

By Senator Dean

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1 A bill to be entitled
2 An act relating to rehabilitation of petroleum
3 contamination sites; amending s. 376.3071, F.S.;
4 revising legislative findings and intent regarding the
5 Petroleum Restoration Program and the rehabilitation
6 of contamination sites; providing requirements for
7 site rehabilitation contracts and procedures for
8 payment of rehabilitation work under the Petroleum
9 Restoration Program; limiting eligibility for funding
10 under the Early Detection Incentive Program; deleting
11 obsolete provisions relating to reimbursement for
12 certain cleanup expenses; repealing s. 376.30711,
13 F.S., relating to preapproved site rehabilitation;
14 amending ss. 376.301, 376.302, 376.305, 376.30713,
15 376.30714, 376.3072, 376.3073, and 376.3075, F.S.;
16 conforming provisions to changes made by the act;
17 providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 376.3071, Florida Statutes, is amended
22 to read:

23 376.3071 Inland Protection Trust Fund; creation; purposes;
24 funding.—

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

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

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30 (b) That spills, leaks, and other discharges from such
31 storage systems have occurred, are occurring, and will continue
32 to occur and that such discharges pose a significant threat to
33 the quality of the groundwaters and inland surface waters of
34 this state.

35 (c) That, where contamination of the ground or surface
36 water has occurred, remedial measures have often been delayed
37 for long periods while determinations as to liability and the
38 extent of liability are made and that such delays result in the
39 continuation and intensification of the threat to the public
40 health, safety, and welfare; in greater damage to water
41 resources and the environment; and in significantly higher costs
42 to contain and remove the contamination.

43 (d) That adequate financial resources must be readily
44 available to provide for the expeditious supply of safe and
45 reliable alternative sources of potable water to affected
46 persons and to provide a means for investigation and cleanup of
47 contamination sites without delay.

48 (e) That it is necessary to fulfill the intent and purposes
49 of ss. 376.30-376.317, ~~and further it is hereby~~ determined to be
50 in the best interest of, and necessary for the protection of the
51 public health, safety, and ~~general~~ welfare of the residents of
52 this state, and therefore a paramount public purpose, to provide
53 for the creation of a nonprofit public benefit corporation as an
54 instrumentality of the state to assist in financing the
55 functions provided in ss. 376.30-376.317 and to authorize the
56 department to enter into one or more service contracts with such
57 corporation for the purpose ~~provision~~ of financing services
58 related to such functions and to make payments thereunder from

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59 the amount on deposit in the Inland Protection Trust Fund,
60 subject to annual appropriation by the Legislature.

61 (f) That to achieve the purposes established in paragraph
62 (e) and in order to facilitate the expeditious handling and
63 rehabilitation of contamination sites and remedial measures with
64 respect to contamination sites ~~provided hereby~~ without delay, it
65 is in the best interests of the residents of this state to
66 authorize such corporation to issue evidences of indebtedness
67 payable from amounts paid by the department under any such
68 service contract entered into between the department and such
69 corporation.

70 (g) That the Petroleum Restoration Program must be
71 implemented in a manner that reduces costs and improves the
72 efficiency of rehabilitation activities to reduce the
73 significant backlog of contaminated sites eligible for state-
74 funded rehabilitation and the corresponding threat to water
75 resources, the environment, and the public health, safety, and
76 welfare.

77 (2) INTENT AND PURPOSE.—

78 (a) It is the intent of the Legislature to establish the
79 Inland Protection Trust Fund to serve as a repository for funds
80 which will enable the department to respond without delay to
81 incidents of inland contamination related to the storage of
82 petroleum and petroleum products in order to protect the public
83 health, safety, and welfare and to minimize environmental
84 damage.

85 (b) It is the intent of the Legislature that the department
86 implement rules and procedures to improve the efficiency of the
87 Petroleum Restoration Program. The department is directed to

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88 implement rules and policies to eliminate and reduce duplication
89 of site rehabilitation efforts, paperwork, and documentation,
90 and micromanagement of site rehabilitation tasks.

91 (c) It is the intent of the Legislature that rehabilitation
92 of contamination sites be conducted with emphasis on first
93 addressing the sites that pose the greatest threat to water
94 resources, the environment, and the public health, safety, and
95 welfare, within the availability of funds in the Inland
96 Protection Trust Fund, recognizing that source removal, wherever
97 it is technologically feasible and cost-effective, significantly
98 reduces contamination or eliminates the spread of contamination
99 and protects water resources, the environment, and the public
100 health, safety, and welfare.

101 ~~(d)(e)~~ The department is directed to adopt and implement
102 uniform and standardized forms for ~~the requests for preapproval~~
103 site rehabilitation work and for the submittal of reports to
104 ensure that information is submitted to the department in a
105 concise, standardized uniform format seeking only information
106 that is necessary.

107 ~~(e)(d)~~ The department is directed to implement computerized
108 and electronic filing capabilities of ~~preapproval requests and~~
109 submittal of reports in order to expedite submittal of the
110 information and elimination of delay in paperwork. ~~The~~
111 ~~computerized, electronic filing system shall be implemented no~~
112 ~~later than January 1, 1997.~~

113 ~~(e) The department is directed to adopt uniform scopes of~~
114 ~~work with templated labor and equipment costs to provide~~
115 ~~definitive guidance as to the type of work and authorized~~
116 ~~expenditures that will be allowed for preapproved site~~

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117 ~~rehabilitation tasks.~~

118 (f) The department is directed to establish guidelines for
119 consideration and acceptance of new and innovative technologies
120 for site rehabilitation work.

121 (3) CREATION.—There is ~~hereby~~ created the Inland Protection
122 Trust Fund, hereinafter referred to as the “fund,” to be
123 administered by the department. This fund shall be used by the
124 department as a nonlapsing revolving fund for carrying out the
125 purposes of this section and s. 376.3073. To this fund shall be
126 credited all penalties, judgments, recoveries, reimbursements,
127 loans, and other fees and charges related to the implementation
128 of this section and s. 376.3073 and the excise tax revenues
129 levied, collected, and credited pursuant to ss. 206.9935(3) and
130 206.9945(1)(c). Charges against the fund shall be made pursuant
131 to ~~in accordance with the provisions of~~ this section.

132 (4) USES.—Whenever, in its determination, incidents of
133 inland contamination related to the storage of petroleum or
134 petroleum products may pose a threat to water resources, the
135 environment, or the public health, safety, or welfare, the
136 department shall obligate moneys available in the fund to
137 provide for:

138 (a) Prompt investigation and assessment of contamination
139 sites.

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

142 (c) Rehabilitation of contamination sites, which shall
143 consist of cleanup of affected soil, groundwater, and inland
144 surface waters, using the most cost-effective alternative that
145 is technologically feasible and reliable, ~~and~~ and that provides

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146 adequate protection of water resources and the public health,
147 safety, and welfare, and that minimizes environmental damage,
148 pursuant to ~~in accordance with~~ the site selection and cleanup
149 criteria established by the department under subsection (5),
150 except that this paragraph does not ~~nothing herein shall be~~
151 ~~construed to~~ authorize the department to obligate funds for
152 payment of costs that ~~which~~ may be associated with, but are not
153 integral to, site rehabilitation, such as the cost for
154 retrofitting or replacing petroleum storage systems.

155 (d) Maintenance and monitoring of contamination sites.

156 (e) Inspection and supervision of activities described in
157 this subsection.

158 (f) Payment of expenses incurred by the department in its
159 efforts to obtain from responsible parties the payment or
160 recovery of reasonable costs resulting from the activities
161 described in this subsection.

162 (g) Payment of any other reasonable costs of
163 administration, including those administrative costs incurred by
164 the Department of Health in providing field and laboratory
165 services, toxicological risk assessment, and other assistance to
166 the department in the investigation of drinking water
167 contamination complaints and costs associated with public
168 information and education activities.

169 (h) Establishment and implementation of the compliance
170 verification program as authorized in s. 376.303(1)(a),
171 including contracting with local governments or state agencies
172 to provide for the administration of such program through
173 locally administered programs, to minimize the potential for
174 further contamination sites.

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175 (i) Funding of the provisions of ss. 376.305(6) and
176 376.3072.

177 (j) Activities related to removal and replacement of
178 petroleum storage systems, exclusive of costs of any tank,
179 piping, dispensing unit, or related hardware, if soil removal is
180 approved ~~preapproved~~ as a component of site rehabilitation and
181 requires removal of the tank where remediation is conducted
182 under this section ~~s. 376.30711~~ or if such activities were
183 justified in an approved remedial action plan ~~performed pursuant~~
184 ~~to subsection (12)~~.

185 ~~(k) Activities related to reimbursement application~~
186 ~~preparation and activities related to reimbursement application~~
187 ~~examination by a certified public accountant pursuant to~~
188 ~~subsection (12)~~.

189 (k) ~~(l)~~ Reasonable costs of restoring property as nearly as
190 practicable to the conditions that ~~which~~ existed before ~~prior to~~
191 activities associated with contamination assessment or remedial
192 action taken under s. 376.303(4).

193 (l) ~~(m)~~ Repayment of loans to the fund.

194 (m) ~~(n)~~ Expenditure of sums from the fund to cover
195 ineligible sites or costs as set forth in subsection (13), if
196 the department in its discretion deems it necessary to do so. In
197 such cases, the department may seek recovery and reimbursement
198 of costs in the same manner and pursuant to ~~in accordance with~~
199 the same procedures ~~as are~~ established for recovery and
200 reimbursement of sums otherwise owed to or expended from the
201 fund.

202 (n) ~~(o)~~ Payment of amounts payable under any service
203 contract entered into by the department pursuant to s. 376.3075,

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204 subject to annual appropriation by the Legislature.

205 (o) ~~(p)~~ Petroleum remediation pursuant to this section ~~s.~~
 206 ~~376.30711~~ throughout a state fiscal year. The department shall
 207 establish a process to uniformly encumber appropriated funds
 208 throughout a state fiscal year and shall allow for emergencies
 209 and imminent threats to water resources, ~~human health and the~~
 210 environment, and the public health, safety, and welfare, as
 211 provided in paragraph (5) (a). This paragraph does not apply to
 212 appropriations associated with the free product recovery
 213 initiative provided in ~~of~~ paragraph (5) (c) or the ~~preapproved~~
 214 advanced cleanup program provided in ~~of~~ s. 376.30713.

215 (p) ~~(q)~~ Enforcement of this section and ss. 376.30-376.317
 216 by the Fish and Wildlife Conservation Commission. The department
 217 shall disburse moneys to the commission for such purpose.

218
 219 The Inland Protection Trust Fund may only be used to fund the
 220 activities in ss. 376.30-376.317 except ss. 376.3078 and
 221 376.3079. Amounts on deposit in the ~~Inland Protection Trust~~ fund
 222 in each fiscal year shall first be applied or allocated for the
 223 payment of amounts payable by the department pursuant to
 224 paragraph (n) ~~(o)~~ under a service contract entered into by the
 225 department pursuant to s. 376.3075 and appropriated in each year
 226 by the Legislature before ~~prior to~~ making or providing for other
 227 disbursements from the fund. ~~Nothing in~~ This subsection does not
 228 ~~shall~~ authorize the use of the ~~Inland Protection Trust~~ fund for
 229 cleanup of contamination caused primarily by a discharge of
 230 solvents as defined in s. 206.9925(6), or polychlorinated
 231 biphenyls when their presence causes them to be hazardous
 232 wastes, except solvent contamination which is the result of

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233 chemical or physical breakdown of petroleum products and is
234 otherwise eligible. Facilities used primarily for the storage of
235 motor or diesel fuels as defined in ss. 206.01 and 206.86 are
236 ~~shall be presumed not to be~~ excluded from eligibility pursuant
237 to this section.

238 (5) SITE SELECTION AND CLEANUP CRITERIA.—

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

243 1. The degree to which the public ~~human~~ health, safety, or
244 welfare may be affected by exposure to the contamination;

245 2. The size of the population or area affected by the
246 contamination;

247 3. The present and future uses of the affected aquifer or
248 surface waters, with particular consideration as to the
249 probability that the contamination is substantially affecting,
250 or will migrate to and substantially affect, a known public or
251 private source of potable water; and

252 4. The effect of the contamination on water resources and
253 the environment.

