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1 A bill to be entitled
2 An act relating to the Department of Environmental
3 Protection; amending s. 287.0595, F.S.; deleting a
4 provision exempting certain professional service
5 contracts from pollution response action contract
6 requirements; amending s. 376.3071, F.S.; providing
7 legislative findings and intent regarding the
8 Petroleum Restoration Program and the rehabilitation
9 of contamination sites; providing requirements for
10 site rehabilitation contracts and procedures for
11 payment of rehabilitation work under the Petroleum
12 Restoration Program; revising provisions relating to
13 the duty of the Department of Environmental Protection
14 to seek recovery and reimbursement of certain costs;
15 providing applicability of funding under the Early
16 Detection Incentive Program; deleting obsolete
17 provisions relating to reimbursement for certain
18 cleanup expenses; repealing s. 376.30711, F.S.,
19 relating to preapproved site rehabilitation; amending
20 376.30713, F.S.; providing for certain applicants to
21 use a commitment to pay, a demonstrated cost savings,
22 or both to meet advanced cleanup cost-share
23 requirements; amending ss. 376.301, 376.302, 376.305,
24 376.30714, 376.3072, 376.3073, and 376.3075, F.S.;
25 conforming provisions to changes made by the act;



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26 amending s. 161.053, F.S.; revising permit
27 requirements for coastal construction and excavation;
28 authorizing the Department of Environmental
29 Protection, in consultation with the Fish and Wildlife
30 Conservation Commission, to grant areawide permits for
31 certain structures; requiring the department to adopt
32 rules; creating s. 258.435, F.S.; requiring the
33 Department of Environmental Protection to promote the
34 public use of aquatic preserves and their associated
35 uplands; authorizing the department to receive gifts
36 and donations for specified purposes; providing
37 restrictions for moneys received; authorizing the
38 department to grant privileges and concessions for
39 accommodation of visitors in and use of aquatic
40 preserves and their associated uplands; providing
41 criteria for granting such concessions; providing
42 restrictions on such privileges and concessions and
43 prohibiting them from being assigned or transferred
44 without the department's consent; requiring the
45 department to post descriptions of proposed privileges
46 and concessions on the department's website; requiring
47 the department to provide an opportunity for public
48 comment on agreements for such privileges and
49 concessions; amending s. 380.276, F.S.; authorizing
50 the department to allow state agencies and local



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51 governments to use additional safety and warning
52 devices at public beaches under certain conditions;
53 providing an appropriation to the Southwest Florida
54 Water Management District to purchase property for a
55 specified purpose; providing construction; amending s.
56 258.007, F.S., prohibiting certain new concession
57 agreements in state parks with limited shorelines;
58 exempting existing accommodations; providing effective
59 dates.

60

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

62

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

65 287.0595 Pollution response action contracts; department
66 rules.—

67 ~~(4) This section does not apply to contracts which must be~~
68 ~~negotiated under s. 287.055.~~

69 Section 2. Section 376.3071, Florida Statutes, is amended
70 to read:

71 376.3071 Inland Protection Trust Fund; creation; purposes;
72 funding.—

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

75 (a) That significant quantities of petroleum and petroleum



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76 products are being stored in storage systems in this state,
77 which is a hazardous undertaking.

78 (b) That spills, leaks, and other discharges from such
79 storage systems have occurred, are occurring, and will continue
80 to occur and that such discharges pose a significant threat to
81 the quality of the groundwaters and inland surface waters of
82 this state.

83 (c) That, where contamination of the ground or surface
84 water has occurred, remedial measures have often been delayed
85 for long periods while determinations as to liability and the
86 extent of liability are made and that such delays result in the
87 continuation and intensification of the threat to the public
88 health, safety, and welfare; in greater damage to water
89 resources and the environment; and in significantly higher costs
90 to contain and remove the contamination.

91 (d) That adequate financial resources must be readily
92 available to provide for the expeditious supply of safe and
93 reliable alternative sources of potable water to affected
94 persons and to provide a means for investigation and cleanup of
95 contamination sites without delay.

