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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to rehabilitation projects for
petroleum contamination sites; amending s. 287.0595,
F.S.; clarifying competitive solicitation
requirements; amending s. 376.30711, F.S.; providing
legislative findings; requiring contractors to provide
certain information; allowing the Department of
Environmental Protection to recover sums paid in the
event of overpayment; requiring the department to
adopt rules; providing specific criteria to be adopted
by rule; amending s. 376.3071, F.S.; conforming
language; allowing the department to impose a lien on
real property which the contaminated site is located;
amending s. 376.30713, F.S.; conforming language;
amending s. 373.326, F.S.; exempting certain
monitoring wells from requiring a permit or fee;
providing an effective date.

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

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

287.0595 Pollution response action contracts; department
rules.—

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



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28 ~~287.055.~~

29 Section 2. Section 376.30711, Florida Statutes, is amended
30 to read:

31 376.30711 Petroleum ~~Preapproved~~ site rehabilitation,
32 ~~effective March 29, 1995.~~

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

56 (b) Site rehabilitation work on sites eligible for state-



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57 funded cleanup from the Inland Protection Trust Fund and
58 pursuant to ss. 376.305(6), 376.3071, 376.3072, and 376.3073, is
59 ~~shall only be~~ eligible for site rehabilitation funding under
60 this section. After March 29, 1995, ~~only persons who have~~
61 ~~received prior written approval from the department of the scope~~
62 ~~of work and costs may continue site rehabilitation work.~~ in the
63 event of a new release, the facility operator is ~~shall be~~
64 required to abate the source of the discharge. If free product
65 is present, the operator must ~~shall~~ notify the department, which
66 may direct the removal of the free product ~~as a preapproved~~
67 ~~expense~~ pursuant to this section. The department must ~~shall~~
68 grant approval to continue site rehabilitation based on this
69 section and s. 376.3071(5).

70 (c) The Legislature declares that in order to protect
71 public resources, to maximize funding available for site
72 rehabilitation, and to prevent owners and operators of petroleum
73 storage facilities or tanks and their insurers, indemnitors, and
74 parties to other contractual arrangements providing funds for
75 site rehabilitation from receiving a windfall at the expense of
76 taxpayers, all such private funds available to perform site
77 rehabilitation for a discharge or condition determined to be
78 eligible for participation in any petroleum program providing
79 state funding for site rehabilitation after the effective date
80 of this act shall be exhausted prior to the expenditure of
81 public funds for site rehabilitation.

82 (d) An owner or operator of a facility or storage tank or
83 other person responsible for site rehabilitation may not receive
84 both funding from the Inland Protection Trust Fund and
85 remuneration or compensation for the same site rehabilitation



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86 task from another funding source. Therefore, prior to the
87 department authorizing the expenditure of any state funds for
88 site rehabilitation after July 1, 2013, the owner and, if
89 different, the operator, of every facility or petroleum storage
90 tank system that is determined to be eligible for site
91 rehabilitation funding under this section after that date shall
92 certify to the department that:

93 1. The certifying party has not received compensation from
94 any other funding source as remuneration or reimbursement for
95 site rehabilitation work for the eligible discharge or condition
96 other than from a state funding program;

97 2. There is no insurance, indemnity agreement, or other
98 arrangement, other than a state funding program under this
99 chapter, which provides coverage for any site rehabilitation
100 task for the eligible discharge or condition; and

101 3. The certifying party has made no claims against any
102 insurance policy, indemnity agreement, or other arrangement for
103 the cost of site rehabilitation for the eligible discharge or
104 condition, nor received any remuneration for the cost of site
105 rehabilitation for the eligible discharge or condition.

106 (e) If the owner and operator cannot certify as required by
107 subparagraphs (d)1.-3., the owner and operator shall disclose to
108 the department the date, amount, and source of all payments
109 received as remuneration or reimbursement for site
110 rehabilitation work, including a description of the tasks for
111 which such remuneration or reimbursement was received, and shall
112 provide copies of all insurance policies, indemnity agreements,
113 or other arrangements that provide coverage for all or a portion
114 of the cost of site rehabilitation, all claims made by the owner



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115 or operator against any insurance policy, indemnity agreement,
116 or other arrangement for the cost of site rehabilitation, and
117 all settlements, judgments, and other documents detailing the
118 basis for the claim and its disposition.

119 (f) If the owner or operator of a petroleum storage tank
120 system or facility that is eligible for site rehabilitation or
121 other person responsible for site rehabilitation becomes aware
122 of an insurance policy, indemnity agreement, or other
123 arrangement, makes a claim against any such instrument, or
124 receives any remuneration or reimbursement for site
125 rehabilitation for an eligible discharge, the owner or operator
126 shall immediately notify the department and provide the
127 information required under paragraph (e), and shall immediately
128 reimburse the department in an amount equal to the lesser of the
129 amount of the payment received or the amount expended by the
130 department for site rehabilitation. If the payment received by
131 the owner or operator is the result of a settlement of a claim
132 or multiple claims against an insurer, indemnitor, or other
133 person, the department or a court may determine how the sums
134 received should be allocated between site rehabilitation tasks
135 for which public funds have been expended and other tasks for
136 which the claim was made.

137 (g) Upon determining that a discharge or condition is
138 eligible for state funding, or upon expending funds for
139 rehabilitation of any site, the department has a right of
140 subrogation to any insurance policies, indemnity agreements, or
141 other arrangements providing funds for site rehabilitation in
142 existence at the time of the release to the extent of any rights
143 the owner or operator of a facility or petroleum storage tank



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144 may have had under that policy, contract, or arrangement and has
145 a right of subrogation against any third party who caused or
146 contributed to the release.

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

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

155 (2) (a) Competitive bidding pursuant to this section is
156 ~~shall not be~~ subject to the requirements of s. 287.055. The
157 department must ~~is authorized to~~ use competitive procurement bid
158 procedures or negotiated contracts for preapproving all costs
159 and rehabilitation procedures for site-specific rehabilitation
160 projects, pursuant to rules adopted under this section, s.
161 120.54, and s. 287.0595 through performance-based contracts.
162 Site rehabilitation shall be conducted according to the priority
163 ranking order established pursuant to s. 376.3071(5).

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

166 1. Generally applicable provisions from chapter 287 that do
167 not conflict with this section or other applicable provisions in
168 chapter 376.

169 2. Procedures whereby the department will develop a pool of
170 qualified contractors through an open and competitive
171 procurement process to provide site assessment and
172 rehabilitation services.



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173 3. Coordination with the site or real property owner, at
174 their option, to develop a site-specific scope of work.

175 4. The ability for the site or real property owner to
176 remove from the pool of qualified contractors, prior to the
177 procurement process, any contractor based on non-performance or
178 other demonstrable factors, subject to approval by the
179 department.

180 5. In order to ensure that the competitive procurement
181 process is effective and results in quality bids, procedures to
182 ensure that the pool of qualified contractors are provided with
183 the necessary site assessment report and other appropriate
184 information, have the ability to visit the work site and to
185 conduct other appropriate due diligence, and have questions
186 answered by the department or site owner as needed.

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

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

192 8. Procedures to ensure that site rehabilitation is
193 completed in an efficient and cost effective manner, in
194 accordance with criteria established in chapter 376 and other
195 applicable statutes and rules.

196 9. Reporting deadlines for deliverables and departmental
197 review and approval deadlines for deliverables.

198 10. Reporting on the progress of site rehabilitation
199 completion through a publicly accessible website.

200 11. In addition to the requirements in paragraph (c),
201 procedures for the ongoing evaluation of contractor performance



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202 based on criteria commonly used by federal and state agencies as
203 well as other institutions and businesses engaged in
204 environmental cleanup activities.

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

207 ~~1. The contractor meets all certification and license~~
208 ~~requirements imposed by law.~~

209 ~~2. The contractor has obtained approval of its~~
210 ~~Comprehensive Quality Assurance Plan prepared under department~~
211 ~~rules.~~

212 (c) The contractor shall certify to the department that
213 such contractor:

214 1. Complies with applicable OSHA regulations.

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

217 3. Maintains comprehensive general liability and
218 comprehensive automobile liability insurance with minimum limits
219 of at least \$1 million per occurrence and \$1 million annual
220 aggregate, as shall protect it from claims for damage for
221 personal injury, including accidental death, as well as claims
222 for property damage that ~~which~~ may arise from performance of
223 work under the program, designating the state as an additional
224 insured party.

225 4. Maintains professional liability insurance of at least
226 \$1 million per occurrence and \$1 million annual aggregate.

227 5. Has completed and submitted a sworn statement under s.
228 287.133(3)(a), on public entity crimes.

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



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231 7. Meets all certification and license requirements imposed
232 by law.

233 (3) Any person responsible for site rehabilitation who
234 received prior approval to conduct site rehabilitation and to
235 thereafter submit an application for reimbursement, pursuant to
236 s. 2(3), chapter 95-2, Laws of Florida, may request approval to
237 conduct site rehabilitation pursuant to this section regardless
238 of the site score.