254

255 Moneys in the fund shall then be obligated for activities
256 described in paragraphs (4) (a)-(e) at individual sites pursuant
257 to ~~in accordance with~~ such established criteria. However,
258 ~~nothing in this paragraph~~ does not ~~shall be construed to~~
259 restrict the department from modifying the priority status of a
260 rehabilitation site where conditions warrant, taking into
261 consideration the actual distance between the contamination site

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262 and groundwater or surface water receptors or other factors that
263 affect the risk of exposure to petroleum products' chemicals of
264 concern. The department may use the effective date of a
265 department final order granting eligibility pursuant to
266 subsections (10) ~~(9)~~ and (13) and ss. 376.305(6) and 376.3072 to
267 establish a prioritization system within a particular priority
268 scoring range.

269 (b) It is the intent of the Legislature to protect the
270 health of all people under actual circumstances of exposure. The
271 secretary shall establish criteria by rule for the purpose of
272 determining, on a site-specific basis, the rehabilitation
273 program tasks that comprise a site rehabilitation program and
274 the level at which a rehabilitation program task and a site
275 rehabilitation program are ~~may be deemed~~ completed. In
276 establishing the rule, the department shall incorporate, to the
277 maximum extent feasible, risk-based corrective action principles
278 to achieve protection of water resources, human health and
279 ~~safety and~~ the environment, and the public health, safety, and
280 welfare in a cost-effective manner as provided in this
281 subsection. Criteria for determining what constitutes a
282 rehabilitation program task or completion of site rehabilitation
283 program tasks and site rehabilitation programs shall be based
284 upon the factors set forth in paragraph (a) and the following
285 additional factors:

286 1. The current exposure and potential risk of exposure to
287 humans and the environment including multiple pathways of
288 exposure.

289 2. The appropriate point of compliance with cleanup target
290 levels for petroleum products' chemicals of concern. The point

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291 of compliance shall be at the source of the petroleum
292 contamination. However, the department may ~~is authorized to~~
293 temporarily move the point of compliance to the boundary of the
294 property, or to the edge of the plume when the plume is within
295 the property boundary, while cleanup, including cleanup through
296 natural attenuation processes in conjunction with appropriate
297 monitoring, is proceeding. The department may also ~~is~~
298 ~~authorized,~~ pursuant to criteria provided for in this paragraph,
299 ~~to~~ temporarily extend the point of compliance beyond the
300 property boundary with appropriate monitoring, if such extension
301 is needed to facilitate natural attenuation or to address the
302 current conditions of the plume and if water resources, provided
303 ~~human health, public safety, and the environment, and the public~~
304 health, safety, and welfare are adequately protected. Temporary
305 extension of the point of compliance beyond the property
306 boundary, as provided in this subparagraph, must ~~shall~~ include
307 notice to local governments and owners of any property into
308 which the point of compliance is allowed to extend.

309 3. The appropriate site-specific cleanup goal. The site-
310 specific cleanup goal shall be that all petroleum contamination
311 sites ultimately achieve the applicable cleanup target levels
312 provided in this paragraph. However, the department may ~~is~~
313 ~~authorized to~~ allow concentrations of the petroleum products'
314 chemicals of concern to temporarily exceed the applicable
315 cleanup target levels while cleanup, including cleanup through
316 natural attenuation processes in conjunction with appropriate
317 monitoring, is proceeding, if water resources provided human
318 ~~health, public safety, and the environment, and the public~~
319 health, welfare, and safety are adequately protected.

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320 4. The appropriateness of using institutional or
321 engineering controls. Site rehabilitation programs may include
322 the use of institutional or engineering controls to eliminate
323 the potential exposure to petroleum products' chemicals of
324 concern to humans or the environment. Use of such controls must
325 have prior department approval ~~be preapproved by the department,~~
326 and may institutional controls ~~shall~~ not be acquired with moneys
327 ~~funds~~ from the ~~Inland Protection Trust~~ fund. When institutional
328 or engineering controls are implemented to control exposure, the
329 removal of such controls must have prior department approval and
330 must be accompanied immediately by the resumption of active
331 cleanup, or other approved controls, unless cleanup target
332 levels pursuant to this paragraph have been achieved.

333 5. The additive effects of the petroleum products'
334 chemicals of concern. The synergistic effects of petroleum
335 products' chemicals of concern must ~~shall~~ also be considered
336 when the scientific data becomes available.

337 6. Individual site characteristics that must ~~which shall~~
338 include, but not be limited to, the current and projected use of
339 the affected groundwater in the vicinity of the site, current
340 and projected land uses of the area affected by the
341 contamination, the exposed population, the degree and extent of
342 contamination, the rate of contaminant migration, the apparent
343 or potential rate of contaminant degradation through natural
344 attenuation processes, the location of the plume, and the
345 potential for further migration in relation to site property
346 boundaries.

347 7. Applicable state water quality standards.

348 a. Cleanup target levels for petroleum products' chemicals

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349 of concern found in groundwater shall be the applicable state
350 water quality standards. Where such standards do not exist, the
351 cleanup target levels for groundwater shall be based on the
352 minimum criteria specified in department rule. The department
353 shall consider the following, as appropriate, in establishing
354 the applicable minimum criteria: calculations using a lifetime
355 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
356 best achievable detection limit; the naturally occurring
357 background concentration; or nuisance, organoleptic, and
358 aesthetic considerations.

359 b. Where surface waters are exposed to petroleum
360 contaminated groundwater, the cleanup target levels for the
361 petroleum products' chemicals of concern shall be based on the
362 surface water standards as established by department rule. The
363 point of measuring compliance with the surface water standards
364 shall be in the groundwater immediately adjacent to the surface
365 water body.

366 8. Whether deviation from state water quality standards or
367 from established criteria is appropriate. The department may
368 issue a "No Further Action Order" based upon the degree to which
369 the desired cleanup target level is achievable and can be
370 reasonably and cost-effectively implemented within available
371 technologies or engineering and institutional control
372 strategies. Where a state water quality standard is applicable,
373 a deviation may not result in the application of cleanup target
374 levels more stringent than the ~~said~~ standard. In determining
375 whether it is appropriate to establish alternate cleanup target
376 levels at a site, the department may consider the effectiveness
377 of source removal that has been completed at the site and the

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378 practical likelihood of: the use of low yield or poor quality
379 groundwater; the use of groundwater near marine surface water
380 bodies; the current and projected use of the affected
381 groundwater in the vicinity of the site; or the use of
382 groundwater in the immediate vicinity of the storage tank area,
383 where it has been demonstrated that the groundwater
384 contamination is not migrating away from such localized source,
385 if water resources; ~~provided human health, public safety, and~~
386 the environment, and the public health, safety, and welfare are
387 adequately protected.

388 9. Appropriate cleanup target levels for soils.

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

396 b. Leachability-based soil target levels shall be based on
397 protection of the groundwater cleanup target levels or the
398 alternate cleanup target levels for groundwater established
399 pursuant to this paragraph, as appropriate. Source removal and
400 other cost-effective alternatives that are technologically
401 feasible shall be considered in achieving the leachability soil
402 target levels established by the department. The leachability
403 goals do not apply ~~shall not be applicable~~ if the department
404 determines, based upon individual site characteristics, that
405 petroleum products' chemicals of concern will not leach into the
406 groundwater at levels which pose a threat to water resources,

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407 ~~human health and safety or the environment, or the public~~
408 health, safety, or welfare.

409
410 ~~However, nothing in~~ This paragraph does not ~~shall be construed~~
411 ~~to~~ restrict the department from temporarily postponing
412 completion of any site rehabilitation program for which funds
413 are being expended whenever such postponement is ~~deemed~~
414 necessary in order to make funds available for rehabilitation of
415 a contamination site with a higher priority status.

416 (c) The department shall require source removal, if
417 warranted and cost-effective, at each site eligible for
418 restoration funding from the ~~Inland Protection Trust~~ fund.

419 1. Funding for free product recovery may be provided in
420 advance of the order established by the priority ranking system
421 under paragraph (a) for site cleanup activities. However, a
422 separate prioritization for free product recovery shall be
423 established consistent with paragraph (a). No more than \$5
424 million shall be encumbered from the ~~Inland Protection Trust~~
425 fund in any fiscal year for free product recovery conducted in
426 advance of the priority order under paragraph (a) established
427 for site cleanup activities.

428 2. Once free product removal and other source removal
429 identified in this paragraph are completed at a site, and
430 notwithstanding the order established by the priority ranking
431 system under paragraph (a) for site cleanup activities, the
432 department may reevaluate the site to determine the degree of
433 active cleanup needed to continue site rehabilitation. Further,
434 the department shall determine whether ~~if~~ the reevaluated site
435 qualifies for natural attenuation monitoring, long-term natural

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436 attenuation monitoring, or no further action. If additional site
437 rehabilitation is necessary to reach no further action status,
438 the site rehabilitation shall be conducted in the order
439 established by the priority ranking system under paragraph (a).
440 The department shall use ~~utilize~~ natural attenuation monitoring
441 strategies and, when cost-effective, transition sites eligible
442 for restoration funding assistance to long-term natural
443 attenuation monitoring where the plume is shrinking or stable
444 and confined to the source property boundaries and the petroleum
445 products' chemicals of concern meet the natural attenuation
446 default concentrations, as defined by department rule. If the
447 plume migrates beyond the source property boundaries, natural
448 attenuation monitoring may be conducted pursuant to ~~in~~
449 ~~accordance with~~ department rule, or if the site no longer
450 qualifies for natural attenuation monitoring, active remediation
451 may be resumed. For long-term natural attenuation monitoring, if
452 the petroleum products' chemicals of concern increase or are not
453 significantly reduced after 42 months of monitoring, or if the
454 plume migrates beyond the property boundaries, active
455 remediation shall be resumed as necessary. For sites undergoing
456 active remediation, the department shall evaluate ~~template~~ the
457 cost of natural attenuation monitoring pursuant to s. 376.30711
458 to ensure that site mobilizations are performed in a cost-
459 effective manner. Sites that are not eligible for state
460 restoration funding may transition to long-term natural
461 attenuation monitoring using the criteria in this subparagraph.
462 ~~Nothing in~~ This subparagraph does not preclude ~~precludes~~ a site
463 from pursuing a "No Further Action" order with conditions.

464 3. The department shall evaluate whether higher natural

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465 attenuation default concentrations for natural attenuation
466 monitoring or long-term natural attenuation monitoring are cost-
467 effective and would adequately protect water resources, public
468 ~~health and~~ the environment, and the public health, safety, and
469 welfare. The department shall also evaluate site-specific
470 characteristics that would allow for higher natural attenuation
471 or long-term natural attenuation concentration levels.

472 4. A local government may not deny a building permit based
473 solely on the presence of petroleum contamination for any
474 construction, repairs, or renovations performed in conjunction
475 with tank upgrade activities to an existing retail fuel facility
476 if the facility was fully operational before the building permit
477 was requested and if the construction, repair, or renovation is
478 performed by a licensed contractor. All building permits and any
479 construction, repairs, or renovations performed in conjunction
480 with such permits must comply with the applicable provisions of
481 chapters 489 and 553.

482 (6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

483 (a) Site rehabilitation work on sites that are eligible for
484 state-funded cleanup from the fund pursuant to this section and
485 ss. 376.305(6), 376.3072, and 376.3073 may be funded only
486 pursuant to this section. A facility operator shall abate the
487 source of discharge for a new release that occurred after March
488 29, 1995. If free product is present, the operator shall notify
489 the department, and the department may direct the removal of the
490 free product. The department shall grant approval to continue
491 site rehabilitation pursuant to this section.

492 (b) When contracting for site rehabilitation activities
493 performed under the Petroleum Restoration Program, the

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494 department shall comply with competitive procurement
495 requirements provided in chapter 287 or rules adopted under this
496 section or s. 287.0595. A competitive solicitation issued
497 pursuant to this section is not subject to s. 287.055.

498 (c) Each contractor performing site assessment and
499 remediation activities for state-funded sites under this section
500 shall certify to the department that the contractor meets all
501 certification and license requirements imposed by law. Each
502 contractor shall certify to the department that the contractor
503 meets the following minimum qualifications:

504 1. Complies with applicable Occupational Safety and Health
505 Administration regulations.

