowingly acquire title
11 to contaminated property; amending s.
12 376.30711, F.S.; providing for an innovative
13 technology pilot program consisting of five
14 sites eligible for state restoration funding
15 which have low priority ranking scores;
16 amending s. 376.30713, F.S.; providing for
17 future legislative review; creating s.
18 376.30714, F.S.; providing authority for the
19 department and owners of existing contaminated
20 property eligible for state-funded site cleanup
21 to enter into a cost-sharing agreement for site
22 rehabilitation when a new discharge occurs;
23 providing for retroactive application;
24 providing an effective date.

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

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28 Section 1. Paragraph (c) of subsection (5), and
29 paragraphs (c) and (g) of subsection (13) of section 376.3071,
30 Florida Statutes, are amended to read:

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1 376.3071 Inland Protection Trust Fund; creation;
2 purposes; funding.--

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

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

7 Funding for free product recovery may be provided in advance
8 of ~~in~~ the order established by the priority ranking system
9 pursuant to paragraph (a) for site cleanup activities.

10 However, a separate prioritization for free product recovery
11 must be established consistent with paragraph (a). No more
12 than \$5 million may be encumbered from the Inland Protection

13 Trust Fund in any fiscal year for free product recovery

14 conducted in advance of the priority order established

15 pursuant to paragraph (a) for site cleanup activities.Once

16 free product ~~source~~ removal at a site is complete, the

17 department shall reevaluate the site to determine the degree

18 of active cleanup needed to continue. Further, the department

19 shall determine if the reevaluated site qualifies for

20 monitoring only or if no further action is required to

21 rehabilitate the site. If additional site rehabilitation is

22 necessary to reach no further action status, the department is

23 encouraged to utilize natural attenuation and monitoring where

24 site conditions warrant.

25 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.--To

26 encourage detection, reporting, and cleanup of contamination

27 caused by discharges of petroleum or petroleum products, the

28 department shall, within the guidelines established in this

29 subsection, implement a cost-sharing cleanup program to

30 provide rehabilitation funding assistance for all property

31 contaminated by discharges of petroleum or petroleum products

1 occurring before January 1, 1995, subject to a copayment
2 provided for in a preapproved site rehabilitation agreement.
3 Eligibility shall be subject to an annual appropriation from
4 the Inland Protection Trust Fund. Additionally, funding for
5 eligible sites shall be contingent upon annual appropriation
6 in subsequent years. Such continued state funding shall not
7 be deemed an entitlement or a vested right under this
8 subsection. Eligibility in the program shall be
9 notwithstanding any other provision of law, consent order,
10 order, judgment, or ordinance to the contrary.

11 (c) Upon notification by the department that
12 rehabilitation funding assistance is available for the site
13 pursuant to subsection (5) and s. 376.30711, the owner,
14 operator, or person otherwise responsible for site
15 rehabilitation shall provide the department with a limited
16 contamination assessment report and shall enter into a
17 preapproved site rehabilitation agreement with the department
18 and a contractor qualified under s. 376.30711(2)(b). The
19 agreement shall provide for a 25-percent copayment by the
20 owner, operator, or person otherwise responsible for
21 conducting site rehabilitation. The owner, operator, or
22 person otherwise responsible for conducting site
23 rehabilitation shall adequately demonstrate the ability to
24 meet the copayment obligation. The limited contamination
25 assessment report and the copayment costs may be reduced or
26 eliminated if the owner and all operators responsible for
27 restoration under s. 376.308 demonstrate that they are
28 financially unable to comply with the copayment and limited
29 contamination assessment report requirements. The department
30 shall take into consideration the owner's and operator's net
31 worth in making the determination of financial ability. If the

1 department and the owner, operator, or person otherwise
2 responsible for site rehabilitation are unable to complete
3 negotiations of the cost-sharing agreement within 120 days
4 after commencing negotiations, the department shall terminate
5 negotiations and the site shall be deemed ineligible for state
6 funding under this subsection; and all liability protections
7 provided under this subsection are revoked.