96 (e) That it is necessary to fulfill the intent and
97 purposes of ss. 376.30-376.317, and ~~further it is hereby~~
98 determined to be in the best interest of, and necessary for the
99 protection of the public health, safety, and ~~general~~ welfare of
100 the residents of this state, and therefore a paramount public



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101 | purpose, to provide for the creation of a nonprofit public
102 | benefit corporation as an instrumentality of the state to assist
103 | in financing the functions provided in ss. 376.30-376.317 and to
104 | authorize the department to enter into one or more service
105 | contracts with such corporation for the purpose ~~provision~~ of
106 | financing services related to such functions and to make
107 | payments thereunder from the amount on deposit in the Inland
108 | Protection Trust Fund, subject to annual appropriation by the
109 | Legislature.

110 | (f) That to achieve the purposes established in paragraph
111 | (e) and in order to facilitate the expeditious handling and
112 | rehabilitation of contamination sites and remedial measures with
113 | respect to contamination sites ~~provided hereby~~ without delay, it
114 | is in the best interests of the residents of this state to
115 | authorize such corporation to issue evidences of indebtedness
116 | payable from amounts paid by the department under any such
117 | service contract entered into between the department and such
118 | corporation.

119 | (g) That the Petroleum Restoration Program must be
120 | implemented in a manner that reduces costs and improves the
121 | efficiency of rehabilitation activities to reduce the
122 | significant backlog of contaminated sites eligible for state-
123 | funded rehabilitation and the corresponding threat to the public
124 | health, safety, and welfare, water resources, and the
125 | environment.



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126 (2) INTENT AND PURPOSE.—

127 (a) It is the intent of the Legislature to establish the
128 Inland Protection Trust Fund to serve as a repository for funds
129 which will enable the department to respond without delay to
130 incidents of inland contamination related to the storage of
131 petroleum and petroleum products in order to protect the public
132 health, safety, and welfare and to minimize environmental
133 damage.

134 (b) It is the intent of the Legislature that the
135 department implement rules and procedures to improve the
136 efficiency of the Petroleum Restoration Program. The department
137 is directed to implement rules and policies to eliminate and
138 reduce duplication of site rehabilitation efforts, paperwork,
139 and documentation, and micromanagement of site rehabilitation
140 tasks.

141 (c) It is the intent of the Legislature that
142 rehabilitation of contamination sites be conducted with emphasis
143 on first addressing the sites that pose the greatest threat to
144 the public health, safety, and welfare, water resources, and the
145 environment, within the availability of funds in the Inland
146 Protection Trust Fund, recognizing that source removal, wherever
147 it is technologically feasible and cost-effective, will
148 significantly reduce contamination or eliminate the spread of
149 contamination and will protect the public health, safety, and
150 welfare, water resources, and the environment.



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151 (d)~~(e)~~ The department is directed to adopt and implement
152 uniform and standardized forms for ~~the requests for preapproval~~
153 site rehabilitation work and for the submittal of reports to
154 ensure that information is submitted to the department in a
155 concise, standardized uniform format seeking only information
156 that is necessary.

157 (e)~~(d)~~ The department is directed to implement
158 computerized and electronic filing capabilities ~~of preapproval~~
159 ~~requests~~ and submittal of reports in order to expedite submittal
160 of the information and elimination of delay in paperwork. ~~The~~
161 ~~computerized, electronic filing system shall be implemented no~~
162 ~~later than January 1, 1997.~~

163 ~~(e) The department is directed to adopt uniform scopes of~~
164 ~~work with templated labor and equipment costs to provide~~
165 ~~definitive guidance as to the type of work and authorized~~
166 ~~expenditures that will be allowed for preapproved site~~
167 ~~rehabilitation tasks.~~

168 (f) The department is directed to establish guidelines for
169 consideration and acceptance of new and innovative technologies
170 for site rehabilitation work.

171 (3) CREATION.—There is ~~hereby~~ created the Inland
172 Protection Trust Fund, hereinafter referred to as the "fund," to
173 be administered by the department. This fund shall be used by
174 the department as a nonlapsing revolving fund for carrying out
175 the purposes of this section and s. 376.3073. To this fund shall



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176 be credited all penalties, judgments, recoveries,
177 reimbursements, loans, and other fees and charges related to the
178 implementation of this section and s. 376.3073 and the excise
179 tax revenues levied, collected, and credited pursuant to ss.
180 206.9935(3) and 206.9945(1)(c). Charges against the fund shall
181 be made pursuant to ~~in accordance with the provisions of~~ this
182 section.