506 2. Maintains workers' compensation insurance for employees
507 as required by the Florida Workers' Compensation Law.

508 3. Maintains comprehensive general liability and
509 comprehensive automobile liability insurance with minimum limits
510 of at least \$1 million per occurrence and \$1 million annual
511 aggregate to pay claims for damage for personal injury,
512 including accidental death, as well as claims for property
513 damage that may arise from performance of work under the
514 program, which insurance designates the state as an additional
515 insured party.

516 4. Maintains professional liability insurance of at least
517 \$1 million per occurrence and \$1 million annual aggregate.

518 5. Has the capacity to perform or directly supervise the
519 majority of the rehabilitation work at a site pursuant to s.
520 489.113(9).

521 (d) The department rules implementing this section must
522 specify that only qualified vendors may submit responses on a

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523 competitive solicitation. The department rules must also include
524 procedures for the rejection of vendors not meeting the minimum
525 qualifications on the opening of a competitive solicitation and
526 requirements for a vendor to maintain its qualifications in
527 order to enter contracts or perform rehabilitation work.

528 (e) A contractor that performs services pursuant to this
529 subsection may file invoices for payment with the department for
530 the services described in the approved contract. The invoices
531 for payment must be submitted to the department on forms
532 provided by the department, together with evidence documenting
533 that activities were conducted or completed pursuant to the
534 approved contract. If there are sufficient unencumbered funds
535 available in the fund which have been appropriated for
536 expenditure by the Legislature and if all of the terms of the
537 approved contract have been met, invoices for payment must be
538 paid pursuant to s. 215.422. After a contractor has submitted
539 its invoices to the department, and before payment is made, the
540 contractor may assign its right to payment to another person
541 without recourse of the assignee or assignor to the state. In
542 such cases, the assignee must be paid pursuant to s. 215.422.
543 Prior notice of the assignment and assignment information must
544 be made to the department and must be signed and notarized by
545 the assigning party.

546 (f) The contractor shall submit an invoice to the
547 department within 30 days after the date of the department's
548 written acceptance of each interim deliverable or written
549 approval of the final deliverable specified in the approved
550 contract.

551 (g) The department shall make payments based on the terms

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552 of an approved contract for site rehabilitation work. The
553 department may, based on its experience and the past performance
554 and concerns regarding a contractor, retain up to 25 percent of
555 the contracted amount or use performance bonds to ensure
556 performance. The amount of retainage and the amount of
557 performance bonds, as well as the terms and conditions for such,
558 must be included in the approved contract.

559 (h) The contractor or the person to which the contractor
560 has assigned its right to payment pursuant to paragraph (e)
561 shall make prompt payment to subcontractors and suppliers for
562 their costs associated with an approved contract pursuant to s.
563 287.0585(1).

564 (i) The exemption under s. 287.0585(2) does not apply to
565 payments associated with an approved contract.

566 (j) The department may withhold payment if the validity or
567 accuracy of a contractor's invoices or supporting documents is
568 in question.

569 (k) This section does not authorize payment to a person for
570 costs of contaminated soil treatment or disposal that does not
571 meet the applicable rules of this state for such treatment or
572 disposal, including all general permitting, state air emission
573 standards, monitoring, sampling, and reporting rules more
574 specifically described by department rules.

575 (l) The department shall terminate or suspend a
576 contractor's eligibility for participation in the program if the
577 contractor fails to perform its contractual duties for site
578 rehabilitation program tasks.

579 (m) A site owner or operator, or his or her designee, may
580 not receive any remuneration, in cash or in kind, directly or

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581 indirectly, from a rehabilitation contractor performing site
582 cleanup activities pursuant to this section.

583 (7)~~(6)~~ FUNDING.—The Inland Protection Trust Fund shall be
584 funded as follows:

585 (a) All excise taxes levied, collected, and credited to the
586 fund in accordance with ~~the provisions of~~ ss. 206.9935(3) and
587 206.9945(1) (c).

588 (b) All penalties, judgments, recoveries, reimbursements,
589 and other fees and charges credited to the fund pursuant to ~~in~~
590 ~~accordance with the provisions of~~ subsection (3).

591 (8)~~(7)~~ DEPARTMENTAL DUTY TO SEEK RECOVERY AND
592 REIMBURSEMENT.—

593 (a) Except as provided in subsection (10) ~~(9)~~ and as
594 otherwise provided by law, the department shall recover to the
595 use of the fund from a person or persons at any time causing or
596 having caused the discharge or from the Federal Government,
597 jointly and severally, all sums owed or expended from the fund,
598 pursuant to s. 376.308, except that the department may decline
599 to pursue such recovery if it finds the amount involved too
600 small or the likelihood of recovery too uncertain. Sums
601 recovered as a result of damage due to a discharge related to
602 the storage of petroleum or petroleum products or other similar
603 disaster shall be apportioned between the fund and the General
604 Revenue Fund so as to repay the full costs to the General
605 Revenue Fund of ~~any~~ sums disbursed therefrom as a result of such
606 disaster. A ~~Any~~ request for reimbursement to the fund for such
607 costs, if not paid within 30 days after ~~of~~ demand, shall be
608 turned over to the department for collection.

609 (b) Except as provided in subsection (10) ~~(9)~~ and as

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610 otherwise provided by law, it is the duty of the department in
611 administering the fund diligently to pursue the reimbursement to
612 the fund of any sum expended from the fund for cleanup and
613 abatement pursuant to ~~in accordance with the provisions of this~~
614 section or s. 376.3073, unless the department finds the amount
615 involved too small or the likelihood of recovery too uncertain.
616 For the purposes of s. 95.11, the limitation period within which
617 to institute an action to recover such sums shall begin ~~commence~~
618 on the last date on which ~~any~~ such sums were expended, and not
619 the date on which ~~that~~ the discharge occurred. The department's
620 claim for recovery of payments or overpayments from the fund
621 must be based on the law in existence at the time of the payment
622 or overpayment.

623 (c) If the department initiates an enforcement action to
624 clean up a contaminated site and determines that the responsible
625 party cannot ~~is~~ financially ~~unable to~~ undertake complete
626 restoration of the contaminated site, that the current property
627 owner was not responsible for the discharge when the
628 contamination first occurred, or that the state's interest can
629 best be served by conducting cleanup, the department may enter
630 into an agreement with the responsible party or property owner
631 whereby the department agrees to conduct site rehabilitation and
632 the responsible party or property owner agrees to pay for the
633 portion of the cleanup costs that are within such party's or
634 owner's financial capabilities as determined by the department,
635 taking into consideration the party's or owner's net worth and
636 the economic impact on the party or owner.

637 (9) ~~(8)~~ INVESTMENTS; INTEREST.—Moneys in the fund which are
638 not needed currently to meet the obligations of the department

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639 in the exercise of its responsibilities under this section and
640 s. 376.3073 shall be deposited with the Chief Financial Officer
641 to the credit of the fund and may be invested in such manner as
642 ~~is~~ provided ~~for~~ by law statute. The interest received on such
643 investment shall be credited to the fund. Any provisions of law
644 to the contrary notwithstanding, such interest may be freely
645 transferred between the ~~this~~ trust fund and the Water Quality
646 Assurance Trust Fund, in the discretion of the department.

647 (10) ~~(9)~~ EARLY DETECTION INCENTIVE PROGRAM.—To encourage
648 early detection, reporting, and cleanup of contamination from
649 leaking petroleum storage systems, the department shall, within
650 the guidelines established in this subsection, conduct an
651 incentive program that provides ~~which shall provide~~ for a 30-
652 month grace period ending on December 31, 1988. ~~Pursuant~~
653 ~~thereto:~~

654 (a) The department shall establish reasonable requirements
655 for the written reporting of petroleum contamination incidents
656 and shall distribute forms to registrants under s. 376.303(1)(b)
657 and to other interested parties upon request to be used for such
658 purpose. Until such forms are available for distribution, the
659 department shall take reports of such incidents, however made,
660 but shall notify any person making such a report that a complete
661 written report of the incident will be required by the
662 department at a later time, the form for which will be provided
663 by the department.

664 (b) When reporting forms become available for distribution,
665 all sites involving incidents of contamination from petroleum
666 storage systems initially reported to the department at any time
667 from midnight on June 30, 1986, to midnight on December 31,

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668 1988, shall be qualified sites ~~if, provided that~~ such a complete
669 written report is filed with respect thereto within a reasonable
670 time. Subject to the delays which may occur as a result of the
671 prioritization of sites under paragraph (5)(a) for any qualified
672 site, costs for activities described in paragraphs (4)(a)-(e)
673 shall be absorbed at the expense of the fund, without recourse
674 to reimbursement or recovery, with the following exceptions:

675 1. ~~The provisions of~~ This subsection does ~~shall~~ not apply
676 to a ~~any~~ site where the department has been denied site access
677 to implement ~~the provisions of~~ this section.

678 2. ~~The provisions of~~ This subsection does ~~shall~~ not ~~be~~
679 ~~construed to~~ authorize or require reimbursement from the fund
680 for costs expended before ~~prior to~~ the beginning of the grace
681 period, ~~except as provided in subsection (12).~~

682 3.a. Upon discovery by the department that the owner or
683 operator of a petroleum storage system has been grossly
684 negligent in the maintenance of such petroleum storage system;
685 has, with willful intent to conceal the existence of a serious
686 discharge, falsified inventory or reconciliation records
687 maintained with respect to the site at which such system is
688 located; or has intentionally damaged such petroleum storage
689 system, the site at which such system is located shall be
690 ineligible for participation in the incentive program and the
691 owner shall be liable for all costs due to discharges from
692 petroleum storage systems at that site, any other provisions of
693 chapter 86-159, Laws of Florida, to the contrary
694 notwithstanding. For the purposes of this paragraph, willful
695 failure to maintain inventory and reconciliation records,
696 willful failure to make monthly monitoring system checks where

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697 such systems are in place, and failure to meet monitoring and
698 retrofitting requirements within the schedules established under
699 chapter 62-761, Florida Administrative Code, or violation of
700 similar rules adopted by the department under this chapter,
701 constitutes ~~shall be construed to be~~ gross negligence in the
702 maintenance of a petroleum storage system.

703 b. The department shall redetermine the eligibility of
704 petroleum storage systems for which a timely Early Detection
705 Incentive Program ~~EDI~~ application was filed, but which were
706 deemed ineligible by the department, under the following
707 conditions:

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

713 (II) The department verifies the storage system compliance
714 based on a compliance inspection.

715
716 ~~Provided, however, that~~ A site may be determined eligible by the
717 department for good cause shown, including, but not limited to,
718 demonstration by the owner or operator that to achieve
719 compliance would cause an increase in the potential for the
720 spread of the contamination.

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

723 (I) Petroleum storage systems owned or operated by the
724 Federal Government.

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

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726 (III) Facilities where a discharge was intentionally
727 concealed.

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

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

732 (B) Contamination from substances that were not petroleum
733 or a petroleum product.

734 (C) Contamination that was not from a petroleum storage
735 system.

736 d. ~~EDI~~ Applicants who demonstrate compliance for a site
737 pursuant to sub-subparagraph b. are eligible for the Early
738 Detection Incentive Program and site rehabilitation funding
739 pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~.

740
741 If, in order to avoid prolonged delay, the department in its
742 discretion deems it necessary to expend sums from the fund to
743 cover ineligible sites or costs as set forth in this paragraph,
744 the department may do so and seek recovery and reimbursement
745 therefor in the same manner and pursuant to ~~in accordance with~~
746 the same procedures ~~as are~~ established for recovery and
747 reimbursement of sums otherwise owed to or expended from the
748 fund.

749 (c) A ~~No~~ report of a discharge made to the department by a
750 any person pursuant to ~~in accordance with~~ this subsection, or
751 any rules adopted promulgated pursuant to this subsection may
752 not hereto, ~~shall~~ be used directly as evidence of liability for
753 such discharge in any civil or criminal trial arising out of the
754 discharge.

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755 (d) ~~The provisions of~~ This subsection does ~~shall~~ not apply
756 to petroleum storage systems owned or operated by the Federal
757 Government.