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

245 (5) (a) Any contractor ~~person~~ who performs services under
246 the approved contract ~~the conditions of a preapproved site~~
247 ~~rehabilitation agreement~~, pursuant to the provisions of this
248 section and s. 376.3071(5), may file invoices with the
249 department for payment ~~within the schedule and~~ for the services
250 described in the approved contract ~~preapproved site~~
251 ~~rehabilitation agreement~~. The ~~Such~~ invoices for payment must be
252 submitted to the department on forms provided by the department,
253 together with evidence documenting that ~~preapproved~~ activities
254 were conducted or completed in accordance with the approved
255 contract ~~preapproved authorization~~. Provided there are
256 sufficient unencumbered funds available in the Inland Protection
257 Trust Fund which have been appropriated for expenditure by the
258 Legislature and provided all of the terms of the approved
259 contract ~~preapproved site rehabilitation agreement~~ have been



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260 met, invoices for payment must ~~shall~~ be paid consistent with the
261 provisions of s. 215.422. After a contractor ~~an applicant~~ has
262 submitted its invoices to the department and before payment is
263 made, the contractor may assign its right to payment to any
264 other person, without recourse of the assignee or assignor to
265 the state, and in such cases the assignee must ~~shall~~ be paid
266 consistent with the provisions of s. 215.422. Prior notice of
267 the assignment and assignment information must ~~shall~~ be made to
268 the department, and must ~~which notice shall~~ be signed and
269 notarized by the assigning party. The department does ~~shall~~ not
270 have the authority to regulate private financial transactions by
271 which an applicant seeks to account for working capital or the
272 time value of money, unless charges associated with such
273 transactions are added as a separate charge in an invoice.

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

279 (c) ~~Payments shall be made by~~ The department must make
280 payments based on the terms of an approved ~~a~~ contract for site
281 rehabilitation work. The department must ~~may, based on its~~
282 ~~experience and the past performance and concerns regarding a~~
283 ~~contractor,~~ retain between 5 and 25 ~~up to 25~~ percent of the
284 contracted amount or use performance bonds to assure performance
285 and final acceptance of the project by the department. The
286 amount of retainage or performance bond or bonds, as well as the
287 terms and conditions, must ~~shall~~ be a part of the approved site-
288 specific performance-based contract.



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289 (d) Contractors or persons to which the contractor has
290 assigned its right to payment pursuant to paragraph (a) shall
291 make prompt payment to subcontractors and suppliers for their
292 costs associated with an approved contract ~~a preapproved site~~
293 ~~rehabilitation agreement~~ pursuant to s. 287.0585(1).

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

297 (f) The department shall provide certification within 30
298 days after notification from a contractor that the terms of the
299 contract for site rehabilitation work have been completed.
300 Failure of the department to do so does ~~shall~~ not constitute a
301 default certification of completion. The department also may
302 withhold payment if the validity or accuracy of the contractor's
303 invoices or supporting documents is in question.

304 (g) ~~Nothing in~~ This section does not ~~shall be construed to~~
305 authorize payment to any person for costs of contaminated soil
306 treatment or disposal that does not meet the applicable rules of
307 this state for such treatment or disposal, including all general
308 permitting, state air emission standards, monitoring, sampling,
309 and reporting rules more specifically described in department
310 rules.

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

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



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318 (6) It is unlawful for a site owner or operator, or his or
319 her designee, to receive any remuneration, in cash or in kind,
320 directly or indirectly, from a rehabilitation contractor
321 performing site cleanup activities pursuant to this section. It
322 is also unlawful for any contractor or subcontractor to receive
323 Inland Petroleum Trust Funds in any capacity when that
324 contractor or subcontractor:

325 (a) Owns or holds any real property interest in any
326 percentage of property upon which such funds are being expended
327 or has any beneficial interest in operations conducted on any
328 such property;

329 (b) Is a relative of a person who owns or has a voting
330 interest in any decisions affecting any percentage of property
331 upon which such funds are being expended; or

332 (c) Serves as a partner, director, officer, trustee, or
333 managing employee of a corporation that owns or has a voting
334 interest in any decisions affecting any percentage of property
335 upon which such funds are being expended. All contractors and
336 subcontractors performing work under this section shall sign an
337 affidavit affirming that they comply with this provision.

338
339 A contractor, subcontractor, real property owner, or responsible
340 party, or employee or agent of any person or entity listed
341 herein, who offers, agrees, or contracts to solicit or secure a
342 contract for petroleum contaminated site assessment or
343 rehabilitation activities by a violation of any state or federal
344 law involving fraud, bribery, collusion, conspiracy, or material
345 misrepresentation with respect to such contracts, upon
346 conviction in a competent court of this state, commits a third



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347 degree felony, punishable as provided in s. 775.082 or s.
348 775.083.

349 (7) On an annual basis, the department shall select one to
350 five sites eligible for state restoration funding assistance
351 under this section, each having a low-priority ranking score
352 pursuant to s. 376.3071(5), for an innovative technology pilot
353 program. Such sites shall be representative of varying
354 geographic, geophysical, and petroleum-contaminated conditions.
355 Utilizing the department's list of mechanical, chemical, and
356 biological products and processes which have already been deemed
357 acceptable from an environmental, regulatory, and safety
358 standpoint, the department shall select innovative products and
359 processes, based upon competitive bid procedures per subsection
360 (2), to be utilized on pilot project sites.

361 Section 3. Section 376.3071, Florida Statutes, is amended
362 to read:

363 376.3071 Inland Protection Trust Fund; creation; purposes;
364 funding.—

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

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

370 (b) That spills, leaks, and other discharges from such
371 storage systems have occurred, are occurring, and will continue
372 to occur and that such discharges pose a significant threat to
373 the quality of the groundwaters and inland surface waters of
374 this state.

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



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376 water has occurred, remedial measures have often been delayed
377 for long periods while determinations as to liability and the
378 extent of liability are made and that such delays result in the
379 continuation and intensification of the threat to the public
380 health, safety, and welfare; in greater damage to the
381 environment; and in significantly higher costs to contain and
382 remove the contamination.

383 (d) That adequate financial resources must be readily
384 available to provide for the expeditious supply of safe and
385 reliable alternative sources of potable water to affected
386 persons and to provide a means for investigation and cleanup of
387 contamination sites without delay.

388 (e) That it is necessary to fulfill the intent and purposes
389 of ss. 376.30-376.317, and further it is hereby determined to be
390 in the best interest of, and necessary for the protection of the
391 public health, safety, and general welfare of the residents of
392 this state, and therefore a paramount public purpose, to provide
393 for the creation of a nonprofit public benefit corporation as an
394 instrumentality of the state to assist in financing the
395 functions provided in ss. 376.30-376.317 and to authorize the
396 department to enter into one or more service contracts with such
397 corporation for the provision of financing services related to
398 such functions and to make payments thereunder from the amount
399 on deposit in the Inland Protection Trust Fund, subject to
400 annual appropriation by the Legislature.

401 (f) That to achieve the purposes established in paragraph
402 (e) and in order to facilitate the expeditious handling and
403 rehabilitation of contamination sites and remedial measures with
404 respect to contamination sites provided hereby without delay, it



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405 is in the best interests of the residents of this state to
406 authorize such corporation to issue evidences of indebtedness
407 payable from amounts paid by the department under any such
408 service contract entered into between the department and such
409 corporation.

410 (2) INTENT AND PURPOSE.—

411 (a) It is the intent of the Legislature to establish the
412 Inland Protection Trust Fund to serve as a repository for funds
413 which will enable the department to respond without delay to
414 incidents of inland contamination related to the storage of
415 petroleum and petroleum products in order to protect the public
416 health, safety, and welfare and to minimize environmental
417 damage.

418 (b) It is the intent of the Legislature that the department
419 implement rules and procedures to improve the efficiency of the
420 Petroleum Restoration Program. The department is directed to
421 implement rules and policies to eliminate and reduce duplication
422 of site rehabilitation efforts, paperwork, and documentation,
423 and micromanagement of site rehabilitation tasks.

424 (c) The department is directed to adopt and implement
425 uniform and standardized forms for ~~the requests for preapproval~~
426 site rehabilitation work and for the submittal of reports to
427 ensure that information is submitted to the department in a
428 concise, standardized uniform format seeking only information
429 that is necessary.

430 (d) The department is directed to implement computerized
431 and electronic filing capabilities ~~of preapproval requests~~ and
432 submittal of reports in order to expedite submittal of the
433 information and elimination of delay in paperwork. The



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434 computerized, electronic filing system shall be implemented no
435 later than January 1, 1997.

436 ~~(c) The department is directed to adopt uniform scopes of~~
437 ~~work with templated labor and equipment costs to provide~~
438 ~~definitive guidance as to the type of work and authorized~~
439 ~~expenditures that will be allowed for preapproved site~~
440 ~~rehabilitation tasks.~~

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

444 (3) CREATION.—There is hereby created the Inland Protection
445 Trust Fund, hereinafter referred to as the “fund,” to be
446 administered by the department. This fund shall be used by the
447 department as a nonlapsing revolving fund for carrying out the
448 purposes of this section and s. 376.3073. To this fund shall be
449 credited all penalties, judgments, recoveries, reimbursements,
450 loans, and other fees and charges related to the implementation
451 of this section and s. 376.3073 and the excise tax revenues
452 levied, collected, and credited pursuant to ss. 206.9935(3) and
453 206.9945(1)(c). Charges against the fund shall be made in
454 accordance with the provisions of this section.