183 (4) USES.—Whenever, in its determination, incidents of
184 inland contamination related to the storage of petroleum or
185 petroleum products may pose a threat to ~~the environment or~~ the
186 public health, safety, or welfare, water resources, or the
187 environment, the department shall obligate moneys available in
188 the fund to provide for:

189 (a) Prompt investigation and assessment of contamination
190 sites.

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

193 (c) Rehabilitation of contamination sites, which shall
194 consist of cleanup of affected soil, groundwater, and inland
195 surface waters, using the most cost-effective alternative that
196 is technologically feasible and reliable and that provides
197 adequate protection of the public health, safety, and welfare,
198 and water resources, and that minimizes environmental damage,
199 pursuant to ~~in accordance with~~ the site selection and cleanup
200 criteria established by the department under subsection (5),



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201 | except that this paragraph does not ~~nothing herein shall be~~
202 | ~~construed to~~ authorize the department to obligate funds for
203 | payment of costs which may be associated with, but are not
204 | integral to, site rehabilitation, such as the cost for
205 | retrofitting or replacing petroleum storage systems.

206 | (d) Maintenance and monitoring of contamination sites.

207 | (e) Inspection and supervision of activities described in
208 | this subsection.

209 | (f) Payment of expenses incurred by the department in its
210 | efforts to obtain from responsible parties the payment or
211 | recovery of reasonable costs resulting from the activities
212 | described in this subsection.

213 | (g) Payment of any other reasonable costs of
214 | administration, including those administrative costs incurred by
215 | the Department of Health in providing field and laboratory
216 | services, toxicological risk assessment, and other assistance to
217 | the department in the investigation of drinking water
218 | contamination complaints and costs associated with public
219 | information and education activities.

220 | (h) Establishment and implementation of the compliance
221 | verification program as authorized in s. 376.303(1)(a),
222 | including contracting with local governments or state agencies
223 | to provide for the administration of such program through
224 | locally administered programs, to minimize the potential for
225 | further contamination sites.



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226 (i) Funding of the provisions of ss. 376.305(6) and
227 376.3072.

228 (j) Activities related to removal and replacement of
229 petroleum storage systems, exclusive of costs of any tank,
230 piping, dispensing unit, or related hardware, if soil removal is
231 approved ~~preapproved~~ as a component of site rehabilitation and
232 requires removal of the tank where remediation is conducted
233 under this section ~~s. 376.30711~~ or if such activities were
234 justified in an approved remedial action plan ~~performed pursuant~~
235 ~~to subsection (12)~~.

236 ~~(k) Activities related to reimbursement application~~
237 ~~preparation and activities related to reimbursement application~~
238 ~~examination by a certified public accountant pursuant to~~
239 ~~subsection (12)~~.

240 (k)(1) Reasonable costs of restoring property as nearly as
241 practicable to the conditions which existed before ~~prior to~~
242 activities associated with contamination assessment or remedial
243 action taken under s. 376.303(4).

244 (l)(m) Repayment of loans to the fund.

245 (m)(n) Expenditure of sums from the fund to cover
246 ineligible sites or costs as set forth in subsection (13), if
247 the department in its discretion deems it necessary to do so. In
248 such cases, the department may seek recovery and reimbursement
249 of costs in the same manner and pursuant to ~~in accordance with~~
250 the same procedures ~~as are~~ established for recovery and



251 reimbursement of sums otherwise owed to or expended from the
 252 fund.

253 (n) ~~(o)~~ Payment of amounts payable under any service
 254 contract entered into by the department pursuant to s. 376.3075,
 255 subject to annual appropriation by the Legislature.

256 (o) ~~(p)~~ Petroleum remediation pursuant to this section ~~s.~~
 257 ~~376.30711~~ throughout a state fiscal year. The department shall
 258 establish a process to uniformly encumber appropriated funds
 259 throughout a state fiscal year and shall allow for emergencies
 260 and imminent threats to public human health, safety, and
 261 welfare, water resources, and the environment as provided in
 262 paragraph (5) (a). This paragraph does not apply to
 263 appropriations associated with the free product recovery
 264 initiative provided in ~~of~~ paragraph (5) (c) or the ~~preapproved~~
 265 advanced cleanup program provided in ~~of~~ s. 376.30713.