758 (11) ~~(10)~~ VIOLATIONS; PENALTY.—~~A~~ ~~It is unlawful for any~~
759 person may not ~~to~~:

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

764 (b) Intentionally damage a petroleum storage system.

765
766 A ~~Any~~ person convicted of such a violation commits ~~shall be~~
767 ~~guilty of~~ a felony of the third degree, punishable as provided
768 in s. 775.082, s. 775.083, or s. 775.084.

769 (12) ~~(11)~~ SITE CLEANUP.—

770 (a) *Voluntary cleanup.*—This section does not prohibit a
771 person from conducting site rehabilitation ~~either~~ through his or
772 her own personnel or through responsible response action
773 contractors or subcontractors when such person is not seeking
774 site rehabilitation funding from the fund. Such voluntary
775 cleanups must meet all applicable environmental standards.

776 (b) *Low-scored site initiative.*—Notwithstanding subsections
777 (5) and (6) ~~s. 376.30711~~, a ~~any~~ site with a priority ranking
778 score of 29 points or less may voluntarily participate in the
779 low-scored site initiative regardless of, whether ~~or not~~ the
780 site is eligible for state restoration funding.

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

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- 784 a. Upon reassessment pursuant to department rule, the site
785 retains a priority ranking score of 29 points or less.
- 786 b. ~~No~~ Excessively contaminated soil, as defined by
787 department rule, does not exist ~~exists~~ onsite as a result of a
788 release of petroleum products.
- 789 c. A minimum of 6 months of groundwater monitoring
790 indicates that the plume is shrinking or stable.
- 791 d. The release of petroleum products at the site does not
792 adversely affect adjacent surface waters, including their
793 effects on human health and the environment.
- 794 e. The area of groundwater containing the petroleum
795 products' chemicals of concern is less than one-quarter acre and
796 is confined to the source property boundaries of the real
797 property on which the discharge originated.
- 798 f. Soils onsite that are subject to human exposure found
799 between land surface and 2 feet below land surface meet the soil
800 cleanup target levels established by department rule or human
801 exposure is limited by appropriate institutional or engineering
802 controls.
- 803 2. Upon affirmative demonstration of the conditions under
804 subparagraph 1., the department shall issue a determination of
805 "No Further Action." Such determination acknowledges that
806 minimal contamination exists onsite and that such contamination
807 is not a threat to water resources, human health or the
808 environment, or the public health, safety, or welfare. If no
809 contamination is detected, the department may issue a site
810 rehabilitation completion order.
- 811 3. Sites that are eligible for state restoration funding
812 may receive payment of ~~preapproved~~ costs for the low-scored site

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813 initiative as follows:

814 a. A responsible party or property owner may submit an
815 assessment plan designed to affirmatively demonstrate that the
816 site meets the conditions under subparagraph 1. Notwithstanding
817 the priority ranking score of the site, the department may
818 approve ~~preapprove~~ the cost of the assessment ~~pursuant to s.~~
819 ~~376.30711~~, including 6 months of groundwater monitoring, not to
820 exceed \$30,000 for each site. The department may not pay the
821 costs associated with the establishment of institutional or
822 engineering controls.

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

825 c. No more than \$10 million for the low-scored site
826 initiative may be encumbered from the ~~Inland Protection Trust~~
827 fund in any fiscal year. Funds shall be made available on a
828 first-come, first-served basis and shall be limited to 10 sites
829 in each fiscal year for each responsible party or property
830 owner.

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

834 ~~(12) REIMBURSEMENT FOR CLEANUP EXPENSES. Except as provided~~
835 ~~in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall~~
836 ~~not apply to any site rehabilitation program task initiated~~
837 ~~after March 29, 1995. Effective August 1, 1996, no further site~~
838 ~~rehabilitation work on sites eligible for state-funded cleanup~~
839 ~~from the Inland Protection Trust Fund shall be eligible for~~
840 ~~reimbursement pursuant to this subsection. The person~~
841 ~~responsible for conducting site rehabilitation may seek~~

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842 ~~reimbursement for site rehabilitation program task work~~
843 ~~conducted after March 28, 1995, in accordance with s. 2(2) and~~
844 ~~(3), chapter 95-2, Laws of Florida, regardless of whether the~~
845 ~~site rehabilitation program task is completed. A site~~
846 ~~rehabilitation program task shall be considered to be initiated~~
847 ~~when actual onsite work or engineering design, pursuant to~~
848 ~~chapter 62-770, Florida Administrative Code, which is integral~~
849 ~~to performing a site rehabilitation program task has begun and~~
850 ~~shall not include contract negotiation and execution, site~~
851 ~~research, or project planning. All reimbursement applications~~
852 ~~pursuant to this subsection must be submitted to the department~~
853 ~~by January 3, 1997. The department shall not accept any~~
854 ~~applications for reimbursement or pay any claims on applications~~
855 ~~for reimbursement received after that date; provided, however if~~
856 ~~an application filed on or prior to January 3, 1997, was~~
857 ~~returned by the department on the grounds of untimely filing, it~~
858 ~~shall be refiled within 30 days after the effective date of this~~
859 ~~act in order to be processed.~~

860 ~~(a) Legislative findings. The Legislature finds and~~
861 ~~declares that rehabilitation of contamination sites should be~~
862 ~~conducted in a manner and to a level of completion which will~~
863 ~~protect the public health, safety, and welfare and will minimize~~
864 ~~damage to the environment.~~

865 ~~(b) Conditions.—~~

866 ~~1. The owner, operator, or his or her designee of a site~~
867 ~~which is eligible for restoration funding assistance in the EDI,~~
868 ~~PLRIP, or ATRP programs shall be reimbursed from the Inland~~
869 ~~Protection Trust Fund of allowable costs at reasonable rates~~
870 ~~incurred on or after January 1, 1985, for completed program~~

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871 ~~tasks as identified in the department rule promulgated pursuant~~
872 ~~to paragraph (5) (b), or uncompleted program tasks pursuant to~~
873 ~~chapter 95-2, Laws of Florida, subject to the conditions in this~~
874 ~~section. It is unlawful for a site owner or operator, or his or~~
875 ~~her designee, to receive any remuneration, in cash or in kind,~~
876 ~~directly or indirectly from the rehabilitation contractor.~~

877 ~~2. Nothing in this subsection shall be construed to~~
878 ~~authorize reimbursement to any person for costs of contaminated~~
879 ~~soil treatment or disposal that does not meet the applicable~~
880 ~~rules of this state for such treatment or disposal, including~~
881 ~~all general permitting, state air emission standards,~~
882 ~~monitoring, sampling, and reporting rules more specifically~~
883 ~~described in department rules.~~

884 ~~(c) Legislative intent. Due to the value of the potable~~
885 ~~water of this state, it is the intent of the Legislature that~~
886 ~~the department initiate and facilitate as many cleanups as~~
887 ~~possible utilizing the resources of the state, local~~
888 ~~governments, and the private sector, recognizing that source~~
889 ~~removal, wherever it is technologically feasible and cost-~~
890 ~~effective, shall be considered the primary initial response to~~
891 ~~protect public health, safety, and the environment.~~

892 ~~(d) Amount of reimbursement. The department shall reimburse~~
893 ~~actual and reasonable costs for site rehabilitation. The~~
894 ~~department shall not reimburse interest on the amount of~~
895 ~~reimbursable costs for any reimbursement application. However,~~
896 ~~nothing herein shall affect the department's authority to pay~~
897 ~~interest authorized under prior law.~~

898 ~~(e) Records. The person responsible for conducting site~~
899 ~~rehabilitation, or his or her agent, shall keep and preserve~~

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900 ~~suitable records as follows:~~

901 ~~1. Hydrological and other site investigations and~~
902 ~~assessments; site rehabilitation plans; contracts and contract~~
903 ~~negotiations; and accounts, invoices, sales tickets, or other~~
904 ~~payment records from purchases, sales, leases, or other~~
905 ~~transactions involving costs actually incurred related to site~~
906 ~~rehabilitation. Such records shall be made available upon~~
907 ~~request to agents and employees of the department during regular~~
908 ~~business hours and at other times upon written request of the~~
909 ~~department.~~

910 ~~2. In addition, the department may from time to time~~
911 ~~request submission of such site-specific information as it may~~
912 ~~require, unless a waiver or variance from such department~~
913 ~~request is granted pursuant to paragraph (k).~~

914 ~~3. All records of costs actually incurred for cleanup shall~~
915 ~~be certified by affidavit to the department as being true and~~
916 ~~correct.~~

917 ~~(f) *Application for reimbursement.* Any eligible person who~~
918 ~~performs a site rehabilitation program or performs site~~
919 ~~rehabilitation program tasks such as preparation of site~~
920 ~~rehabilitation plans or assessments; product recovery; cleanup~~
921 ~~of groundwater or inland surface water; soil treatment or~~
922 ~~removal; or any other tasks identified by department rule~~
923 ~~developed pursuant to subsection (5), may apply for~~
924 ~~reimbursement. Such applications for reimbursement must be~~
925 ~~submitted to the department on forms provided by the department,~~
926 ~~together with evidence documenting that site rehabilitation~~
927 ~~program tasks were conducted or completed in accordance with~~
928 ~~department rule developed pursuant to subsection (5), and other~~

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929 ~~such records or information as the department requires. The~~
930 ~~reimbursement application and supporting documentation shall be~~
931 ~~examined by a certified public accountant in accordance with~~
932 ~~standards established by the American Institute of Certified~~
933 ~~Public Accountants. A copy of the accountant's report shall be~~
934 ~~submitted with the reimbursement application. Applications for~~
935 ~~reimbursement shall not be approved for site rehabilitation~~
936 ~~program tasks which have not been completed, except for the task~~
937 ~~of remedial action and except for uncompleted program tasks~~
938 ~~pursuant to chapter 95-2, Laws of Florida, and this subsection.~~
939 ~~Applications for remedial action may be submitted semiannually~~
940 ~~at the discretion of the person responsible for cleanup. After~~
941 ~~an applicant has filed an application with the department and~~
942 ~~before payment is made, the applicant may assign the right to~~
943 ~~payment to any other person, without recourse of the assignee or~~
944 ~~assignor to the state, without affecting the order in which~~
945 ~~payment is made. Information necessary to process the~~
946 ~~application shall be requested from and provided by the~~
947 ~~assigning applicant. Proper notice of the assignment and~~
948 ~~assignment information shall be made to the department which~~
949 ~~notice shall be signed and notarized by the assigning applicant.~~

950 ~~(g) Review.—~~

951 ~~1. Provided there are sufficient unencumbered funds~~
952 ~~available in the Inland Protection Trust Fund, or to the extent~~
953 ~~proceeds of debt obligations are available for the payment of~~
954 ~~existing reimbursement obligations pursuant to s. 376.3075, the~~
955 ~~department shall have 60 days to determine if the applicant has~~
956 ~~provided sufficient information for processing the application~~
957 ~~and shall request submission of any additional information that~~

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958 ~~the department may require within such 60-day period. If the~~
959 ~~applicant believes any request for additional information is not~~
960 ~~authorized, the applicant may request a hearing pursuant to ss.~~
961 ~~120.569 and 120.57. Once the department requests additional~~
962 ~~information, the department may request only that information~~
963 ~~needed to clarify such additional information or to answer new~~
964 ~~questions raised by or directly related to such additional~~
965 ~~information.~~

966 ~~2. The department shall deny or approve the application for~~
967 ~~reimbursement within 90 days after receipt of the last item of~~
968 ~~timely requested additional material, or, if no additional~~
969 ~~material is requested, within 90 days of the close of the 60-day~~
970 ~~period described in subparagraph 1., unless the total review~~
971 ~~period is otherwise extended by written mutual agreement of the~~
972 ~~applicant and the department.~~

973 ~~3. Final disposition of an application shall be provided to~~
974 ~~the applicant in writing, accompanied by a written explanation~~
975 ~~setting forth in detail the reason or reasons for the approval~~
976 ~~or denial. If the department fails to make a determination on an~~
977 ~~application within the time provided in subparagraph 2., or~~
978 ~~denies an application, or if a dispute otherwise arises with~~
979 ~~regard to reimbursement, the applicant may request a hearing~~
980 ~~pursuant to ss. 120.569 and 120.57.~~