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

460 (a) Prompt investigation and assessment of contamination
461 sites.

462 (b) Expeditious restoration or replacement of potable water



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

464 (c) Rehabilitation of contamination sites, which shall
465 consist of cleanup of affected soil, groundwater, and inland
466 surface waters, using the most cost-effective alternative that
467 is technologically feasible and reliable and that provides
468 adequate protection of the public health, safety, and welfare
469 and minimizes environmental damage, in accordance with the site
470 selection and cleanup criteria established by the department
471 under subsection (5), except that nothing herein shall be
472 construed to authorize the department to obligate funds for
473 payment of costs which may be associated with, but are not
474 integral to, site rehabilitation, such as the cost for
475 retrofitting or replacing petroleum storage systems.

476 (d) Maintenance and monitoring of contamination sites.

477 (e) Inspection and supervision of activities described in
478 this subsection.

479 (f) Payment of expenses incurred by the department in its
480 efforts to obtain from responsible parties the payment or
481 recovery of reasonable costs resulting from the activities
482 described in this subsection.

483 (g) Payment of any other reasonable costs of
484 administration, including those administrative costs incurred by
485 the Department of Health in providing field and laboratory
486 services, toxicological risk assessment, and other assistance to
487 the department in the investigation of drinking water
488 contamination complaints and costs associated with public
489 information and education activities.

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



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492 including contracting with local governments or state agencies
493 to provide for the administration of such program through
494 locally administered programs, to minimize the potential for
495 further contamination sites.

496 (i) Funding of the provisions of ss. 376.305(6) and
497 376.3072.

498 (j) Activities related to removal and replacement of
499 petroleum storage systems, exclusive of costs of any tank,
500 piping, dispensing unit, or related hardware, if soil removal is
501 preapproved as a component of site rehabilitation and requires
502 removal of the tank where remediation is conducted under s.
503 376.30711 or if such activities were justified in an approved
504 remedial action plan performed pursuant to subsection (12).

505 (k) Activities related to reimbursement application
506 preparation and activities related to reimbursement application
507 examination by a certified public accountant pursuant to
508 subsection (12).

509 (l) Reasonable costs of restoring property as nearly as
510 practicable to the conditions which existed prior to activities
511 associated with contamination assessment or remedial action
512 taken under s. 376.303(4).

513 (m) Repayment of loans to the fund.

514 (n) Expenditure of sums from the fund to cover ineligible
515 sites or costs as set forth in subsection (13), if the
516 department in its discretion deems it necessary to do so. In
517 such cases, the department may seek recovery and reimbursement
518 of costs in the same manner and in accordance with the same
519 procedures as are established for recovery and reimbursement of
520 sums otherwise owed to or expended from the fund.



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

524 (p) Petroleum remediation pursuant to s. 376.30711
525 throughout a state fiscal year. The department shall establish a
526 process to uniformly encumber appropriated funds throughout a
527 state fiscal year and shall allow for emergencies and imminent
528 threats to human health and the environment as provided in
529 paragraph (5) (a). This paragraph does not apply to
530 appropriations associated with the free product recovery
531 initiative of paragraph (5) (c) or the ~~preapproved~~ advanced
532 cleanup program of s. 376.30713.

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

536
537 The Inland Protection Trust Fund may only be used to fund the
538 activities in ss. 376.30-376.317 except ss. 376.3078 and
539 376.3079. Amounts on deposit in the Inland Protection Trust Fund
540 in each fiscal year shall first be applied or allocated for the
541 payment of amounts payable by the department pursuant to
542 paragraph (o) under a service contract entered into by the
543 department pursuant to s. 376.3075 and appropriated in each year
544 by the Legislature prior to making or providing for other
545 disbursements from the fund. Nothing in this subsection shall
546 authorize the use of the Inland Protection Trust Fund for
547 cleanup of contamination caused primarily by a discharge of
548 solvents as defined in s. 206.9925(6), or polychlorinated
549 biphenyls when their presence causes them to be hazardous



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550 wastes, except solvent contamination which is the result of
551 chemical or physical breakdown of petroleum products and is
552 otherwise eligible. Facilities used primarily for the storage of
553 motor or diesel fuels as defined in ss. 206.01 and 206.86 shall
554 be presumed not to be excluded from eligibility pursuant to this
555 section.

556 (5) SITE SELECTION AND CLEANUP CRITERIA.—

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

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

563 2. The size of the population or area affected by the
564 contamination;

565 3. The present and future uses of the affected aquifer or
566 surface waters, with particular consideration as to the
567 probability that the contamination is substantially affecting,
568 or will migrate to and substantially affect, a known public or
569 private source of potable water; and

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

571
572 Moneys in the fund shall then be obligated for activities
573 described in paragraphs (4) (a)-(e) at individual sites in
574 accordance with such established criteria. However, nothing in
575 this paragraph shall be construed to restrict the department
576 from modifying the priority status of a rehabilitation site
577 where conditions warrant, taking into consideration the actual
578 distance between the contamination site and groundwater or



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

585 (b) It is the intent of the Legislature to protect the
586 health of all people under actual circumstances of exposure. The
587 secretary shall establish criteria by rule for the purpose of
588 determining, on a site-specific basis, the rehabilitation
589 program tasks that comprise a site rehabilitation program and
590 the level at which a rehabilitation program task and a site
591 rehabilitation program may be deemed completed. In establishing
592 the rule, the department shall incorporate, to the maximum
593 extent feasible, risk-based corrective action principles to
594 achieve protection of human health and safety and the
595 environment in a cost-effective manner as provided in this
596 subsection. Criteria for determining what constitutes a
597 rehabilitation program task or completion of site rehabilitation
598 program tasks and site rehabilitation programs shall be based
599 upon the factors set forth in paragraph (a) and the following
600 additional factors:

601 1. The current exposure and potential risk of exposure to
602 humans and the environment including multiple pathways of
603 exposure.

604 2. The appropriate point of compliance with cleanup target
605 levels for petroleum products' chemicals of concern. The point
606 of compliance shall be at the source of the petroleum
607 contamination. However, the department is authorized to



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608 temporarily move the point of compliance to the boundary of the
609 property, or to the edge of the plume when the plume is within
610 the property boundary, while cleanup, including cleanup through
611 natural attenuation processes in conjunction with appropriate
612 monitoring, is proceeding. The department also is authorized,
613 pursuant to criteria provided for in this paragraph, to
614 temporarily extend the point of compliance beyond the property
615 boundary with appropriate monitoring, if such extension is
616 needed to facilitate natural attenuation or to address the
617 current conditions of the plume, provided human health, public
618 safety, and the environment are adequately protected. Temporary
619 extension of the point of compliance beyond the property
620 boundary, as provided in this subparagraph, shall include notice
621 to local governments and owners of any property into which the
622 point of compliance is allowed to extend.

623 3. The appropriate site-specific cleanup goal. The site-
624 specific cleanup goal shall be that all petroleum contamination
625 sites ultimately achieve the applicable cleanup target levels
626 provided in this paragraph. However, the department is
627 authorized to allow concentrations of the petroleum products'
628 chemicals of concern to temporarily exceed the applicable
629 cleanup target levels while cleanup, including cleanup through
630 natural attenuation processes in conjunction with appropriate
631 monitoring, is proceeding, provided human health, public safety,
632 and the environment are adequately protected.

633 4. The appropriateness of using institutional or
634 engineering controls. Site rehabilitation programs may include
635 the use of institutional or engineering controls to eliminate
636 the potential exposure to petroleum products' chemicals of



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637 concern to humans or the environment. Use of such controls must
638 be preapproved by the department, and institutional controls
639 shall not be acquired with funds from the Inland Protection
640 Trust Fund. When institutional or engineering controls are
641 implemented to control exposure, the removal of such controls
642 must have prior department approval and must be accompanied
643 immediately by the resumption of active cleanup, or other
644 approved controls, unless cleanup target levels pursuant to this
645 paragraph have been achieved.

646 5. The additive effects of the petroleum products'
647 chemicals of concern. The synergistic effects of petroleum
648 products' chemicals of concern shall also be considered when the
649 scientific data becomes available.

650 6. Individual site characteristics which shall include, but
651 not be limited to, the current and projected use of the affected
652 groundwater in the vicinity of the site, current and projected
653 land uses of the area affected by the contamination, the exposed
654 population, the degree and extent of contamination, the rate of
655 contaminant migration, the apparent or potential rate of
656 contaminant degradation through natural attenuation processes,
657 the location of the plume, and the potential for further
658 migration in relation to site property boundaries.

659 7. Applicable state water quality standards.

660 a. Cleanup target levels for petroleum products' chemicals
661 of concern found in groundwater shall be the applicable state
662 water quality standards. Where such standards do not exist, the
663 cleanup target levels for groundwater shall be based on the
664 minimum criteria specified in department rule. The department
665 shall consider the following, as appropriate, in establishing



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666 the applicable minimum criteria: calculations using a lifetime
667 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
668 best achievable detection limit; the naturally occurring
669 background concentration; or nuisance, organoleptic, and
670 aesthetic considerations.