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

269
 270 The Inland Protection Trust Fund may only be used to fund the
 271 activities in ss. 376.30-376.317 except ss. 376.3078 and
 272 376.3079. Amounts on deposit in the ~~Inland Protection Trust~~ fund
 273 in each fiscal year shall first be applied or allocated for the
 274 payment of amounts payable by the department pursuant to
 275 paragraph (n) ~~(o)~~ under a service contract entered into by the



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276 department pursuant to s. 376.3075 and appropriated in each year
277 by the Legislature before ~~prior to~~ making or providing for other
278 disbursements from the fund. ~~Nothing in~~ This subsection does not
279 ~~shall~~ authorize the use of the ~~Inland Protection Trust~~ fund for
280 cleanup of contamination caused primarily by a discharge of
281 solvents as defined in s. 206.9925(6), or polychlorinated
282 biphenyls when their presence causes them to be hazardous
283 wastes, except solvent contamination which is the result of
284 chemical or physical breakdown of petroleum products and is
285 otherwise eligible. Facilities used primarily for the storage of
286 motor or diesel fuels as defined in ss. 206.01 and 206.86 are
287 ~~shall be presumed~~ not ~~to be~~ excluded from eligibility pursuant
288 to this section.

289 (5) SITE SELECTION AND CLEANUP CRITERIA.—

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

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

296 2. The size of the population or area affected by the
297 contamination;

298 3. The present and future uses of the affected aquifer or
299 surface waters, with particular consideration as to the
300 probability that the contamination is substantially affecting,



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301 or will migrate to and substantially affect, a known public or
302 private source of potable water; and

303 4. The effect of the contamination on water resources and
304 the environment.

305

306 Moneys in the fund shall then be obligated for activities
307 described in paragraphs (4) (a)-(e) at individual sites pursuant
308 to ~~in accordance with~~ such established criteria. However,
309 ~~nothing in this paragraph does not shall be construed to~~
310 restrict the department from modifying the priority status of a
311 rehabilitation site where conditions warrant, taking into
312 consideration the actual distance between the contamination site
313 and groundwater or surface water receptors or other factors that
314 affect the risk of exposure to petroleum products' chemicals of
315 concern. The department may use the effective date of a
316 department final order granting eligibility pursuant to
317 subsections (10) ~~(9)~~ and (13) and ss. 376.305(6) and 376.3072 to
318 establish a prioritization system within a particular priority
319 scoring range.

320 (b) It is the intent of the Legislature to protect the
321 health of all people under actual circumstances of exposure. The
322 secretary shall establish criteria by rule for the purpose of
323 determining, on a site-specific basis, the rehabilitation
324 program tasks that comprise a site rehabilitation program and
325 the level at which a rehabilitation program task and a site



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326 rehabilitation program are ~~may be deemed~~ completed. In
327 establishing the rule, the department shall incorporate, to the
328 maximum extent feasible, risk-based corrective action principles
329 to achieve protection of the public ~~human~~ health, ~~and~~ safety,
330 and welfare, water resources, and the environment in a cost-
331 effective manner as provided in this subsection. Criteria for
332 determining what constitutes a rehabilitation program task or
333 completion of site rehabilitation program tasks and site
334 rehabilitation programs shall be based upon the factors set
335 forth in paragraph (a) and the following additional factors:

- 336 1. The current exposure and potential risk of exposure to
337 humans and the environment including multiple pathways of
338 exposure.
- 339 2. The appropriate point of compliance with cleanup target
340 levels for petroleum products' chemicals of concern. The point
341 of compliance shall be at the source of the petroleum
342 contamination. However, the department may ~~is authorized to~~
343 temporarily move the point of compliance to the boundary of the
344 property, or to the edge of the plume when the plume is within
345 the property boundary, while cleanup, including cleanup through
346 natural attenuation processes in conjunction with appropriate
347 monitoring, is proceeding. The department may also ~~is~~
348 ~~authorized,~~ pursuant to criteria provided for in this paragraph,
349 ~~to~~ temporarily extend the point of compliance beyond the
350 property boundary with appropriate monitoring, if such extension



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351 is needed to facilitate natural attenuation or to address the
352 current conditions of the plume, if the public ~~provided human~~
353 health, ~~public~~ safety, and welfare, water resources, and the
354 environment are adequately protected. Temporary extension of the
355 point of compliance beyond the property boundary, as provided in
356 this subparagraph, must ~~shall~~ include notice to local
357 governments and owners of any property into which the point of
358 compliance is allowed to extend.