981 ~~(h) Reimbursement. Upon approval of an application for~~
982 ~~reimbursement, reimbursement for reasonable expenditures of a~~
983 ~~site rehabilitation program or site rehabilitation program tasks~~
984 ~~documented therein shall be made in the order in which the~~
985 ~~department receives completed applications. Effective January 1,~~
986 ~~1997, all unpaid reimbursement applications are subject to~~

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987 ~~payment on the following terms: The department shall develop a~~
988 ~~schedule of the anticipated dates of reimbursement of~~
989 ~~applications submitted to the department pursuant to this~~
990 ~~subsection. The schedule shall specify the projected date of~~
991 ~~payment based on equal monthly payments and projected annual~~
992 ~~revenue of \$100 million. Based on the schedule, the department~~
993 ~~shall notify all reimbursement applicants of the projected date~~
994 ~~of payment of their applications. The department shall direct~~
995 ~~the Inland Protection Financing Corporation to pay applicants~~
996 ~~the present value of their applications as soon as practicable~~
997 ~~after approval by the department, subject to the availability of~~
998 ~~funds within the Inland Protection Financing Corporation. The~~
999 ~~present value of an application shall be based on the date on~~
1000 ~~which the department anticipates the Inland Protection Financing~~
1001 ~~Corporation will settle the reimbursement application and the~~
1002 ~~schedule's projected date of payment and shall use 3.5 percent~~
1003 ~~as the annual discount rate. The determination of the amount of~~
1004 ~~the claim and the projected date of payment shall be subject to~~
1005 ~~s. 120.57.~~

1006 ~~(i) *Liberal construction.* With respect to site~~
1007 ~~rehabilitation initiated prior to July 1, 1986, the provisions~~
1008 ~~of this subsection shall be given such liberal construction by~~
1009 ~~the department as will accomplish the purposes set forth in this~~
1010 ~~subsection. With regard to the keeping of particular records or~~
1011 ~~the giving of certain notice, the department may accept as~~
1012 ~~compliance action by a person which meets the intent of the~~
1013 ~~requirements set forth in this subsection.~~

1014 ~~(j) *Reimbursement-review contracts.* The department may~~
1015 ~~contract with entities capable of processing or assisting in the~~

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1016 ~~review of reimbursement applications. Any purchase of such~~
1017 ~~services shall not be subject to chapter 287.~~

1018 ~~(k) Audits.—~~

1019 ~~1. The department is authorized to perform financial and~~
1020 ~~technical audits in order to certify site restoration costs and~~
1021 ~~ensure compliance with this chapter. The department shall seek~~
1022 ~~recovery of any overpayments based on the findings of these~~
1023 ~~audits. The department must commence any audit within 5 years~~
1024 ~~after the date of reimbursement, except in cases where the~~
1025 ~~department alleges specific facts indicating fraud.~~

1026 ~~2. Upon determination by the department that any portion of~~
1027 ~~costs which have been reimbursed are disallowed, the department~~
1028 ~~shall give written notice to the applicant setting forth with~~
1029 ~~specificity the allegations of fact which justify the~~
1030 ~~department's proposed action and ordering repayment of~~
1031 ~~disallowed costs within 60 days of notification of the~~
1032 ~~applicant.~~

1033 ~~3. In the event the applicant does not make payment to the~~
1034 ~~department within 60 days of receipt of such notice, the~~
1035 ~~department shall seek recovery in a court of competent~~
1036 ~~jurisdiction to recover reimbursement overpayments made to the~~
1037 ~~person responsible for conducting site rehabilitation, unless~~
1038 ~~the department finds the amount involved too small or the~~
1039 ~~likelihood of recovery too uncertain.~~

1040 ~~4. In addition to the amount of any overpayment, the~~
1041 ~~applicant shall be liable to the department for interest of 1~~
1042 ~~percent per month or the prime rate, whichever is less, on the~~
1043 ~~amount of overpayment, from the date of overpayment by the~~
1044 ~~department until the applicant satisfies the department's~~

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1045 ~~request for repayment pursuant to this paragraph. The~~
1046 ~~calculation of interest shall be tolled during the pendency of~~
1047 ~~any litigation.~~

1048 ~~5. Financial and technical audits frequently are conducted~~
1049 ~~under this section many years after the site rehabilitation~~
1050 ~~activities were performed and the costs examined in the course~~
1051 ~~of the audit were incurred by the person responsible for site~~
1052 ~~rehabilitation. During the intervening span of years, the~~
1053 ~~department's rule requirements and its related guidance and~~
1054 ~~other nonrule policy directives may have changed significantly.~~
1055 ~~The Legislature finds that it may be appropriate for the~~
1056 ~~department to provide relief to persons subject to such~~
1057 ~~requirements in financial and technical audits conducted~~
1058 ~~pursuant to this section.~~

1059 ~~a. The department is authorized to grant variances and~~
1060 ~~waivers from the documentation requirements of subparagraph~~
1061 ~~(e)2. and from the requirements of rules applicable in technical~~
1062 ~~and financial audits conducted under this section. Variances and~~
1063 ~~waivers shall be granted when the person responsible for site~~
1064 ~~rehabilitation demonstrates to the department that application~~
1065 ~~of a financial or technical auditing requirement would create a~~
1066 ~~substantial hardship or would violate principles of fairness.~~
1067 ~~For purposes of this subsection, "substantial hardship" means a~~
1068 ~~demonstrated economic, technological, legal, or other type of~~
1069 ~~hardship to the person requesting the variance or waiver. For~~
1070 ~~purposes of this subsection, "principles of fairness" are~~
1071 ~~violated when the application of a requirement affects a~~
1072 ~~particular person in a manner significantly different from the~~
1073 ~~way it affects other similarly situated persons who are affected~~

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1074 ~~by the requirement or when the requirement is being applied~~
1075 ~~retroactively without due notice to the affected parties.~~

1076 ~~b. A person whose reimbursed costs are subject to a~~
1077 ~~financial and technical audit under this section may file a~~
1078 ~~written request to the department for grant of a variance or~~
1079 ~~waiver. The request shall specify:~~

1080 ~~(I) The requirement from which a variance or waiver is~~
1081 ~~requested.~~

1082 ~~(II) The type of action requested.~~

1083 ~~(III) The specific facts which would justify a waiver or~~
1084 ~~variance.~~

1085 ~~(IV) The reason or reasons why the requested variance or~~
1086 ~~waiver would serve the purposes of this section.~~

1087 ~~e. Within 90 days after receipt of a written request for~~
1088 ~~variance or waiver under this subsection, the department shall~~
1089 ~~grant or deny the request. If the request is not granted or~~
1090 ~~denied within 90 days of receipt, the request shall be deemed~~
1091 ~~approved. An order granting or denying the request shall be in~~
1092 ~~writing and shall contain a statement of the relevant facts and~~
1093 ~~reasons supporting the department's action. The department's~~
1094 ~~decision to grant or deny the petition shall be supported by~~
1095 ~~competent substantial evidence and is subject to ss. 120.569 and~~
1096 ~~120.57. Once adopted, model rules promulgated by the~~
1097 ~~Administration Commission under s. 120.542 shall govern the~~
1098 ~~processing of requests under this provision.~~

1099 ~~6. The Chief Financial Officer may audit the records of~~
1100 ~~persons who receive or who have received payments pursuant to~~
1101 ~~this chapter in order to verify site restoration costs, ensure~~
1102 ~~compliance with this chapter, and verify the accuracy and~~

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1103 ~~completeness of audits performed by the department pursuant to~~
 1104 ~~this paragraph. The Chief Financial Officer may contract with~~
 1105 ~~entities or persons to perform audits pursuant to this~~
 1106 ~~subparagraph. The Chief Financial Officer shall commence any~~
 1107 ~~audit within 1 year after the department's completion of an~~
 1108 ~~audit conducted pursuant to this paragraph, except in cases~~
 1109 ~~where the department or the Chief Financial Officer alleges~~
 1110 ~~specific facts indicating fraud.~~

1111 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
 1112 detection, reporting, and cleanup of contamination caused by
 1113 discharges of petroleum or petroleum products, the department
 1114 shall, within the guidelines established in this subsection,
 1115 implement a cost-sharing cleanup program to provide
 1116 rehabilitation funding assistance for all property contaminated
 1117 by discharges of petroleum or petroleum products occurring
 1118 before January 1, 1995, subject to a copayment provided for in a
 1119 Petroleum Cleanup Participation Program preapproved site
 1120 rehabilitation agreement. Eligibility is ~~shall be~~ subject to an
 1121 annual appropriation from the ~~Inland Protection Trust~~ fund.
 1122 Additionally, funding for eligible sites is ~~shall be~~ contingent
 1123 upon annual appropriation in subsequent years. Such continued
 1124 state funding is ~~shall not be deemed~~ an entitlement or a vested
 1125 right under this subsection. Eligibility shall be determined in
 1126 the program, ~~shall be~~ notwithstanding any other provision of
 1127 law, consent order, order, judgment, or ordinance to the
 1128 contrary.

1129 (a)1. The department shall accept any discharge reporting
 1130 form received before ~~prior to~~ January 1, 1995, as an application
 1131 for this program, and the facility owner or operator need not

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1132 reapply.

1133 2. Owners or operators of property contaminated by
1134 petroleum or petroleum products from a petroleum storage system
1135 may apply for such program by filing a written report of the
1136 contamination incident, including evidence that such incident
1137 occurred before ~~prior to~~ January 1, 1995, with the department.
1138 Incidents of petroleum contamination discovered after December
1139 31, 1994, at sites which have not stored petroleum or petroleum
1140 products for consumption, use, or sale after such date shall be
1141 presumed to have occurred before ~~prior to~~ January 1, 1995. An
1142 operator's filed report shall be ~~deemed~~ an application of the
1143 owner for all purposes. Sites reported to the department after
1144 December 31, 1998, are ~~shall~~ not be eligible for the ~~this~~
1145 program.

1146 (b) Subject to annual appropriation from the ~~Inland~~
1147 ~~Protection Trust~~ fund, sites meeting the criteria of this
1148 subsection are eligible for up to \$400,000 of site
1149 rehabilitation funding assistance in priority order pursuant to
1150 subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~. Sites meeting
1151 the criteria of this subsection for which a site rehabilitation
1152 completion order was issued before ~~prior to~~ June 1, 2008, do not
1153 qualify for the 2008 increase in site rehabilitation funding
1154 assistance and are bound by the pre-June 1, 2008, limits. Sites
1155 meeting the criteria of this subsection for which a site
1156 rehabilitation completion order was not issued before ~~prior to~~
1157 June 1, 2008, regardless of whether ~~or not~~ they have previously
1158 transitioned to nonstate-funded cleanup status, may continue
1159 state-funded cleanup pursuant to this section ~~s. 376.30711~~ until
1160 a site rehabilitation completion order is issued or the

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1161 increased site rehabilitation funding assistance limit is
1162 reached, whichever occurs first. The department may not pay ~~At~~
1163 ~~no time shall~~ expenses incurred beyond ~~outside~~ the scope of an
1164 approved contract ~~preapproved site rehabilitation program under~~
1165 ~~s. 376.30711~~ be reimbursable.

1166 (c) Upon notification by the department that rehabilitation
1167 funding assistance is available for the site pursuant to
1168 subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~, the owner,
1169 operator, or person otherwise responsible for site
1170 rehabilitation shall provide the department with a limited
1171 contamination assessment report and shall enter into a Petroleum
1172 Cleanup Participation Program ~~preapproved~~ site rehabilitation
1173 agreement with the department and ~~a contractor qualified under~~
1174 ~~s. 376.30711(2)(b)~~. The agreement must ~~shall~~ provide for a 25-
1175 percent copayment by the owner, operator, or person otherwise
1176 responsible for conducting site rehabilitation. The owner,
1177 operator, or person otherwise responsible for conducting site
1178 rehabilitation shall adequately demonstrate the ability to meet
1179 the copayment obligation. The limited contamination assessment
1180 report and the copayment costs may be reduced or eliminated if
1181 the owner and all operators responsible for restoration under s.
1182 376.308 demonstrate that they cannot ~~are~~ financially ~~unable to~~
1183 comply with the copayment and limited contamination assessment
1184 report requirements. The department shall take into
1185 consideration the owner's and operator's net worth in making the
1186 determination of financial ability. In the event the department
1187 and the owner, operator, or person otherwise responsible for
1188 site rehabilitation cannot ~~are unable to~~ complete negotiation of
1189 the cost-sharing agreement within 120 days after beginning

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1190 ~~commencing~~ negotiations, the department shall terminate
 1191 negotiations, and the site shall be ~~deemed~~ ineligible for state
 1192 funding under this subsection and all liability protections
 1193 provided for in this subsection shall be revoked.