671 b. Where surface waters are exposed to petroleum
672 contaminated groundwater, the cleanup target levels for the
673 petroleum products' chemicals of concern shall be based on the
674 surface water standards as established by department rule. The
675 point of measuring compliance with the surface water standards
676 shall be in the groundwater immediately adjacent to the surface
677 water body.

678 8. Whether deviation from state water quality standards or
679 from established criteria is appropriate. The department may
680 issue a "No Further Action Order" based upon the degree to which
681 the desired cleanup target level is achievable and can be
682 reasonably and cost-effectively implemented within available
683 technologies or engineering and institutional control
684 strategies. Where a state water quality standard is applicable,
685 a deviation may not result in the application of cleanup target
686 levels more stringent than said standard. In determining whether
687 it is appropriate to establish alternate cleanup target levels
688 at a site, the department may consider the effectiveness of
689 source removal that has been completed at the site and the
690 practical likelihood of: the use of low yield or poor quality
691 groundwater; the use of groundwater near marine surface water
692 bodies; the current and projected use of the affected
693 groundwater in the vicinity of the site; or the use of
694 groundwater in the immediate vicinity of the storage tank area,



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695 where it has been demonstrated that the groundwater
696 contamination is not migrating away from such localized source;
697 provided human health, public safety, and the environment are
698 adequately protected.

699 9. Appropriate cleanup target levels for soils.

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

707 b. Leachability-based soil target levels shall be based on
708 protection of the groundwater cleanup target levels or the
709 alternate cleanup target levels for groundwater established
710 pursuant to this paragraph, as appropriate. Source removal and
711 other cost-effective alternatives that are technologically
712 feasible shall be considered in achieving the leachability soil
713 target levels established by the department. The leachability
714 goals shall not be applicable if the department determines,
715 based upon individual site characteristics, that petroleum
716 products' chemicals of concern will not leach into the
717 groundwater at levels which pose a threat to human health and
718 safety or the environment.

719
720 However, nothing in this paragraph shall be construed to
721 restrict the department from temporarily postponing completion
722 of any site rehabilitation program for which funds are being
723 expended whenever such postponement is deemed necessary in order



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724 to make funds available for rehabilitation of a contamination
725 site with a higher priority status.

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

729 1. Funding for free product recovery may be provided in
730 advance of the order established by the priority ranking system
731 under paragraph (a) for site cleanup activities. However, a
732 separate prioritization for free product recovery shall be
733 established consistent with paragraph (a). No more than \$5
734 million shall be encumbered from the Inland Protection Trust
735 Fund in any fiscal year for free product recovery conducted in
736 advance of the priority order under paragraph (a) established
737 for site cleanup activities.

738 2. Once free product removal and other source removal
739 identified in this paragraph are completed at a site, and
740 notwithstanding the order established by the priority ranking
741 system under paragraph (a) for site cleanup activities, the
742 department may reevaluate the site to determine the degree of
743 active cleanup needed to continue site rehabilitation. Further,
744 the department shall determine if the reevaluated site qualifies
745 for natural attenuation monitoring, long-term natural
746 attenuation monitoring, or no further action. If additional site
747 rehabilitation is necessary to reach no further action status,
748 the site rehabilitation shall be conducted in the order
749 established by the priority ranking system under paragraph (a).
750 The department shall utilize natural attenuation monitoring
751 strategies and, when cost-effective, transition sites eligible
752 for restoration funding assistance to long-term natural



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753 attenuation monitoring where the plume is shrinking or stable
754 and confined to the source property boundaries and the petroleum
755 products' chemicals of concern meet the natural attenuation
756 default concentrations, as defined by department rule. If the
757 plume migrates beyond the source property boundaries, natural
758 attenuation monitoring may be conducted in accordance with
759 department rule, or if the site no longer qualifies for natural
760 attenuation monitoring, active remediation may be resumed. For
761 long-term natural attenuation monitoring, if the petroleum
762 products' chemicals of concern increase or are not significantly
763 reduced after 42 months of monitoring or at the discretion of
764 the department, or if the plume migrates beyond the property
765 boundaries, active remediation shall be resumed as necessary.
766 For sites undergoing active remediation, the department shall
767 evaluate ~~template~~ the cost of natural attenuation monitoring
768 pursuant to s. 376.30711 to ensure that site mobilizations are
769 performed in a cost-effective manner. Sites that are not
770 eligible for state restoration funding may transition to long-
771 term natural attenuation monitoring using the criteria in this
772 subparagraph. Nothing in this subparagraph precludes a site from
773 pursuing a "No Further Action" order with conditions.

774 3. The department shall evaluate whether higher natural
775 attenuation default concentrations for natural attenuation
776 monitoring or long-term natural attenuation monitoring are cost-
777 effective and would adequately protect public health and the
778 environment. The department shall also evaluate site-specific
779 characteristics that would allow for higher natural attenuation
780 or long-term natural attenuation concentration levels.

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



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782 solely on the presence of petroleum contamination for any
783 construction, repairs, or renovations performed in conjunction
784 with tank upgrade activities to an existing retail fuel facility
785 if the facility was fully operational before the building permit
786 was requested and if the construction, repair, or renovation is
787 performed by a licensed contractor. All building permits and any
788 construction, repairs, or renovations performed in conjunction
789 with such permits must comply with the applicable provisions of
790 chapters 489 and 553.

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

793 (a) All excise taxes levied, collected, and credited to the
794 fund in accordance with the provisions of ss. 206.9935(3) and
795 206.9945(1)(c).

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

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

800 (a) Except as provided in subsection (9) and as otherwise
801 provided by law, the department shall recover to the use of the
802 fund from a person or persons at any time causing or having
803 caused the discharge or from the Federal Government, jointly and
804 severally, all sums owed or expended from the fund, pursuant to
805 s. 376.308, except that the department may decline to pursue
806 such recovery if it finds the amount involved too small or the
807 likelihood of recovery too uncertain. Sums recovered as a result
808 of damage due to a discharge related to the storage of petroleum
809 or petroleum products or other similar disaster shall be
810 apportioned between the fund and the General Revenue Fund so as



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811 to repay the full costs to the General Revenue Fund of any sums
812 disbursed therefrom as a result of such disaster. Any request
813 for reimbursement to the fund for such costs, if not paid within
814 30 days of demand, shall be turned over to the department for
815 collection.

816 (b) Except as provided in subsection (9) and as otherwise
817 provided by law, it is the duty of the department in
818 administering the fund diligently to pursue the reimbursement to
819 the fund of any sum expended from the fund for cleanup and
820 abatement in accordance with the provisions of this section or
821 s. 376.3073, unless the department finds the amount involved too
822 small or the likelihood of recovery too uncertain. For the
823 purposes of s. 95.11, the limitation period within which to
824 institute an action to recover such sums shall commence on the
825 last date on which any such sums were expended, and not the date
826 that the discharge occurred.

827 (c) If the department initiates an enforcement action to
828 clean up a contaminated site and determines that the responsible
829 party is financially unable to undertake complete restoration of
830 the contaminated site, that the current property owner was not
831 responsible for the discharge when the contamination first
832 occurred, or that the state's interest can best be served by
833 conducting cleanup, the department may enter into an agreement
834 with the responsible party or property owner whereby the
835 department agrees to conduct site rehabilitation and the
836 responsible party or property owner agrees to pay for the
837 portion of the cleanup costs that are within such party's or
838 owner's financial capabilities as determined by the department,
839 taking into consideration the party's net worth and the economic



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840 impact on the party.

841 (d) The department may impose a lien on the real property
842 on which the contaminated site is located equal to the estimated
843 cost to bring the site into compliance, including attorney fees
844 and court costs. Any owner whose property has such a lien
845 imposed may release her or his property from any lien claimed
846 under this subsection by filing with the clerk of the circuit
847 court a cash or surety bond, payable to the department in the
848 amount of the estimated cost of bringing the site into
849 compliance with department rules, including attorney fees and
850 court costs, or the value of the property after the abatement
851 action is complete, whichever is less. A lien provided by this
852 subsection may not continue for a period longer than 4 years
853 after the abatement action is completed, unless within that
854 period an action to enforce the lien is commenced in a court of
855 competent jurisdiction. The department may take action to
856 enforce the lien in the same manner used for construction liens
857 under part I of chapter 713.

858 (8) INVESTMENTS; INTEREST.—Moneys in the fund which are not
859 needed currently to meet the obligations of the department in
860 the exercise of its responsibilities under this section and s.
861 376.3073 shall be deposited with the Chief Financial Officer to
862 the credit of the fund and may be invested in such manner as is
863 provided for by statute. The interest received on such
864 investment shall be credited to the fund. Any provisions of law
865 to the contrary notwithstanding, such interest may be freely
866 transferred between this trust fund and the Water Quality
867 Assurance Trust Fund, in the discretion of the department.