359 3. The appropriate site-specific cleanup goal. The site-
360 specific cleanup goal shall be that all petroleum contamination
361 sites ultimately achieve the applicable cleanup target levels
362 provided in this paragraph. However, the department may ~~is~~
363 ~~authorized to~~ allow concentrations of the petroleum products'
364 chemicals of concern to temporarily exceed the applicable
365 cleanup target levels while cleanup, including cleanup through
366 natural attenuation processes in conjunction with appropriate
367 monitoring, ~~is proceeding,~~ if the public ~~provided human~~ health,
368 ~~public~~ safety, and welfare, water resources, and the environment
369 are adequately protected.

370 4. The appropriateness of using institutional or
371 engineering controls. Site rehabilitation programs may include
372 the use of institutional or engineering controls to eliminate
373 the potential exposure to petroleum products' chemicals of
374 concern to humans or the environment. Use of such controls must
375 have prior department approval ~~be preapproved by the department,~~



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376 and may ~~institutional controls shall~~ not be acquired with moneys
377 ~~funds~~ from the ~~Inland Protection Trust~~ fund. When institutional
378 or engineering controls are implemented to control exposure, the
379 removal of such controls must have prior department approval and
380 must be accompanied immediately by the resumption of active
381 cleanup~~7~~ or other approved controls~~7~~, unless cleanup target
382 levels pursuant to this paragraph have been achieved.

383 5. The additive effects of the petroleum products'
384 chemicals of concern. The synergistic effects of petroleum
385 products' chemicals of concern must ~~shall~~ also be considered
386 when the scientific data becomes available.

387 6. Individual site characteristics which must ~~shall~~
388 include, but not be limited to, the current and projected use of
389 the affected groundwater in the vicinity of the site, current
390 and projected land uses of the area affected by the
391 contamination, the exposed population, the degree and extent of
392 contamination, the rate of contaminant migration, the apparent
393 or potential rate of contaminant degradation through natural
394 attenuation processes, the location of the plume, and the
395 potential for further migration in relation to site property
396 boundaries.

397 7. Applicable state water quality standards.

398 a. Cleanup target levels for petroleum products' chemicals
399 of concern found in groundwater shall be the applicable state
400 water quality standards. Where such standards do not exist, the



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401 cleanup target levels for groundwater shall be based on the
402 minimum criteria specified in department rule. The department
403 shall consider the following, as appropriate, in establishing
404 the applicable minimum criteria: calculations using a lifetime
405 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
406 best achievable detection limit; the naturally occurring
407 background concentration; or nuisance, organoleptic, and
408 aesthetic considerations.

409 b. Where surface waters are exposed to petroleum
410 contaminated groundwater, the cleanup target levels for the
411 petroleum products' chemicals of concern shall be based on the
412 surface water standards as established by department rule. The
413 point of measuring compliance with the surface water standards
414 shall be in the groundwater immediately adjacent to the surface
415 water body.

416 8. Whether deviation from state water quality standards or
417 from established criteria is appropriate. The department may
418 issue a "No Further Action Order" based upon the degree to which
419 the desired cleanup target level is achievable and can be
420 reasonably and cost-effectively implemented within available
421 technologies or engineering and institutional control
422 strategies. Where a state water quality standard is applicable,
423 a deviation may not result in the application of cleanup target
424 levels more stringent than the ~~said~~ standard. In determining
425 whether it is appropriate to establish alternate cleanup target



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426 | levels at a site, the department may consider the effectiveness
427 | of source removal that has been completed at the site and the
428 | practical likelihood of~~+~~ the use of low yield or poor quality
429 | groundwater; the use of groundwater near marine surface water
430 | bodies; the current and projected use of the affected
431 | groundwater in the vicinity of the site; or the use of
432 | groundwater in the immediate vicinity of the storage tank area,
433 | where it has been demonstrated that the groundwater
434 | contamination is not migrating away from such localized source,
435 | if the public, ~~provided human~~ health, ~~public~~ safety, and
436 | welfare, water resources, and the environment are adequately
437 | protected.