1194 (d) A ~~No~~ report of a discharge made to the department by a
 1195 any person pursuant to ~~in accordance with~~ this subsection, or
 1196 any rules adopted pursuant to this subsection may not hereto,
 1197 ~~shall~~ be used directly as evidence of liability for such
 1198 discharge in any civil or criminal trial arising out of the
 1199 discharge.

1200 (e) ~~Nothing in~~ This subsection does not ~~shall be construed~~
 1201 ~~to~~ preclude the department from pursuing penalties under ~~in~~
 1202 ~~accordance with~~ s. 403.141 for violations of any law or any
 1203 rule, order, permit, registration, or certification adopted or
 1204 issued by the department pursuant to its lawful authority.

1205 (f) Upon the filing of a discharge reporting form under
 1206 paragraph (a), ~~neither~~ the department or ~~nor any~~ local
 1207 government may not ~~shall~~ pursue any judicial or enforcement
 1208 action to compel rehabilitation of the discharge. This paragraph
 1209 does ~~shall~~ not prevent any such action with respect to
 1210 discharges determined ineligible under this subsection or to
 1211 sites for which rehabilitation funding assistance is available
 1212 pursuant to subsections ~~in accordance with subsection~~ (5) and
 1213 (6) ~~s. 376.30711~~.

1214 (g) The following are ~~shall be~~ excluded from participation
 1215 in the program:

- 1216 1. Sites at which the department has been denied reasonable
 1217 site access to implement ~~the provisions of~~ this section.
- 1218 2. Sites that were active facilities when owned or operated

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1219 by the Federal Government.

1220 3. Sites that are identified by the United States
1221 Environmental Protection Agency to be on, or which qualify for
1222 listing on, the National Priorities List under Superfund. This
1223 exception does not apply to those sites for which eligibility
1224 has been requested or granted as of the effective date of this
1225 act under the Early Detection Incentive Program established
1226 pursuant to s. 15, chapter 86-159, Laws of Florida.

1227 4. Sites for which ~~The~~ contamination is covered under the
1228 Early Detection Incentive Program, the Abandoned Tank
1229 Restoration Program, or the Petroleum Liability and Restoration
1230 Insurance Program, in which case site rehabilitation funding
1231 assistance shall continue under the respective program.

1232 (14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—Before ~~Prior~~
1233 ~~to~~ the department enters ~~entering~~ into a service contract with
1234 the Inland Protection Financing Corporation which includes
1235 payments by the department to support any existing or planned
1236 note, bond, certificate of indebtedness, or other obligation or
1237 evidence of indebtedness of the corporation pursuant to s.
1238 376.3075, the Legislature, by law, must specifically authorize
1239 the department to enter into such a contract. The corporation
1240 may issue bonds in an amount not to exceed \$104 million, with a
1241 term up to 15 years, and annual payments not in excess of \$10.4
1242 million. The department may enter into a service contract in
1243 conjunction with the issuance of such bonds which provides for
1244 annual payments for debt service payments or other amounts
1245 payable with respect to bonds, plus any administrative expenses
1246 of the corporation to finance the rehabilitation of petroleum
1247 contamination sites pursuant to ss. 376.30-376.317.

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1248 Section 2. Section 376.30711, Florida Statutes, is
1249 repealed.

1250 Section 3. Subsections (4) and (30) of section 376.301,
1251 Florida Statutes, are amended to read:

1252 376.301 Definitions of terms used in ss. 376.30-376.317,
1253 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
1254 376.75, unless the context clearly requires otherwise, the term:

1255 ~~(4) "Backlog" means reimbursement obligations incurred~~
1256 ~~pursuant to s. 376.3071(12), prior to March 29, 1995, or~~
1257 ~~authorized for reimbursement under the provisions of s.~~
1258 ~~376.3071(12), pursuant to chapter 95-2, Laws of Florida. Claims~~
1259 ~~within the backlog are subject to adjustment, where appropriate.~~

1260 ~~(30) "Person responsible for conducting site~~
1261 ~~rehabilitation" means the site owner, operator, or the person~~
1262 ~~designated by the site owner or operator on the reimbursement~~
1263 ~~application. Mortgage holders and trust holders may be eligible~~
1264 ~~to participate in the reimbursement program pursuant to s.~~
1265 ~~376.3071(12).~~

1266 Section 4. Subsection (5) of section 376.302, Florida
1267 Statutes, is amended to read:

1268 376.302 Prohibited acts; penalties.—

1269 (5) Any person who commits fraud in representing his or her
1270 ~~their~~ qualifications as a contractor for reimbursement or in
1271 submitting a payment invoice reimbursement request pursuant to
1272 s. 376.3071 ~~s. 376.3071(12)~~ commits a felony of the third
1273 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1274 775.084.

1275 Section 5. Subsection (6) of section 376.305, Florida
1276 Statutes, is amended to read:

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1277 376.305 Removal of prohibited discharges.—

1278 (6) The Legislature created the Abandoned Tank Restoration
1279 Program in response to the need to provide financial assistance
1280 for cleanup of sites that have abandoned petroleum storage
1281 systems. For purposes of this subsection, the term "abandoned
1282 petroleum storage system" means a ~~shall mean any~~ petroleum
1283 storage system that has not stored petroleum products for
1284 consumption, use, or sale since March 1, 1990. The department
1285 shall establish the Abandoned Tank Restoration Program to
1286 facilitate the restoration of sites contaminated by abandoned
1287 petroleum storage systems.

1288 (a) To be included in the program:

1289 1. An application must be submitted to the department by
1290 June 30, 1996, certifying that the system has not stored
1291 petroleum products for consumption, use, or sale at the facility
1292 since March 1, 1990.

1293 2. The owner or operator of the petroleum storage system
1294 when it was in service must have ceased conducting business
1295 involving consumption, use, or sale of petroleum products at
1296 that facility on or before March 1, 1990.

1297 3. The site is not otherwise eligible for the cleanup
1298 programs pursuant to s. 376.3071 or s. 376.3072.

1299 (b) In order to be eligible for the program, petroleum
1300 storage systems from which a discharge occurred must be closed
1301 pursuant to ~~in accordance with~~ department rules before ~~prior to~~
1302 an eligibility determination. However, if the department
1303 determines that the owner of the facility cannot ~~is~~ financially
1304 ~~unable to~~ comply with the department's petroleum storage system
1305 closure requirements and all other eligibility requirements are

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1306 met, the petroleum storage system closure requirements shall be
 1307 waived. The department shall take into consideration the owner's
 1308 net worth and the economic impact on the owner in making the
 1309 determination of the owner's financial ability. The June 30,
 1310 1996, application deadline shall be waived for owners who cannot
 1311 ~~are~~ financially ~~unable to~~ comply.

1312 (c) Sites accepted in the program are ~~will be~~ eligible for
 1313 site rehabilitation funding as provided in s. 376.3071 ~~s.~~
 1314 ~~376.3071(12) or s. 376.30711, as appropriate.~~

1315 (d) The following sites are excluded from eligibility:

- 1316 1. Sites on property of the Federal Government;
- 1317 2. Sites contaminated by pollutants that are not petroleum
 1318 products;
- 1319 3. Sites where the department has been denied site access;
 1320 or

1321 4. Sites which are owned by a ~~any~~ person who had knowledge
 1322 of the polluting condition when title was acquired unless the
 1323 ~~that~~ person acquired title to the site after issuance of a
 1324 notice of site eligibility by the department.

1325 (e) Participating sites are subject to a deductible as
 1326 determined by rule, not to exceed \$10,000.

1327
 1328 ~~The provisions of~~ This subsection does ~~do~~ not relieve a ~~any~~
 1329 person who has acquired title after ~~subsequent to~~ July 1, 1992,
 1330 from the duty to establish by a preponderance of the evidence
 1331 that he or she undertook, at the time of acquisition, all
 1332 appropriate inquiry into the previous ownership and use of the
 1333 property consistent with good commercial or customary practice
 1334 in an effort to minimize liability, as required by s.

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1335 376.308(1)(c).

1336 Section 6. Section 376.30713, Florida Statutes, is amended
1337 to read:

1338 376.30713 ~~Preapproved~~ Advanced cleanup.—

1339 (1) In addition to the legislative findings provided in s.
1340 376.3071 ~~s. 376.30711~~, the Legislature finds and declares:

1341 (a) That the inability to conduct site rehabilitation in
1342 advance of a site's priority ranking pursuant to s.
1343 376.3071(5)(a) may substantially impede or prohibit property
1344 transactions or the proper completion of public works projects.

1345 (b) While the first priority of the state is to provide for
1346 protection of ~~the water resources of the state, human health,~~
1347 ~~and the environment,~~ and the public health, safety, and welfare,
1348 the viability of commerce is of equal importance to the state.

1349 (c) It is in the public interest and of substantial
1350 economic benefit to the state to provide an opportunity for site
1351 rehabilitation to be conducted on a limited basis at
1352 contaminated sites, in advance of the site's priority ranking,
1353 to facilitate property transactions or public works projects.

1354 (d) It is appropriate for a person who is ~~persons~~
1355 responsible for site rehabilitation to share the costs
1356 associated with managing and conducting ~~preapproved~~
1357 cleanup, to facilitate the opportunity for ~~preapproved~~
1358 cleanup, and to mitigate the additional costs that will be
1359 incurred by the state in conducting site rehabilitation in
1360 advance of the site's priority ranking. Such cost sharing will
1361 result in more contaminated sites being cleaned up and greater
1362 environmental benefits to the state. ~~The provisions of This~~
1363 section ~~is shall only be~~ available only for sites eligible for

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1364 restoration funding under EDI, ATRP, or PLRIP ~~PLIRP~~. This
1365 section is available for discharges eligible for restoration
1366 funding under the petroleum cleanup participation program for
1367 the state's cost share of site rehabilitation. Applications must
1368 ~~shall~~ include a cost-sharing commitment for this section in
1369 addition to the 25-percent-copayment requirement of the
1370 petroleum cleanup participation program. This section is not
1371 available for any discharge under a petroleum cleanup
1372 participation program where the 25-percent-copayment requirement
1373 of the petroleum cleanup participation program has been reduced
1374 or eliminated pursuant to s. 376.3071(13)(c).

1375 (2) The department may ~~is authorized to~~ approve an
1376 application for ~~preapproved~~ advanced cleanup at eligible sites,
1377 before ~~prior to~~ funding based on the site's priority ranking
1378 established pursuant to s. 376.3071(5)(a), pursuant to ~~in~~
1379 ~~accordance with the provisions of~~ this section. Only the
1380 facility owner or operator or the person otherwise responsible
1381 for site rehabilitation qualifies ~~Persons who qualify~~ as an
1382 applicant under ~~the provisions of~~ this section ~~shall only~~
1383 ~~include the facility owner or operator or the person otherwise~~
1384 ~~responsible for site rehabilitation.~~

1385 (a) ~~Preapproved~~ Advanced cleanup applications may be
1386 submitted between May 1 and June 30 and between November 1 and
1387 December 31 of each fiscal year. Applications submitted between
1388 May 1 and June 30 shall be for the fiscal year beginning July 1.
1389 An application must ~~shall~~ consist of:

1390 1. A commitment to pay ~~no less than~~ 25 percent or more of
1391 the total cleanup cost deemed recoverable under ~~the provisions~~
1392 ~~of~~ this section along with proof of the ability to pay the cost

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1393 share.

1394 2. A nonrefundable review fee of \$250 to cover the
1395 administrative costs associated with the department's review of
1396 the application.