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



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

874 (a) The department shall establish reasonable requirements
875 for the written reporting of petroleum contamination incidents
876 and shall distribute forms to registrants under s. 376.303(1)(b)
877 and to other interested parties upon request to be used for such
878 purpose. Until such forms are available for distribution, the
879 department shall take reports of such incidents, however made,
880 but shall notify any person making such a report that a complete
881 written report of the incident will be required by the
882 department at a later time, the form for which will be provided
883 by the department.

884 (b) When reporting forms become available for distribution,
885 all sites involving incidents of contamination from petroleum
886 storage systems initially reported to the department at any time
887 from midnight on June 30, 1986, to midnight on December 31,
888 1988, shall be qualified sites, provided that such a complete
889 written report is filed with respect thereto within a reasonable
890 time. Subject to the delays which may occur as a result of the
891 prioritization of sites under paragraph (5)(a) for any qualified
892 site, costs for activities described in paragraphs (4)(a)-(e)
893 shall be absorbed at the expense of the fund, without recourse
894 to reimbursement or recovery, with the following exceptions:

895 1. The provisions of this subsection shall not apply to any
896 site where the department has been denied site access to
897 implement the provisions of this section.



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

902 3.a. Upon discovery by the department that the owner or
903 operator of a petroleum storage system has been grossly
904 negligent in the maintenance of such petroleum storage system;
905 has, with willful intent to conceal the existence of a serious
906 discharge, falsified inventory or reconciliation records
907 maintained with respect to the site at which such system is
908 located; or has intentionally damaged such petroleum storage
909 system, the site at which such system is located shall be
910 ineligible for participation in the incentive program and the
911 owner shall be liable for all costs due to discharges from
912 petroleum storage systems at that site, any other provisions of
913 chapter 86-159, Laws of Florida, to the contrary
914 notwithstanding. For the purposes of this paragraph, willful
915 failure to maintain inventory and reconciliation records,
916 willful failure to make monthly monitoring system checks where
917 such systems are in place, and failure to meet monitoring and
918 retrofitting requirements within the schedules established under
919 chapter 62-761, Florida Administrative Code, or violation of
920 similar rules adopted by the department under this chapter,
921 shall be construed to be gross negligence in the maintenance of
922 a petroleum storage system.

923 b. The department shall redetermine the eligibility of
924 petroleum storage systems for which a timely EDI application was
925 filed, but which were deemed ineligible by the department, under
926 the following conditions:



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

932 (II) The department verifies the storage system compliance
933 based on a compliance inspection.

934
935 Provided, however, that a site may be determined eligible by the
936 department for good cause shown, including, but not limited to,
937 demonstration by the owner or operator that to achieve
938 compliance would cause an increase in the potential for the
939 spread of the contamination.

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

942 (I) Petroleum storage systems owned or operated by the
943 Federal Government.

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

945 (III) Facilities where a discharge was intentionally
946 concealed.

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

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

951 (B) Contamination from substances that were not petroleum
952 or a petroleum product.

953 (C) Contamination that was not from a petroleum storage
954 system.

955 d. EDI applicants who demonstrate compliance for a site



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956 pursuant to sub-subparagraph b. are eligible for the Early
957 Detection Incentive Program and site rehabilitation funding
958 pursuant to subsection (5) and s. 376.30711.
959

960 If, in order to avoid prolonged delay, the department in its
961 discretion deems it necessary to expend sums from the fund to
962 cover ineligible sites or costs as set forth in this paragraph,
963 the department may do so and seek recovery and reimbursement
964 therefor in the same manner and in accordance with the same
965 procedures as are established for recovery and reimbursement of
966 sums otherwise owed to or expended from the fund.

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

972 (d) The provisions of this subsection shall not apply to
973 petroleum storage systems owned or operated by the Federal
974 Government.

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

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

980 (b) Intentionally damage a petroleum storage system.
981

982 Any person convicted of such a violation shall be guilty of a
983 felony of the third degree, punishable as provided in s.
984 775.082, s. 775.083, or s. 775.084.



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985 (11) SITE CLEANUP.—

986 (a) *Voluntary cleanup.*—This section does not prohibit a
987 person from conducting site rehabilitation either through his or
988 her own personnel or through responsible response action
989 contractors or subcontractors when such person is not seeking
990 site rehabilitation funding from the fund. Such voluntary
991 cleanups must meet all applicable environmental standards.

992 (b) *Low-scored site initiative.*—Notwithstanding s.
993 376.30711, any site with a priority ranking score of 29 points
994 or less may voluntarily participate in the low-scored site
995 initiative, whether or not the site is eligible for state
996 restoration funding.

997 1. To participate in the low-scored site initiative, the
998 responsible party or property owner must affirmatively
999 demonstrate that the following conditions are met:

1000 a. Upon reassessment pursuant to department rule, the site
1001 retains a priority ranking score of 29 points or less.

1002 b. No excessively contaminated soil, as defined by
1003 department rule, exists onsite as a result of a release of
1004 petroleum products.

1005 c. A minimum of 6 months of groundwater monitoring
1006 indicates that the plume is shrinking or stable.

1007 d. The release of petroleum products at the site does not
1008 adversely affect adjacent surface waters, including their
1009 effects on human health and the environment.

1010 e. The area of groundwater containing the petroleum
1011 products' chemicals of concern is less than one-quarter acre and
1012 is confined to the source property boundaries of the real
1013 property on which the discharge originated.



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1014 f. Soils onsite that are subject to human exposure found
1015 between land surface and 2 feet below land surface meet the soil
1016 cleanup target levels established by department rule or human
1017 exposure is limited by appropriate institutional or engineering
1018 controls.

1019 2. Upon affirmative demonstration of the conditions under
1020 subparagraph 1., the department shall issue a determination of
1021 "No Further Action." Such determination acknowledges that
1022 minimal contamination exists onsite and that such contamination
1023 is not a threat to human health or the environment. If no
1024 contamination is detected, the department may issue a site
1025 rehabilitation completion order.

1026 3. Sites that are eligible for state restoration funding
1027 may receive payment of ~~preapproved~~ costs for the low-scored site
1028 initiative as follows:

1029 a. A responsible party or property owner may submit an
1030 assessment plan designed to affirmatively demonstrate that the
1031 site meets the conditions under subparagraph 1. Notwithstanding
1032 the priority ranking score of the site, the department may
1033 approve ~~preapprove~~ the cost of the assessment pursuant to s.
1034 376.30711, including 6 months of groundwater monitoring, not to
1035 exceed \$30,000 for each site. The department may not pay the
1036 costs associated with the establishment of institutional or
1037 engineering controls.

1038 b. The assessment work shall be completed no later than 6
1039 months after the department issues its approval.

1040 c. No more than \$10 million for the low-scored site
1041 initiative may be encumbered from the Inland Protection Trust
1042 Fund in any fiscal year. Funds shall be made available on a



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1043 first-come, first-served basis and shall be limited to 10 sites
1044 in each fiscal year for each responsible party or property
1045 owner.

1046 d. Program deductibles, copayments, and the limited
1047 contamination assessment report requirements under paragraph
1048 (13) (c) do not apply to expenditures under this paragraph.

1049 (12) REIMBURSEMENT FOR CLEANUP EXPENSES.—Except as provided
1050 in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall
1051 not apply to any site rehabilitation program task initiated
1052 after March 29, 1995. Effective August 1, 1996, no further site
1053 rehabilitation work on sites eligible for state-funded cleanup
1054 from the Inland Protection Trust Fund shall be eligible for
1055 reimbursement pursuant to this subsection. The person
1056 responsible for conducting site rehabilitation may seek
1057 reimbursement for site rehabilitation program task work
1058 conducted after March 28, 1995, in accordance with s. 2(2) and
1059 (3), chapter 95-2, Laws of Florida, regardless of whether the
1060 site rehabilitation program task is completed. A site
1061 rehabilitation program task shall be considered to be initiated
1062 when actual onsite work or engineering design, pursuant to
1063 chapter 62-770, Florida Administrative Code, which is integral
1064 to performing a site rehabilitation program task has begun and
1065 shall not include contract negotiation and execution, site
1066 research, or project planning. All reimbursement applications
1067 pursuant to this subsection must be submitted to the department
1068 by January 3, 1997. The department shall not accept any
1069 applications for reimbursement or pay any claims on applications
1070 for reimbursement received after that date; provided, however if
1071 an application filed on or prior to January 3, 1997, was



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1072 returned by the department on the grounds of untimely filing, it
1073 shall be refiled within 30 days after the effective date of this
1074 act in order to be processed.

1075 (a) *Legislative findings.*—The Legislature finds and
1076 declares that rehabilitation of contamination sites should be
1077 conducted in a manner and to a level of completion which will
1078 protect the public health, safety, and welfare and will minimize
1079 damage to the environment.

1080 (b) *Conditions.*—

1081 1. The owner, operator, or his or her designee of a site
1082 which is eligible for restoration funding assistance in the EDI,
1083 PLRIP, or ATRP programs shall be reimbursed from the Inland
1084 Protection Trust Fund of allowable costs at reasonable rates
1085 incurred on or after January 1, 1985, for completed program
1086 tasks as identified in the department rule promulgated pursuant
1087 to paragraph (5) (b), or uncompleted program tasks pursuant to
1088 chapter 95-2, Laws of Florida, subject to the conditions in this
1089 section. It is unlawful for a site owner or operator, or his or
1090 her designee, to receive any remuneration, in cash or in kind,
1091 directly or indirectly from the rehabilitation contractor.