438 | 9. Appropriate cleanup target levels for soils.

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

446 | b. Leachability-based soil target levels shall be based on
447 | protection of the groundwater cleanup target levels or the
448 | alternate cleanup target levels for groundwater established
449 | pursuant to this paragraph, as appropriate. Source removal and
450 | other cost-effective alternatives that are technologically



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451 | feasible shall be considered in achieving the leachability soil
452 | target levels established by the department. The leachability
453 | goals do not apply ~~shall not be applicable~~ if the department
454 | determines, based upon individual site characteristics, that
455 | petroleum products' chemicals of concern will not leach into the
456 | groundwater at levels which pose a threat to public human
457 | ~~health, and safety, and welfare, water resources,~~ or the
458 | environment.

459

460 | ~~However, nothing in~~ This paragraph does not ~~shall be construed~~
461 | ~~to~~ restrict the department from temporarily postponing
462 | completion of any site rehabilitation program for which funds
463 | are being expended whenever such postponement is ~~deemed~~
464 | necessary in order to make funds available for rehabilitation of
465 | a contamination site with a higher priority status.

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

469 | 1. Funding for free product recovery may be provided in
470 | advance of the order established by the priority ranking system
471 | under paragraph (a) for site cleanup activities. However, a
472 | separate prioritization for free product recovery shall be
473 | established consistent with paragraph (a). No more than \$5
474 | million shall be encumbered from the ~~Inland Protection Trust~~
475 | fund in any fiscal year for free product recovery conducted in



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476 advance of the priority order under paragraph (a) established
477 for site cleanup activities.

478 2. Once free product removal and other source removal
479 identified in this paragraph are completed at a site, and
480 notwithstanding the order established by the priority ranking
481 system under paragraph (a) for site cleanup activities, the
482 department may reevaluate the site to determine the degree of
483 active cleanup needed to continue site rehabilitation. Further,
484 the department shall determine whether ~~if~~ the reevaluated site
485 qualifies for natural attenuation monitoring, long-term natural
486 attenuation monitoring, or no further action. If additional site
487 rehabilitation is necessary to reach no further action status,
488 the site rehabilitation shall be conducted in the order
489 established by the priority ranking system under paragraph (a).
490 The department shall use ~~utilize~~ natural attenuation monitoring
491 strategies and, when cost-effective, transition sites eligible
492 for restoration funding assistance to long-term natural
493 attenuation monitoring where the plume is shrinking or stable
494 and confined to the source property boundaries and the petroleum
495 products' chemicals of concern meet the natural attenuation
496 default concentrations, as defined by department rule. If the
497 plume migrates beyond the source property boundaries, natural
498 attenuation monitoring may be conducted pursuant to ~~in~~
499 ~~accordance with~~ department rule, or if the site no longer
500 qualifies for natural attenuation monitoring, active remediation



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501 may be resumed. For long-term natural attenuation monitoring, if
502 the petroleum products' chemicals of concern increase or are not
503 significantly reduced after 42 months of monitoring, or if the
504 plume migrates beyond the property boundaries, active
505 remediation shall be resumed as necessary. For sites undergoing
506 active remediation, the department shall evaluate ~~template~~ the
507 cost of natural attenuation monitoring ~~pursuant to s. 376.30711~~
508 to ensure that site mobilizations are performed in a cost-
509 effective manner. Sites that are not eligible for state
510 restoration funding may transition to long-term natural
511 attenuation monitoring using the criteria in this subparagraph.
512 ~~Nothing in~~ This subparagraph does not preclude ~~precludes~~ a site
513 from pursuing a "No Further Action" order with conditions.

514 3. The department shall evaluate whether higher natural
515 attenuation default concentrations for natural attenuation
516 monitoring or long-term natural attenuation monitoring are cost-
517 effective and would adequately protect the public health,
518 safety, and welfare, water resources, and the environment. The
519 department shall also evaluate site-specific characteristics
520 that would allow for higher natural attenuation or long-term
521 natural attenuation concentration levels.