1397 3. A limited contamination assessment report.

1398 4. A proposed course of action.

1399
1400 The limited contamination assessment report must ~~shall~~ be
1401 sufficient to support the proposed course of action and to
1402 estimate the cost of the proposed course of action. ~~Any~~ Costs
1403 incurred related to conducting the limited contamination
1404 assessment report are not refundable from the Inland Protection
1405 Trust Fund. Site eligibility under this subsection, ~~or any other~~
1406 provision of this section is, ~~shall~~ not constitute an
1407 entitlement to ~~preapproved~~ advanced cleanup or continued
1408 restoration funding. The applicant shall certify to the
1409 department that the applicant has the prerequisite authority to
1410 enter into an ~~a preapproved~~ advanced cleanup contract with the
1411 department. The ~~This~~ certification must ~~shall~~ be submitted with
1412 the application.

1413 (b) The department shall rank the applications based on the
1414 percentage of cost-sharing commitment proposed by the applicant,
1415 with the highest ranking given to the applicant who ~~that~~
1416 proposes the highest percentage of cost sharing. If the
1417 department receives applications that propose identical cost-
1418 sharing commitments and that ~~which~~ exceed the funds available to
1419 commit to all such proposals during the ~~preapproved~~ advanced
1420 cleanup application period, the department shall proceed to
1421 rerank those applicants. Those applicants submitting identical

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1422 cost-sharing proposals that ~~which~~ exceed funding availability
1423 must ~~shall~~ be so notified by the department and ~~shall be~~ offered
1424 the opportunity to raise their individual cost-share
1425 commitments, in a period ~~of time~~ specified in the notice. At the
1426 close of the period, the department shall proceed to rerank the
1427 applications pursuant to ~~in accordance with~~ this paragraph.

1428 (3) (a) Based on the ranking established under paragraph
1429 (2) (b) ~~and the funding limitations provided in subsection (4),~~
1430 the department shall begin ~~commence~~ negotiation with such
1431 applicants. If the department and the applicant agree on the
1432 course of action, the department may enter into a contract with
1433 the applicant. The department may ~~is authorized to~~ negotiate the
1434 terms and conditions of the contract.

1435 (b) ~~Preapproved~~ Advanced cleanup must ~~shall~~ be conducted
1436 pursuant to s. 376.3071(5) (b) and (6) and rules adopted under
1437 ss. 287.0595 and 376.3071 ~~under the provisions of ss.~~
1438 ~~376.3071(5) (b) and 376.30711.~~ If the terms of the ~~preapproved~~
1439 advanced cleanup contract are not fulfilled, the applicant
1440 forfeits any right to future payment for any site rehabilitation
1441 work conducted under the contract.

1442 (c) The department's decision not to enter into an ~~a~~
1443 ~~preapproved~~ advanced cleanup contract with the applicant is
1444 ~~shall not be~~ subject to ~~the provisions of~~ chapter 120. If the
1445 department cannot ~~is not able to~~ complete negotiation of the
1446 course of action and the terms of the contract within 60 days
1447 after beginning ~~commencing~~ negotiations, the department shall
1448 terminate negotiations with that applicant.

1449 (4) The department may ~~is authorized to~~ enter into
1450 contracts for a total of up to \$15 million of ~~preapproved~~

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1451 advanced cleanup work in each fiscal year. However, a facility
 1452 may not be approved ~~preapproved~~ for more than \$5 million of
 1453 cleanup activity in each fiscal year. For the purposes of this
 1454 section, the term "facility" includes ~~shall include~~, but is not
 1455 ~~be~~ limited to, multiple site facilities such as airports, port
 1456 facilities, and terminal facilities even though such enterprises
 1457 may be treated as separate facilities for other purposes under
 1458 this chapter.

1459 (5) All funds collected by the department pursuant to this
 1460 section shall be deposited into the Inland Protection Trust Fund
 1461 to be used as provided in this section.

1462 Section 7. Paragraph (a) of subsection (1) and subsections
 1463 (3), (4), and (9) of section 376.30714, Florida Statutes, are
 1464 amended to read:

1465 376.30714 Site rehabilitation agreements.—

1466 (1) In addition to the legislative findings provided in s.
 1467 376.3071, the Legislature finds and declares:

1468 (a) The provisions of s. 376.3071(5)(a) ~~ss. 376.3071(5)(a)~~
 1469 ~~and 376.30711~~ have delayed cleanup of low-priority sites
 1470 determined to be eligible for state funding under that section
 1471 and ~~ss. 376.305, 376.3071,~~ and 376.3072.

1472 (3) Free product attributable to a new discharge shall be
 1473 removed to the extent practicable and pursuant to ~~in accordance~~
 1474 ~~with~~ department rules adopted pursuant to s. 376.3071(5) at the
 1475 expense of the owner, operator, or other responsible party. Free
 1476 product attributable to existing contamination shall be removed
 1477 pursuant to ~~in accordance with~~ s. 376.3071(5) and (6), ~~or s.~~
 1478 ~~376.30711(1)(b)~~, and department rules adopted pursuant thereto.

1479 (4) Beginning January 1, 1999, the department may ~~is~~

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1480 ~~authorized to~~ negotiate and enter into site rehabilitation
1481 agreements with applicants at sites with eligible existing
1482 contamination at which a new discharge occurs. The site
1483 rehabilitation agreement must ~~shall~~ include, but is not ~~be~~
1484 limited to, allocation of the funding responsibilities of the
1485 department and the applicant for cleanup of the qualified site,
1486 establishment of a mechanism to guarantee the applicant's
1487 commitment to pay its agreed amount of site rehabilitation as
1488 set forth in the agreement, and establishment of the priority in
1489 which cleanup of the qualified site will occur. Under ~~any~~ such a
1490 negotiated site rehabilitation agreement, the applicant may not
1491 ~~shall~~ be responsible for ~~no~~ more than the cleanup costs that are
1492 attributable to the new discharge. However, the payment of ~~any~~
1493 applicable deductibles, copayments, or other program eligibility
1494 requirements under ss. 376.305, 376.3071, and 376.3072 shall
1495 continue to apply to the existing contamination and must be
1496 accounted for in the negotiated site rehabilitation agreement.
1497 The department may ~~is further authorized,~~ pursuant to this
1498 section, ~~to preapprove or~~ conduct additional assessment
1499 activities at the site.

1500 (9) Site rehabilitation conducted at qualified sites shall
1501 be conducted pursuant to s. 376.3071(5)(b) and (6) ~~under the~~
1502 ~~provisions of ss. 376.3071(5)(b) and 376.30711.~~ If the terms of
1503 the agreement are not fulfilled by the applicant, the applicant
1504 forfeits the ~~any~~ right to continued funding for ~~any~~ site
1505 rehabilitation work under the agreement and is ~~shall be~~ subject
1506 to enforcement action by the department or local government to
1507 compel cleanup of the new discharge.

1508 Section 8. Subsection (2) of section 376.3072, Florida

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1509 Statutes, is amended to read:

1510 376.3072 Florida Petroleum Liability and Restoration
1511 Insurance Program.—

1512 (2) (a) An ~~Any~~ owner or operator of a petroleum storage
1513 system may become an insured in the restoration insurance
1514 program at a facility if provided:

1515 1. A site at which an incident has occurred is ~~shall be~~
1516 eligible for restoration if the insured is a participant in the
1517 third-party liability insurance program or otherwise meets
1518 applicable financial responsibility requirements. After July 1,
1519 1993, the insured must also provide the required excess
1520 insurance coverage or self-insurance for restoration to achieve
1521 the financial responsibility requirements of 40 C.F.R. s.
1522 280.97, subpart H, not covered by paragraph (d).

1523 2. A site that ~~which~~ had a discharge reported before ~~prior~~
1524 ~~to~~ January 1, 1989, for which notice was given pursuant to s.
1525 376.3071(10) ~~s. 376.3071(9) or (12)~~, and that ~~which~~ is
1526 ineligible for the third-party liability insurance program
1527 solely due to that discharge is ~~shall be~~ eligible for
1528 participation in the restoration program for an ~~any~~ incident
1529 occurring on or after January 1, 1989, pursuant to ~~in accordance~~
1530 ~~with~~ subsection (3). Restoration funding for an eligible
1531 contaminated site will be provided without participation in the
1532 third-party liability insurance program until the site is
1533 restored as required by the department or until the department
1534 determines that the site does not require restoration.

1535 3. Notwithstanding paragraph (b), a site where an
1536 application is filed with the department before ~~prior to~~ January
1537 1, 1995, where the owner is a small business under s.

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1538 288.703(6), a state community college with less than 2,500 FTE,
1539 a religious institution as defined by s. 212.08(7)(m), a
1540 charitable institution as defined by s. 212.08(7)(p), or a
1541 county or municipality with a population of less than 50,000, is
1542 ~~shall be~~ eligible for up to \$400,000 of eligible restoration
1543 costs, less a deductible of \$10,000 for small businesses,
1544 eligible community colleges, and religious or charitable
1545 institutions, and \$30,000 for eligible counties and
1546 municipalities, if provided that:

1547 a. Except as provided in sub-subparagraph e., the facility
1548 was in compliance with department rules at the time of the
1549 discharge.

1550 b. The owner or operator has, upon discovery of a
1551 discharge, promptly reported the discharge to the department,
1552 and drained and removed the system from service, if necessary.

1553 c. The owner or operator has not intentionally caused or
1554 concealed a discharge or disabled leak detection equipment.

1555 d. The owner or operator proceeds to complete initial
1556 remedial action as specified ~~defined~~ by department rules.

1557 e. The owner or operator, if required and if it has not
1558 already done so, applies for third-party liability coverage for
1559 the facility within 30 days after ~~of~~ receipt of an eligibility
1560 order issued by the department pursuant to this subparagraph
1561 provision.

1562
1563 However, the department may consider in-kind services from
1564 eligible counties and municipalities in lieu of the \$30,000
1565 deductible. The cost of conducting initial remedial action as
1566 defined by department rules is ~~shall be~~ an eligible restoration

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1567 cost pursuant to this subparagraph ~~provision~~.

1568 4.a. By January 1, 1997, facilities at sites with existing
1569 contamination must ~~shall be required to~~ have methods of release
1570 detection to be eligible for restoration insurance coverage for
1571 new discharges subject to department rules for secondary
1572 containment. Annual storage system testing, in conjunction with
1573 inventory control, shall be considered to be a method of release
1574 detection until the later of December 22, 1998, or 10 years
1575 after the date of installation or the last upgrade. Other
1576 methods of release detection for storage tanks which meet such
1577 requirement are:

1578 (I) Interstitial monitoring of tank and integral piping
1579 secondary containment systems;

1580 (II) Automatic tank gauging systems; or

1581 (III) A statistical inventory reconciliation system with a
1582 tank test every 3 years.

1583 b. For pressurized integral piping systems, the owner or
1584 operator must use:

1585 (I) An automatic in-line leak detector with flow
1586 restriction meeting the requirements of department rules used in
1587 conjunction with an annual tightness or pressure test; or

1588 (II) An automatic in-line leak detector with electronic
1589 flow shut-off meeting the requirements of department rules.

1590 c. For suction integral piping systems, the owner or
1591 operator must use:

1592 (I) A single check valve installed directly below the
1593 suction pump if, ~~provided~~ there are no other valves between the
1594 dispenser and the tank; or

1595 (II) An annual tightness test or other approved test.

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1596 d. Owners of facilities with existing contamination which
1597 ~~that~~ install internal release detection systems pursuant to in
1598 ~~accordance with~~ sub-subparagraph a. shall permanently close
1599 their external groundwater and vapor monitoring wells pursuant
1600 to in accordance with department rules by December 31, 1998.
1601 Upon installation of the internal release detection system, such
1602 ~~these~~ wells must ~~shall~~ be secured and taken out of service until
1603 permanent closure.

1604 e. Facilities with vapor levels of contamination meeting
1605 the requirements of or below the concentrations specified in the
1606 performance standards for release detection methods specified in
1607 department rules may continue to use vapor monitoring wells for
1608 release detection.

1609 f. The department may approve other methods of release
1610 detection for storage tanks and integral piping which have at
1611 least the same capability to detect a new release as the methods
1612 specified in this subparagraph.