1092 2. Nothing in this subsection shall be construed to
1093 authorize reimbursement to any person for costs of contaminated
1094 soil treatment or disposal that does not meet the applicable
1095 rules of this state for such treatment or disposal, including
1096 all general permitting, state air emission standards,
1097 monitoring, sampling, and reporting rules more specifically
1098 described in department rules.

1099 (c) *Legislative intent.*—Due to the value of the potable
1100 water of this state, it is the intent of the Legislature that



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1101 the department initiate and facilitate as many cleanups as
1102 possible utilizing the resources of the state, local
1103 governments, and the private sector, recognizing that source
1104 removal, wherever it is technologically feasible and cost-
1105 effective, shall be considered the primary initial response to
1106 protect public health, safety, and the environment.

1107 (d) *Amount of reimbursement.*—The department shall reimburse
1108 actual and reasonable costs for site rehabilitation. The
1109 department shall not reimburse interest on the amount of
1110 reimbursable costs for any reimbursement application. However,
1111 nothing herein shall affect the department's authority to pay
1112 interest authorized under prior law.

1113 (e) *Records.*—The person responsible for conducting site
1114 rehabilitation, or his or her agent, shall keep and preserve
1115 suitable records as follows:

1116 1. Hydrological and other site investigations and
1117 assessments; site rehabilitation plans; contracts and contract
1118 negotiations; and accounts, invoices, sales tickets, or other
1119 payment records from purchases, sales, leases, or other
1120 transactions involving costs actually incurred related to site
1121 rehabilitation. Such records shall be made available upon
1122 request to agents and employees of the department during regular
1123 business hours and at other times upon written request of the
1124 department.

1125 2. In addition, the department may from time to time
1126 request submission of such site-specific information as it may
1127 require, unless a waiver or variance from such department
1128 request is granted pursuant to paragraph (k).

1129 3. All records of costs actually incurred for cleanup shall



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1130 be certified by affidavit to the department as being true and
1131 correct.

1132 (f) *Application for reimbursement.*—Any eligible person who
1133 performs a site rehabilitation program or performs site
1134 rehabilitation program tasks such as preparation of site
1135 rehabilitation plans or assessments; product recovery; cleanup
1136 of groundwater or inland surface water; soil treatment or
1137 removal; or any other tasks identified by department rule
1138 developed pursuant to subsection (5), may apply for
1139 reimbursement. Such applications for reimbursement must be
1140 submitted to the department on forms provided by the department,
1141 together with evidence documenting that site rehabilitation
1142 program tasks were conducted or completed in accordance with
1143 department rule developed pursuant to subsection (5), and other
1144 such records or information as the department requires. The
1145 reimbursement application and supporting documentation shall be
1146 examined by a certified public accountant in accordance with
1147 standards established by the American Institute of Certified
1148 Public Accountants. A copy of the accountant's report shall be
1149 submitted with the reimbursement application. Applications for
1150 reimbursement shall not be approved for site rehabilitation
1151 program tasks which have not been completed, except for the task
1152 of remedial action and except for uncompleted program tasks
1153 pursuant to chapter 95-2, Laws of Florida, and this subsection.
1154 Applications for remedial action may be submitted semiannually
1155 at the discretion of the person responsible for cleanup. After
1156 an applicant has filed an application with the department and
1157 before payment is made, the applicant may assign the right to
1158 payment to any other person, without recourse of the assignee or



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1159 assignor to the state, without affecting the order in which
1160 payment is made. Information necessary to process the
1161 application shall be requested from and provided by the
1162 assigning applicant. Proper notice of the assignment and
1163 assignment information shall be made to the department which
1164 notice shall be signed and notarized by the assigning applicant.

1165 (g) *Review.*—

1166 1. Provided there are sufficient unencumbered funds
1167 available in the Inland Protection Trust Fund, or to the extent
1168 proceeds of debt obligations are available for the payment of
1169 existing reimbursement obligations pursuant to s. 376.3075, the
1170 department shall have 60 days to determine if the applicant has
1171 provided sufficient information for processing the application
1172 and shall request submission of any additional information that
1173 the department may require within such 60-day period. If the
1174 applicant believes any request for additional information is not
1175 authorized, the applicant may request a hearing pursuant to ss.
1176 120.569 and 120.57. Once the department requests additional
1177 information, the department may request only that information
1178 needed to clarify such additional information or to answer new
1179 questions raised by or directly related to such additional
1180 information.

1181 2. The department shall deny or approve the application for
1182 reimbursement within 90 days after receipt of the last item of
1183 timely requested additional material, or, if no additional
1184 material is requested, within 90 days of the close of the 60-day
1185 period described in subparagraph 1., unless the total review
1186 period is otherwise extended by written mutual agreement of the
1187 applicant and the department.



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1188 3. Final disposition of an application shall be provided to
1189 the applicant in writing, accompanied by a written explanation
1190 setting forth in detail the reason or reasons for the approval
1191 or denial. If the department fails to make a determination on an
1192 application within the time provided in subparagraph 2., or
1193 denies an application, or if a dispute otherwise arises with
1194 regard to reimbursement, the applicant may request a hearing
1195 pursuant to ss. 120.569 and 120.57.

1196 (h) *Reimbursement.*—Upon approval of an application for
1197 reimbursement, reimbursement for reasonable expenditures of a
1198 site rehabilitation program or site rehabilitation program tasks
1199 documented therein shall be made in the order in which the
1200 department receives completed applications. Effective January 1,
1201 1997, all unpaid reimbursement applications are subject to
1202 payment on the following terms: The department shall develop a
1203 schedule of the anticipated dates of reimbursement of
1204 applications submitted to the department pursuant to this
1205 subsection. The schedule shall specify the projected date of
1206 payment based on equal monthly payments and projected annual
1207 revenue of \$100 million. Based on the schedule, the department
1208 shall notify all reimbursement applicants of the projected date
1209 of payment of their applications. The department shall direct
1210 the Inland Protection Financing Corporation to pay applicants
1211 the present value of their applications as soon as practicable
1212 after approval by the department, subject to the availability of
1213 funds within the Inland Protection Financing Corporation. The
1214 present value of an application shall be based on the date on
1215 which the department anticipates the Inland Protection Financing
1216 Corporation will settle the reimbursement application and the



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1217 schedule's projected date of payment and shall use 3.5 percent
1218 as the annual discount rate. The determination of the amount of
1219 the claim and the projected date of payment shall be subject to
1220 s. 120.57.

1221 (i) *Liberal construction.*—With respect to site
1222 rehabilitation initiated prior to July 1, 1986, the provisions
1223 of this subsection shall be given such liberal construction by
1224 the department as will accomplish the purposes set forth in this
1225 subsection. With regard to the keeping of particular records or
1226 the giving of certain notice, the department may accept as
1227 compliance action by a person which meets the intent of the
1228 requirements set forth in this subsection.

1229 (j) *Reimbursement-review contracts.*—The department may
1230 contract with entities capable of processing or assisting in the
1231 review of reimbursement applications. ~~Any purchase of such~~
1232 ~~services shall not be subject to chapter 287.~~

1233 (k) *Audits.*—

1234 1. The department is authorized to perform financial and
1235 technical audits in order to certify site restoration costs and
1236 ensure compliance with this chapter. The department shall seek
1237 recovery of any overpayments based on the findings of these
1238 audits. The department must commence any audit within 5 years
1239 after the date of reimbursement, except in cases where the
1240 department alleges specific facts indicating fraud.

1241 2. Upon determination by the department that any portion of
1242 costs which have been reimbursed are disallowed, the department
1243 shall give written notice to the applicant setting forth with
1244 specificity the allegations of fact which justify the
1245 department's proposed action and ordering repayment of



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1246 disallowed costs within 60 days of notification of the
1247 applicant.

1248 3. In the event the applicant does not make payment to the
1249 department within 60 days of receipt of such notice, the
1250 department shall seek recovery in a court of competent
1251 jurisdiction to recover reimbursement overpayments made to the
1252 person responsible for conducting site rehabilitation, unless
1253 the department finds the amount involved too small or the
1254 likelihood of recovery too uncertain.

1255 4. In addition to the amount of any overpayment, the
1256 applicant shall be liable to the department for interest of 1
1257 percent per month or the prime rate, whichever is less, on the
1258 amount of overpayment, from the date of overpayment by the
1259 department until the applicant satisfies the department's
1260 request for repayment pursuant to this paragraph. The
1261 calculation of interest shall be tolled during the pendency of
1262 any litigation.

1263 5. Financial and technical audits frequently are conducted
1264 under this section many years after the site rehabilitation
1265 activities were performed and the costs examined in the course
1266 of the audit were incurred by the person responsible for site
1267 rehabilitation. During the intervening span of years, the
1268 department's rule requirements and its related guidance and
1269 other nonrule policy directives may have changed significantly.
1270 The Legislature finds that it may be appropriate for the
1271 department to provide relief to persons subject to such
1272 requirements in financial and technical audits conducted
1273 pursuant to this section.