8 (g) The following shall be excluded from participation
9 in the program:

10 1. Sites at which the department has been denied
11 reasonable site access to implement the provisions of this
12 section.

13 2. Sites that were active facilities when owned or
14 operated by the Federal Government.

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

23 4. The contamination is covered under the Early
24 Detection Incentive Program, the Abandoned Tank Restoration
25 Program or the Petroleum Liability and Restoration Insurance
26 Program, in which case site rehabilitation funding assistance
27 shall continue under the respective program.

28 ~~5. Any person who knowingly acquires title to~~
29 ~~contaminated property shall not be eligible for restoration~~
30 ~~funding pursuant to this subsection. The provisions of this~~
31 ~~subsection do not relieve any person who has acquired title~~

1 ~~subsequent to July 1, 1992, from the duty to establish by a~~
2 ~~preponderance of the evidence that he or she undertook, at the~~
3 ~~time of acquisition, all appropriate inquiry into the previous~~
4 ~~ownership and use of the property consistent with good~~
5 ~~commercial or customary practice in an effort to minimize~~
6 ~~liability, as required by s. 376.308(1)(c). The provisions of~~
7 ~~this subparagraph do not apply to any person who acquires~~
8 ~~title by succession or devise.~~

9 Section 2. Subsection (8) is added to section
10 376.30711, Florida Statutes, to read:

11 376.30711 Preapproved site rehabilitation, effective
12 March 29, 1995.--

13 (8) The department shall select five sites eligible
14 for state restoration funding assistance under this section,
15 each having a low priority ranking score pursuant to s.
16 376.3071(5), for an innovative technology pilot program. Such
17 sites shall be representative of varying geographic,
18 geophysical, and petroleum-contaminated conditions. Utilizing
19 the department's list of mechanical, chemical, and biological
20 products and processes that have already been deemed
21 acceptable from an environmental, regulatory, and safety
22 standpoint, the department shall select innovative products
23 and processes, based upon competitive-bid procedures
24 stipulated in subsection (2), to be utilized on pilot project
25 sites.

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

28 376.30713 Preapproved advanced cleanup.--

29 ~~(7) This section is repealed effective October 1,~~
30 ~~1999, and shall be subject to legislative review prior to~~
31 March 1, 2001 ~~that date.~~

1 Section 4. Section 376.30714, Florida Statutes, is
2 created to read:

3 376.30714 Site rehabilitation agreements.--

4 (1) In addition to the legislative findings provided
5 in s. 367.3071, the Legislature finds and declares that:

6 (a) The provisions of s. 376.3071(5)(a) and s.
7 376.30711 have delayed cleanup of low-priority sites
8 determined to be eligible for state funding under ss. 376.305,
9 376.3071, and 376.3072.

10 (b) While compliance with the department's rules
11 pertaining to storage tank systems is expected to
12 significantly diminish the occurrence and extent of discharges
13 of petroleum products from petroleum storage systems,
14 discharges from these systems and discharges at sites with
15 existing contamination which may have been determined to be
16 eligible for state-funded cleanup may still occur. In some
17 cases, it may be difficult to distinguish between discharges
18 that have been determined to be eligible for state funding and
19 those discharges reported after December 31, 1998, which are
20 ineligible for state funding.

21 (c) Restoration coverage under s. 376.3072(2)(d) is no
22 longer provided for discharges of petroleum products from
23 petroleum storage systems which are reported to the department
24 after December 31, 1998. This situation may result in
25 discharges that are not eligible for state-funded cleanup
26 occurring on sites with existing contamination determined to
27 be eligible for state-funded cleanup.

28 (d) It is necessary for the discharger, and may be
29 desirable for the department, to address the cleanup of
30 discharges of petroleum products reported to the department
31 after December 31, 1998, including discharges that occur at

1 sites with existing contamination determined to be eligible
2 under ss. 376.305, 376.3071, and 376.3072.