1613 (b)1. To be eligible to be certified as an insured
1614 facility, for discharges reported after January 1, 1989, the
1615 owner or operator must ~~shall~~ file an affidavit upon enrollment
1616 in the program. The affidavit must ~~shall~~ state that the owner or
1617 operator has read and is familiar with this chapter and the
1618 rules relating to petroleum storage systems and petroleum
1619 contamination site cleanup adopted pursuant to ss. 376.303 and
1620 376.3071 and that the facility is in compliance with this
1621 chapter and applicable rules adopted pursuant to s. 376.303.
1622 Thereafter, the facility's annual inspection report shall serve
1623 as evidence of the facility's compliance with department rules.
1624 The facility's certificate as an insured facility may be revoked

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1625 only if the insured fails to correct a violation identified in
1626 an inspection report before a discharge occurs. The facility's
1627 certification may be restored when the violation is corrected as
1628 verified by a reinspection.

1629 2. Except as provided in paragraph (a), to be eligible to
1630 be certified as an insured facility, the applicant must
1631 demonstrate to the department that the applicant has financial
1632 responsibility for third-party claims and excess coverage, as
1633 required by this section and 40 C.F.R. s. 280.97(h), and that
1634 the applicant maintains such insurance during the applicant's
1635 participation as an insured facility.

1636 3. Should a reinspection of the facility be necessary to
1637 demonstrate compliance, the insured shall pay an inspection fee
1638 not to exceed \$500 per facility to be deposited in the Inland
1639 Protection Trust Fund.

1640 4. Upon report of a discharge, the department shall issue
1641 an order stating that the site is eligible for restoration
1642 coverage unless the insured has intentionally caused or
1643 concealed a discharge or disabled leak detection equipment, has
1644 misrepresented facts in the affidavit filed pursuant to
1645 subparagraph 1., or cannot demonstrate that he or she has
1646 obtained and maintained the financial responsibility for third-
1647 party claims and excess coverage as required in subparagraph 2.

1648
1649 This paragraph does not ~~Nothing contained herein shall~~ prevent
1650 the department from assessing civil penalties for noncompliance
1651 pursuant to this subsection as provided herein.

1652 (c) A lender that has loaned money to a participant in the
1653 Florida Petroleum Liability and Restoration Insurance Program

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1654 and has held a mortgage lien, security interest, or ~~any~~ lien
1655 rights on the site primarily to protect the lender's right to
1656 convert or liquidate the collateral in satisfaction of the debt
1657 secured, or a financial institution that ~~which~~ serves as a
1658 trustee for an insured in the program for the purpose of site
1659 rehabilitation, is ~~shall be~~ eligible for a state-funded cleanup
1660 of the site, if the lender forecloses the lien or accepts a deed
1661 in lieu of foreclosure on that property and acquires title, and
1662 as long as the following has occurred, as applicable:

1663 1. The owner or operator provided the lender with proof
1664 that the facility is eligible for the restoration insurance
1665 program at the time of the loan or before the discharge
1666 occurred.

1667 2. The financial institution or lender ~~completes site~~
1668 ~~rehabilitation and seeks reimbursement pursuant to s.~~
1669 ~~376.3071(12) or conducts preapproved~~ site rehabilitation
1670 pursuant to s. 376.3071 ~~s. 376.30711~~, as appropriate.

1671 3. The financial institution or lender did not engage in
1672 management activities at the site before ~~prior to~~ foreclosure
1673 and does not operate the site or otherwise engage in management
1674 activities after foreclosure, except to comply with
1675 environmental statutes or rules or to prevent, abate, or
1676 remediate a discharge.

1677 (d)1. With respect to eligible incidents reported to the
1678 department before ~~prior to~~ July 1, 1992, the restoration
1679 insurance program shall provide up to \$1.2 million of
1680 restoration for each incident and shall have an annual aggregate
1681 limit of \$2 million of restoration per facility.

1682 2. For any site at which a discharge is reported on or

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1683 after July 1, 1992, and for which restoration coverage is
1684 requested, the department shall pay for restoration in
1685 accordance with the following schedule:

1686 a. For discharges reported to the department from July 1,
1687 1992, to June 30, 1993, the department shall pay up to \$1.2
1688 million of eligible restoration costs, less a \$1,000 deductible
1689 per incident.

1690 b. For discharges reported to the department from July 1,
1691 1993, to December 31, 1993, the department shall pay up to \$1.2
1692 million of eligible restoration costs, less a \$5,000 deductible
1693 per incident. However, if, before ~~prior~~ to the date the
1694 discharge is reported and by September 1, 1993, the owner or
1695 operator can demonstrate financial responsibility in effect in
1696 accordance with 40 C.F.R. s. 280.97, subpart H, for coverage
1697 under sub-subparagraph c., the deductible will be \$500. The \$500
1698 deductible shall apply for a period of 1 year from the effective
1699 date of a policy or other form of financial responsibility
1700 obtained and in effect by September 1, 1993.

1701 c. For discharges reported to the department from January
1702 1, 1994, to December 31, 1996, the department shall pay up to
1703 \$400,000 of eligible restoration costs, less a deductible of
1704 \$10,000.

1705 d. For discharges reported to the department from January
1706 1, 1997, to December 31, 1998, the department shall pay up to
1707 \$300,000 of eligible restoration costs, less a deductible of
1708 \$10,000.

1709 e. Beginning January 1, 1999, ~~no~~ restoration coverage may
1710 not ~~shall~~ be provided.

1711 f. In addition, a supplemental deductible shall be added as

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1712 follows:

1713 (I) A supplemental deductible of \$5,000 if the owner or
1714 operator fails to report a suspected release within 1 working
1715 day after discovery.

1716 (II) A supplemental deductible of \$10,000 if the owner or
1717 operator, within 3 days after discovery of an actual new
1718 discharge, fails to take steps to test or empty the storage
1719 system and complete such activity within 7 days.

1720 (III) A supplemental deductible of \$25,000 if the owner or
1721 operator, after testing or emptying the storage system, fails to
1722 proceed within 24 hours thereafter to abate the known source of
1723 the discharge or to begin free product removal relating to an
1724 actual new discharge and fails to complete abatement within 72
1725 hours, although free product recovery may be ongoing.

1726 (e) The following are not eligible to participate in the
1727 Petroleum Liability and Restoration Insurance Program:

1728 1. Sites owned or operated by the Federal Government during
1729 the time the facility was in operation.

1730 2. Sites where the owner or operator has denied the
1731 department reasonable site access.

1732 3. Any third-party claims relating to damages caused by
1733 discharges discovered before ~~prior to~~ January 1, 1989.

1734 4. Any incidents discovered before ~~prior to~~ January 1,
1735 1989, ~~are not eligible to participate in the restoration~~
1736 ~~insurance program~~. However, this exclusion does ~~shall~~ not be
1737 ~~construed to~~ prevent a new incident at the same location from
1738 participation in the restoration insurance program if the owner
1739 or operator is otherwise eligible. This exclusion does ~~shall~~ not
1740 affect eligibility for participation in the Early Detection

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1741 Incentive ~~EDF~~ Program.

1742
 1743 Sites meeting the criteria of this subsection for which a site
 1744 rehabilitation completion order was issued before ~~prior to~~ June
 1745 1, 2008, do not qualify for the 2008 increase in site
 1746 rehabilitation funding assistance and are bound by the pre-June
 1747 1, 2008, limits. Sites meeting the criteria of this subsection
 1748 for which a site rehabilitation completion order was not issued
 1749 before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they
 1750 have previously transitioned to nonstate-funded cleanup status,
 1751 may continue state-funded cleanup pursuant to s. 376.3071(6) ~~s.~~
 1752 ~~376.30711~~ until a site rehabilitation completion order is issued
 1753 or the increased site rehabilitation funding assistance limit is
 1754 reached, whichever occurs first. ~~At no time shall expenses~~
 1755 ~~incurred outside the preapproved site rehabilitation program~~
 1756 ~~under s. 376.30711 be reimbursable.~~

1757 Section 9. Subsections (1) and (4) of section 376.3073,
 1758 Florida Statutes, are amended to read:

1759 376.3073 Local programs and state agency programs for
 1760 control of contamination.—

1761 (1) The department shall, to the greatest extent possible
 1762 and cost-effective, contract with local governments to provide
 1763 for the administration of its departmental responsibilities
 1764 under ss. 376.305, 376.3071(4)(a)-(e), (h), (k), and (m) and (6)
 1765 ~~(l), (n), 376.30711, 376.3072, and 376.3077~~ through locally
 1766 administered programs. The department may also contract with
 1767 state agencies to carry out the restoration activities
 1768 authorized pursuant to ss. 376.305, 376.3071, and 376.3072,
 1769 ~~376.305, and 376.30711~~. However, ~~no~~ such a contract may not

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1770 ~~shall~~ be entered into unless the local government or state
 1771 agency is deemed capable of carrying out such responsibilities
 1772 to the department's satisfaction.

1773 (4) Under no circumstances shall the cleanup criteria
 1774 employed in locally administered programs or state agency
 1775 programs or pursuant to local ordinance be more stringent than
 1776 the criteria established by the department pursuant to s.
 1777 376.3071(5) or (6) ~~s. 376.30711~~.

1778 Section 10. Subsections (4) and (5) of section 376.3075,
 1779 Florida Statutes, are amended to read:

1780 376.3075 Inland Protection Financing Corporation.—

1781 (4) The corporation may enter into one or more service
 1782 contracts with the department to provide services to the
 1783 department in connection with financing the functions and
 1784 activities provided in ss. 376.30-376.317. The department may
 1785 enter into one or more such service contracts with the
 1786 corporation and provide for payments under such contracts
 1787 pursuant to s. 376.3071(4)(n) ~~s. 376.3071(4)(e)~~, subject to
 1788 annual appropriation by the Legislature. The proceeds from such
 1789 service contracts may be used for the corporation's
 1790 administrative costs and expenses after payments as set forth in
 1791 subsection (5). Each service contract may have a term of up to
 1792 20 years. Amounts annually appropriated and applied to make
 1793 payments under such service contracts may not include any funds
 1794 derived from penalties or other payments received from any
 1795 property owner or private party, including payments received
 1796 under s. 376.3071(7)(b) ~~s. 376.3071(6)(b)~~. In compliance with s.
 1797 287.0641 and other applicable provisions of law, the obligations
 1798 of the department under such service contracts do not constitute

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1799 a general obligation of the state or a pledge of the faith and
 1800 credit or taxing power of the state, and ~~nor may~~ such
 1801 obligations are not obligations ~~be construed in any manner as an~~
 1802 ~~obligation~~ of the State Board of Administration or entities for
 1803 which it invests funds, other than the department as provided in
 1804 this section, but are payable solely from amounts available in
 1805 the Inland Protection Trust Fund, subject to annual
 1806 appropriation. In compliance with this subsection and s.
 1807 287.0582, the service contract must expressly include the
 1808 following statement: "The State of Florida's performance and
 1809 obligation to pay under this contract is contingent upon an
 1810 annual appropriation by the Legislature."

1811 (5) The corporation may issue and incur notes, bonds,
 1812 certificates of indebtedness, or other obligations or evidences
 1813 of indebtedness payable from and secured by amounts payable to
 1814 the corporation by the department under a service contract
 1815 entered into pursuant to subsection (4) for the purpose of
 1816 financing the rehabilitation of petroleum contamination sites
 1817 pursuant to ss. 376.30-376.317. The term of any such note, bond,
 1818 certificate of indebtedness, or other obligation or evidence of
 1819 indebtedness may not have a financing term that exceeds 15
 1820 years. The corporation may select its financing team and issue
 1821 its obligations through competitive bidding or negotiated
 1822 contracts, whichever is most cost-effective. ~~Any~~ Indebtedness of
 1823 the corporation does not constitute a debt or obligation of the
 1824 state or a pledge of the faith and credit or taxing power of the
 1825 state, but is payable from and secured by payments made by the
 1826 department under the service contract pursuant to s.
 1827 376.3071(4)(n) ~~s. 376.3071(4)(e)~~.

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Section 11. This act shall take effect July 1, 2014.