1274 a. The department is authorized to grant variances and



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1275 waivers from the documentation requirements of subparagraph
1276 (e)2. and from the requirements of rules applicable in technical
1277 and financial audits conducted under this section. Variances and
1278 waivers shall be granted when the person responsible for site
1279 rehabilitation demonstrates to the department that application
1280 of a financial or technical auditing requirement would create a
1281 substantial hardship or would violate principles of fairness.
1282 For purposes of this subsection, "substantial hardship" means a
1283 demonstrated economic, technological, legal, or other type of
1284 hardship to the person requesting the variance or waiver. For
1285 purposes of this subsection, "principles of fairness" are
1286 violated when the application of a requirement affects a
1287 particular person in a manner significantly different from the
1288 way it affects other similarly situated persons who are affected
1289 by the requirement or when the requirement is being applied
1290 retroactively without due notice to the affected parties.

1291 b. A person whose reimbursed costs are subject to a
1292 financial and technical audit under this section may file a
1293 written request to the department for grant of a variance or
1294 waiver. The request shall specify:

1295 (I) The requirement from which a variance or waiver is
1296 requested.

1297 (II) The type of action requested.

1298 (III) The specific facts which would justify a waiver or
1299 variance.

1300 (IV) The reason or reasons why the requested variance or
1301 waiver would serve the purposes of this section.

1302 c. Within 90 days after receipt of a written request for
1303 variance or waiver under this subsection, the department shall



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1304 grant or deny the request. If the request is not granted or
1305 denied within 90 days of receipt, the request shall be deemed
1306 approved. An order granting or denying the request shall be in
1307 writing and shall contain a statement of the relevant facts and
1308 reasons supporting the department's action. The department's
1309 decision to grant or deny the petition shall be supported by
1310 competent substantial evidence and is subject to ss. 120.569 and
1311 120.57. Once adopted, model rules promulgated by the
1312 Administration Commission under s. 120.542 shall govern the
1313 processing of requests under this provision.

1314 6. The Chief Financial Officer may audit the records of
1315 persons who receive or who have received payments pursuant to
1316 this chapter in order to verify site restoration costs, ensure
1317 compliance with this chapter, and verify the accuracy and
1318 completeness of audits performed by the department pursuant to
1319 this paragraph. The Chief Financial Officer may contract with
1320 entities or persons to perform audits pursuant to this
1321 subparagraph. The Chief Financial Officer shall commence any
1322 audit within 1 year after the department's completion of an
1323 audit conducted pursuant to this paragraph, except in cases
1324 where the department or the Chief Financial Officer alleges
1325 specific facts indicating fraud.

1326 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
1327 detection, reporting, and cleanup of contamination caused by
1328 discharges of petroleum or petroleum products, the department
1329 shall, within the guidelines established in this subsection,
1330 implement a cost-sharing cleanup program to provide
1331 rehabilitation funding assistance for all property contaminated
1332 by discharges of petroleum or petroleum products occurring



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1333 before January 1, 1995, subject to a copayment provided for in a
1334 Petroleum Cleanup Participation Program ~~preapproved~~ site
1335 rehabilitation agreement. Eligibility shall be subject to an
1336 annual appropriation from the Inland Protection Trust Fund.
1337 Additionally, funding for eligible sites shall be contingent
1338 upon annual appropriation in subsequent years. Such continued
1339 state funding shall not be deemed an entitlement or a vested
1340 right under this subsection. Eligibility in the program shall be
1341 notwithstanding any other provision of law, consent order,
1342 order, judgment, or ordinance to the contrary.

1343 (a)1. The department shall accept any discharge reporting
1344 form received prior to January 1, 1995, as an application for
1345 this program, and the facility owner or operator need not
1346 reapply.

1347 2. Owners or operators of property contaminated by
1348 petroleum or petroleum products from a petroleum storage system
1349 may apply for such program by filing a written report of the
1350 contamination incident, including evidence that such incident
1351 occurred prior to January 1, 1995, with the department.
1352 Incidents of petroleum contamination discovered after December
1353 31, 1994, at sites which have not stored petroleum or petroleum
1354 products for consumption, use, or sale after such date shall be
1355 presumed to have occurred prior to January 1, 1995. An
1356 operator's filed report shall be deemed an application of the
1357 owner for all purposes. Sites reported to the department after
1358 December 31, 1998, shall not be eligible for this program.

1359 (b) Subject to annual appropriation from the Inland
1360 Protection Trust Fund, sites meeting the criteria of this
1361 subsection are eligible for up to \$400,000 of site



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1362 rehabilitation funding assistance in priority order pursuant to
1363 subsection (5) and s. 376.30711. Sites meeting the criteria of
1364 this subsection for which a site rehabilitation completion order
1365 was issued prior to June 1, 2008, do not qualify for the 2008
1366 increase in site rehabilitation funding assistance and are bound
1367 by the pre-June 1, 2008, limits. Sites meeting the criteria of
1368 this subsection for which a site rehabilitation completion order
1369 was not issued prior to June 1, 2008, regardless of whether or
1370 not they have previously transitioned to nonstate-funded cleanup
1371 status, may continue state-funded cleanup pursuant to s.
1372 376.30711 until a site rehabilitation completion order is issued
1373 or the increased site rehabilitation funding assistance limit is
1374 reached, whichever occurs first. At no time shall expenses
1375 incurred outside the preapproved site rehabilitation program
1376 under s. 376.30711 be reimbursable.

1377 (c) Upon notification by the department that rehabilitation
1378 funding assistance is available for the site pursuant to
1379 subsection (5) and s. 376.30711, the owner, operator, or person
1380 otherwise responsible for site rehabilitation shall provide the
1381 department with a limited contamination assessment report and
1382 shall enter into a Petroleum Cleanup Participation Program
1383 ~~preapproved~~ site rehabilitation agreement with the department
1384 pursuant to ~~and a contractor qualified under~~ s. 376.30711(2)(b).
1385 The agreement shall provide for a 25-percent copayment by the
1386 owner, operator, or person otherwise responsible for conducting
1387 site rehabilitation. The owner, operator, or person otherwise
1388 responsible for conducting site rehabilitation shall adequately
1389 demonstrate the ability to meet the copayment obligation. The
1390 limited contamination assessment report and the copayment costs



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1391 may be reduced or eliminated if the owner and all operators
1392 responsible for restoration under s. 376.308 demonstrate that
1393 they are financially unable to comply with the copayment and
1394 limited contamination assessment report requirements. The
1395 department shall take into consideration the owner's and
1396 operator's net worth in making the determination of financial
1397 ability. In the event the department and the owner, operator, or
1398 person otherwise responsible for site rehabilitation are unable
1399 to complete negotiation of the cost-sharing agreement within 120
1400 days after commencing negotiations, the department shall
1401 terminate negotiations and the site shall be deemed ineligible
1402 for state funding under this subsection and all liability
1403 protections provided for in this subsection shall be revoked.

1404 (d) No report of a discharge made to the department by any
1405 person in accordance with this subsection, or any rules adopted
1406 pursuant hereto, shall be used directly as evidence of liability
1407 for such discharge in any civil or criminal trial arising out of
1408 the discharge.

1409 (e) Nothing in this subsection shall be construed to
1410 preclude the department from pursuing penalties in accordance
1411 with s. 403.141 for violations of any law or any rule, order,
1412 permit, registration, or certification adopted or issued by the
1413 department pursuant to its lawful authority.

1414 (f) Upon the filing of a discharge reporting form under
1415 paragraph (a), neither the department nor any local government
1416 shall pursue any judicial or enforcement action to compel
1417 rehabilitation of the discharge. This paragraph shall not
1418 prevent any such action with respect to discharges determined
1419 ineligible under this subsection or to sites for which



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1420 rehabilitation funding assistance is available in accordance
1421 with subsection (5) and s. 376.30711.

1422 (g) The following shall be excluded from participation in
1423 the program:

1424 1. Sites at which the department has been denied reasonable
1425 site access to implement the provisions of this section.

1426 2. Sites that were active facilities when owned or operated
1427 by the Federal Government.

1428 3. Sites that are identified by the United States
1429 Environmental Protection Agency to be on, or which qualify for
1430 listing on, the National Priorities List under Superfund. This
1431 exception does not apply to those sites for which eligibility
1432 has been requested or granted as of the effective date of this
1433 act under the Early Detection Incentive Program established
1434 pursuant to s. 15, chapter 86-159, Laws of Florida.

1435 4. The contamination is covered under the Early Detection
1436 Incentive Program, the Abandoned Tank Restoration Program or the
1437 Petroleum Liability and Restoration Insurance Program, in which
1438 case site rehabilitation funding assistance shall continue under
1439 the respective program.