3 (e) It is appropriate for persons assuming
4 responsibility for cleanup of such discharges occurring after
5 December 31, 1998, at sites with existing contamination
6 determined to be eligible for state-funded cleanup to share
7 the costs associated with managing and conducting cleanup of
8 those discharges, upon application to the department and in
9 accordance with a priority established for such cleanup in a
10 negotiated site-rehabilitation agreement.

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

12 (a) "Applicant" means a facility owner, operator,
13 discharger, or entity who accepts responsibility for cleanup
14 of a new discharge on a qualified site and who applies for and
15 enters into a site-rehabilitation agreement with the
16 department. Application for or execution of the
17 site-rehabilitation agreement does not constitute an admission
18 of liability for the new discharge by the applicant.

19 (b) "Existing contamination" means contamination that
20 has been determined by the department to be eligible for
21 state-funded cleanup under s. 376.305, s. 376.3071, or s.
22 376.3072 before the new discharge.

23 (c) "New discharge" means a discharge of petroleum
24 products reported after December 31, 1998, occurring at a site
25 having existing contamination.

26 (d) "Qualified site" means a site at which there is
27 new discharge and for which the applicant has entered into a
28 site-rehabilitation agreement with the department.

29 (3) Free product attributable to a new discharge must
30 be removed to the extent practicable and in accordance with
31 department rules adopted pursuant to s. 376.3071(5) at the

1 expense of the owner, operator, or other responsible party.
2 Free product attributable to existing contamination must be
3 removed in accordance with s. 376.3071(5) or s.
4 376.30711(1)(b) and with department rules.

5 (4) Beginning January 1, 1999, the department may
6 negotiate and enter into site-rehabilitation agreements with
7 applicants at sites with eligible existing contamination at
8 which a new discharge occurs. The site-rehabilitation
9 agreement must include, but need not be limited to, allocation
10 of the funding responsibilities of the department and the
11 applicant for cleanup of the qualified site, establishment of
12 a mechanism to guarantee the applicant's commitment to pay its
13 agreed-upon amount of site rehabilitation as set forth in the
14 agreement, and establishment of the priority in which cleanup
15 of the qualified site will occur. Under any negotiated
16 site-rehabilitation agreement, the applicant will be
17 responsible for no more than the cleanup costs at the
18 qualified site which are attributable to the new discharge.
19 However, the payment of any applicable deductibles,
20 copayments, or other program eligibility requirements under
21 ss. 376.305, 376.3071, and 376.3072 continue to apply to the
22 existing contamination and must be accounted for in the
23 negotiated site-rehabilitation agreement. The department may
24 preapprove or conduct additional assessment activities at the
25 site.

26 (5)(a) Applications for site-rehabilitation agreements
27 may be submitted to the department not later than 120 days
28 after discovery of the new discharge, on forms and in
29 accordance with instructions provided by the department, and
30 must include, but need not be limited to:

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1 1. A limited contamination-assessment report that is
2 sufficient to demonstrate the extent of the new discharge and
3 that may include any other evidence relevant to establish the
4 extent or volume of the new discharge, or the impact of the
5 new discharge relative to the existing contamination, in order
6 to allocate the appropriate funding responsibilities of the
7 applicant and the department. The limited
8 contamination-assessment report shall be used as a basis for
9 establishing the respective site-rehabilitation funding
10 responsibilities of the applicant and the department for the
11 new discharge and the existing contamination and for
12 establishing the priority in which cleanup of the new
13 discharge and the existing contamination will occur, based on
14 s. 376.3071(5)(a) and taking into consideration the
15 cost-effectiveness associated with the timing of
16 site-rehabilitation activities.

17 2. Certification by the applicant that the applicant
18 has the prerequisite authority to enter into the
19 site-rehabilitation agreement.

20 (b) Any costs incurred by the applicant in complying
21 with this subsection are not refundable from the Inland
22 Protection Trust Fund.