1440 (14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—Prior to the
1441 department entering into a service contract with the Inland
1442 Protection Financing Corporation which includes payments by the
1443 department to support any existing or planned note, bond,
1444 certificate of indebtedness, or other obligation or evidence of
1445 indebtedness of the corporation pursuant to s. 376.3075, the
1446 Legislature, by law, must specifically authorize the department
1447 to enter into such a contract. The corporation may issue bonds
1448 in an amount not to exceed \$104 million, with a term up to 15



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1449 years, and annual payments not in excess of \$10.4 million. The
1450 department may enter into a service contract in conjunction with
1451 the issuance of such bonds which provides for annual payments
1452 for debt service payments or other amounts payable with respect
1453 to bonds, plus any administrative expenses of the corporation to
1454 finance the rehabilitation of petroleum contamination sites
1455 pursuant to ss. 376.30-376.317.

1456 Section 4. Section 376.30713, Florida Statutes, is amended
1457 to read:

1458 376.30713 Advanced ~~Preapproved~~ advanced cleanup.-

1459 (1) In addition to the legislative findings provided in s.
1460 376.30711, the Legislature finds and declares:

1461 (a) That the inability to conduct site rehabilitation in
1462 advance of a site's priority ranking pursuant to s.
1463 376.3071(5) (a) may substantially impede or prohibit property
1464 transactions or the proper completion of public works projects.

1465 (b) While the first priority of the state is to provide for
1466 protection of the water resources of the state, human health,
1467 and the environment, the viability of commerce is of equal
1468 importance to the state.

1469 (c) It is in the public interest and of substantial
1470 economic benefit to the state to provide an opportunity for site
1471 rehabilitation to be conducted on a limited basis at
1472 contaminated sites, in advance of the site's priority ranking,
1473 to facilitate property transactions or public works projects.

1474 (d) It is appropriate for persons responsible for site
1475 rehabilitation to share the costs associated with managing and
1476 conducting ~~preapproved~~ advanced cleanup, to facilitate the
1477 opportunity for ~~preapproved~~ advanced cleanup, and to mitigate



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1478 the additional costs that will be incurred by the state in
1479 conducting site rehabilitation in advance of the site's priority
1480 ranking. Such cost sharing will result in more contaminated
1481 sites being cleaned up and greater environmental benefits to the
1482 state. The provisions of this section are ~~shall~~ only be
1483 available for sites eligible for restoration funding under EDI,
1484 ATRP, or PLIRP. This section is available for discharges
1485 eligible for restoration funding under the petroleum cleanup
1486 participation program for the state's cost share of site
1487 rehabilitation. Applications must ~~shall~~ include a cost-sharing
1488 commitment for this section in addition to the 25-percent-
1489 copayment requirement of the petroleum cleanup participation
1490 program. This section is not available for any discharge under a
1491 petroleum cleanup participation program where the 25-percent-
1492 copayment requirement of the petroleum cleanup participation
1493 program has been reduced or eliminated pursuant to s.
1494 376.3071(13)(c).

1495 (2) The department may ~~is authorized to~~ approve an
1496 application for ~~preapproved~~ advanced cleanup at eligible sites,
1497 prior to funding based on the site's priority ranking
1498 established pursuant to s. 376.3071(5)(a), in accordance with
1499 the provisions of this section. Persons who qualify as an
1500 applicant under the provisions of this section shall only
1501 include the facility owner or operator or the person otherwise
1502 responsible for site rehabilitation.

1503 (a) Advanced ~~Preapproved advanced~~ cleanup applications may
1504 be submitted between May 1 and June 30 and between November 1
1505 and December 31 of each fiscal year. Applications submitted
1506 between May 1 and June 30 are ~~shall be~~ for the fiscal year



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1507 beginning July 1. An application must ~~shall~~ consist of:

1508 1. A commitment to pay ~~no less than~~ 25 percent or more of
1509 the total cleanup cost deemed recoverable under the provisions
1510 of this section along with proof of the ability to pay the cost
1511 share.

1512 2. A nonrefundable review fee of \$250 to cover the
1513 administrative costs associated with the department's review of
1514 the application.

1515 3. A limited contamination assessment report.

1516 4. A proposed course of action.

1517

1518 The limited contamination assessment report is ~~shall be~~
1519 sufficient to support the proposed course of action and to
1520 estimate the cost of the proposed course of action. Any costs
1521 incurred related to conducting the limited contamination
1522 assessment report are not refundable from the Inland Protection
1523 Trust Fund. Site eligibility under this subsection, or any other
1524 provision of this section, is ~~shall~~ not ~~constitute~~ an
1525 entitlement to ~~preapproved~~ advanced cleanup or continued
1526 restoration funding. The applicant must ~~shall~~ certify to the
1527 department that the applicant has the prerequisite authority to
1528 enter into a preapproved advanced cleanup contract with the
1529 department. This certification shall be submitted with the
1530 application.

1531 (b) The department must ~~shall~~ rank the applications based
1532 on the percentage of cost-sharing commitment proposed by the
1533 applicant, with the highest ranking given to the applicant who
1534 ~~that~~ proposes the highest percentage of cost sharing. If the
1535 department receives applications that propose identical cost-



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1536 sharing commitments and that ~~which~~ exceed the funds available to
1537 commit to all such proposals during the ~~preapproved~~ advanced
1538 cleanup application period, the department must ~~shall proceed to~~
1539 rerank those applicants. Those applicants submitting identical
1540 cost-sharing proposals which exceed funding availability must
1541 ~~shall~~ be ~~so~~ notified by the department and must ~~shall~~ be offered
1542 the opportunity to raise their individual cost-share
1543 commitments, in a period of time specified in the notice. At the
1544 close of the period, the department must ~~shall proceed to~~ rerank
1545 the applications in accordance with this paragraph.

1546 (3) (a) Based on the ranking established under paragraph
1547 (2) (b) ~~and the funding limitations provided in subsection (4),~~
1548 the department must ~~shall~~ commence negotiation with ~~such~~
1549 applicants. If the department and the applicant agree on the
1550 course of action, the department may enter into a contract with
1551 the applicant. The department may ~~is authorized to~~ negotiate the
1552 terms and conditions of the contract.

1553 (b) Advanced ~~Preapproved advanced~~ cleanup must ~~shall~~ be
1554 conducted under the provisions of ss. 376.3071(5) (b) and
1555 376.30711 and rules adopted pursuant to ss. 376.30711 and
1556 287.0595. If the terms of the preapproved advanced cleanup
1557 contract are not fulfilled, the applicant forfeits any right to
1558 future payment for any site rehabilitation work conducted under
1559 the contract.

1560 (c) The department's decision not to enter into an a
1561 ~~preapproved~~ advanced cleanup contract with the applicant is
1562 ~~shall~~ not be subject to the provisions of chapter 120. If the
1563 department cannot ~~is not able to~~ complete negotiation of the
1564 course of action and the terms of the contract within 60 days



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1565 after commencing negotiations, the department shall terminate
1566 negotiations with that applicant.

1567 (4) The department may ~~is authorized to~~ enter into contract
1568 for a total of up to \$10 million of ~~preapproved~~ advanced cleanup
1569 work in each fiscal year. However, no facility may ~~shall~~ be
1570 approved ~~preapproved~~ for more than \$500,000 of cleanup activity
1571 in each fiscal year. For the purposes of this section the term
1572 "facility" includes ~~shall include~~, but is not ~~be~~ limited to,
1573 multiple site facilities such as airports, port facilities, and
1574 terminal facilities even though such enterprises may be treated
1575 as separate facilities for other purposes under this chapter.

1576 (5) All funds collected by the department pursuant to this
1577 section must ~~shall~~ be deposited into the Inland Protection Trust
1578 Fund to be used as provided in this section.

1579 Section 5. Section 373.326, Florida Statutes, is amended to
1580 read:

1581 373.326 Exemptions.—

1582 (1) When the water management district finds that
1583 compliance with all requirements of this part would result in
1584 undue hardship, an exemption from any one or more such
1585 requirements may be granted by the water management district to
1586 the extent necessary to ameliorate such undue hardship and to
1587 the extent such exemption can be granted without impairing the
1588 intent and purpose of this part.

1589 (2) Nothing in this part shall prevent a person who has not
1590 obtained a license pursuant to s. 373.323 from constructing a
1591 well that is 2 inches or under in diameter, on the person's own
1592 or leased property, intended for use only in a single-family
1593 house which is his or her residence, or intended for use only



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1594 for farming purposes on the person's farm, and when the waters
1595 to be produced are not intended for use by the public or any
1596 residence other than his or her own, provided that such person
1597 complies with all local and state rules and regulations relating
1598 to the construction of water wells.

1599 (3) (a) A permit or a fee may not be required under this
1600 part for:

1601 1. Any well authorized pursuant to ss. 403.061 and 403.087
1602 under the State Underground Injection Control Program identified
1603 in chapter 62-528, Florida Administrative Code, as Class I,
1604 Class II, Class III, Class IV, or Class V Groups 2-9.

1605 2. Any monitoring well required pursuant to site
1606 rehabilitation activities under chapter 376, when such water
1607 wells are constructed using state funds being expended pursuant
1608 to s. 376.3071(4), s. 376.3078(2)(b), or s. 376.307(1).

1609 (b) However, a well described in paragraph (a) ~~such wells~~
1610 must be constructed by persons who have obtained a license
1611 pursuant to s. 373.323 as otherwise required by law.

1612 Section 6. This act shall take effect upon becoming law.