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

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

29 (6) If the department and the applicant are unable to
30 agree on the apportionment of the funding responsibilities and
31 on the establishment of priority of clean up for a site

1 otherwise qualified under this section, the provisions of ss.
2 120.569 and 120.57 apply. The administrative law judge shall,
3 in making any determinations or recommendations about the
4 apportionment of the funding responsibilities of the
5 department and the applicant for the new discharge and the
6 existing contamination, consider any admissible evidence
7 relating to apportionment of the discharges.

8 (7) The following shall be excluded from participation
9 under this section:

10 (a) New discharges from storage systems owned or
11 operated by the Federal Government when the new discharge
12 occurred.

13 (b) New discharges at facilities that failed to
14 correct a violation cited in a previous compliance inspection
15 and at which the failure to correct the violation contributed
16 to or caused the new discharge.

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

19 (d) Sites to which the department has been denied
20 access.

21 (e) New discharges at sites that are identified by the
22 United States Environmental Protection Agency to be on or that
23 qualify for listing on the National Priorities List under
24 Superfund. This exception does not apply to those sites for
25 which eligibility has been requested or granted as of the
26 effective date of this section under the Early Detection
27 Incentive Program.

28 (f) New discharges at sites where the person or entity
29 required to report the new discharge upon its discovery as
30 required by department rule, or where the person or entity
31 required to initiate free product recovery upon discovery, as

1 required by department rule adopted pursuant to ss. 376.303
2 and 376.3071(5), failed to do so.

3 (8) If the department at its discretion, determines
4 that it is not able to complete negotiations of the agreement
5 within 90 days after commencing negotiations, except as set
6 forth in subsection (6), the department shall terminate
7 negotiations with the applicant and the site shall receive no
8 further consideration under this section. However, if the
9 parties are negotiating in good faith and need additional time
10 in which to continue negotiations, the parties may mutually
11 agree to continue negotiations.

12 (9) Site rehabilitation conducted at qualified sites
13 must be conducted under ss. 376.3071(5)(b) and 376.30711. If
14 the terms of the agreement are not fulfilled by the applicant,
15 the applicant forfeits any right to continued funding for any
16 site rehabilitation work under the agreement and is subject to
17 enforcement action by the department or local government to
18 compel cleanup of the new discharge.

19 (10) New discharges otherwise meeting the criteria of
20 this section or any site-rehabilitation agreement made under
21 this section do not constitute an independent entitlement to
22 continued restoration funding or to cleanup of the existing
23 contamination in advance of its previous priority order.

24 (11) Upon execution of the site-rehabilitation
25 agreement, retroactive to the date of discovery of the new
26 discharge, the provisions of s. 376.308(5) shall extend to
27 contamination covered by a site-rehabilitation agreement as
28 long as the applicant remains in compliance with the terms and
29 conditions of the agreement. However, if state funding of any
30 agreement entered into under this section is discontinued, the
31 provisions of this subsection no longer apply to the new

1 discharge. For purposes of chapter 95, a cause of action to
2 compel cleanup of the new discharge or to compel payment of
3 costs of the new discharge does not accrue during the time
4 that the site-rehabilitation agreement is in effect.

5 (12) This section does not preclude the department
6 from pursuing penalties in accordance with ss. 376.303(1)(k)
7 and 376.311 for violations of any law or any rule, order,
8 permit, registration, or certification adopted or issued by
9 the department under its lawful authority.

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

13 Section 5. This act shall take effect upon becoming a
14 law.

15
16 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 COMMITTEE SUBSTITUTE FOR
18 SB 2536

19 The committee substitute deletes the amendment to s. 376.301,
20 F.S., which redefined the term "facility." Deletes the
21 amendment to s. 376.305, F.S., which would have provided a
22 deadline for submittal of an application under the Abandoned
23 Tank Restoration Program. The provisions in current law
24 relating to nonreimbursable voluntary cleanups are left
25 unamended. Deletes the provision in the original bill that
26 would have allowed the Department of Environmental Protection
27 to recover overpayments as a result of an Auditor General
28 audit. Provides for an innovative technology pilot program.
29 Provides for retroactive application of the cost-sharing
30 provisions relating to new discharges occurring on a site
31 eligible for state funding assistance.