522 4. A local government may not deny a building permit based
523 solely on the presence of petroleum contamination for any
524 construction, repairs, or renovations performed in conjunction
525 with tank upgrade activities to an existing retail fuel facility



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526 | if the facility was fully operational before the building permit
527 | was requested and if the construction, repair, or renovation is
528 | performed by a licensed contractor. All building permits and any
529 | construction, repairs, or renovations performed in conjunction
530 | with such permits must comply with the applicable provisions of
531 | chapters 489 and 553.

532 | (6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

533 | (a) Site rehabilitation work on sites which are eligible
534 | for state-funded cleanup from the fund pursuant to this section
535 | and ss. 376.305(6), 376.3072, and 376.3073 may only be funded
536 | pursuant to this section. A facility operator shall abate the
537 | source of discharge for a new release that occurred after March
538 | 29, 1995. If free product is present, the operator shall notify
539 | the department, and the department may direct the removal of the
540 | free product. The department shall grant approval to continue
541 | site rehabilitation pursuant to this section.

542 | (b) When contracting for site rehabilitation activities
543 | performed under the Petroleum Restoration Program, the
544 | department shall comply with competitive procurement
545 | requirements provided in chapter 287 or rules adopted under this
546 | section or s. 287.0595.

547 | (c) Each contractor performing site assessment and
548 | remediation activities for state-funded sites under this section
549 | shall certify to the department that the contractor meets all
550 | certification and license requirements imposed by law. Each



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551 contractor shall certify to the department that the contractor
552 meets the following minimum qualifications:

553 1. Complies with applicable Occupational Safety and Health
554 Administration regulations.

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

557 3. Maintains comprehensive general liability and
558 comprehensive automobile liability insurance with minimum limits
559 of at least \$1 million per occurrence and \$1 million annual
560 aggregate to pay claims for damage for personal injury,
561 including accidental death, as well as claims for property
562 damage that may arise from performance of work under the
563 program, which insurance designates the state as an additional
564 insured party.

565 4. Maintains professional liability insurance of at least
566 \$1 million per occurrence and \$1 million annual aggregate.

567 5. Has the capacity to perform or directly supervise the
568 majority of the rehabilitation work at a site pursuant to s.
569 489.113(9).

570 (d) The department rules implementing this section must
571 specify that only qualified vendors may submit responses on a
572 competitive solicitation. The department rules must also include
573 procedures for the rejection of vendors not meeting the minimum
574 qualifications on the opening of a competitive solicitation and
575 requirements for a vendor to maintain its qualifications in



576 order to enter contracts or perform rehabilitation work.

577 (e) A contractor that performs services pursuant to this
578 subsection may file invoices for payment with the department for
579 the services described in the approved contract. The invoices
580 for payment must be submitted to the department on forms
581 provided by the department, together with evidence documenting
582 that activities were conducted or completed pursuant to the
583 approved contract. If there are sufficient unencumbered funds
584 available in the fund which have been appropriated for
585 expenditure by the Legislature, and if all of the terms of the
586 approved contract have been met, invoices for payment must be
587 paid pursuant to s. 215.422. After a contractor has submitted
588 its invoices to the department, and before payment is made, the
589 contractor may assign its right to payment to another person
590 without recourse of the assignee or assignor to the state. In
591 such cases, the assignee must be paid pursuant to s. 215.422.
592 Prior notice of the assignment and assignment information must
593 be made to the department and must be signed and notarized by
594 the assigning party.

595 (f) The contractor shall submit an invoice to the
596 department within 30 days after the date of the department's
597 written acceptance of each interim deliverable or written
598 approval of the final deliverable specified in the approved
599 contract.

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



601 of an approved contract for site rehabilitation work. The
602 department may, based on its experience and the past performance
603 and concerns regarding a contractor, retain up to 25 percent of
604 the contracted amount or use performance bonds to ensure
605 performance. The amount of retainage and the amount of
606 performance bonds, as well as the terms and conditions for such,
607 must be included in the approved contract.

608 (h) The contractor or the person to which the contractor
609 has assigned its right to payment pursuant to paragraph (e)
610 shall make prompt payment to subcontractors and suppliers for
611 their costs associated with an approved contract pursuant to s.
612 287.0585(1).

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

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

618 (k) This section does not authorize payment to a person
619 for costs of contaminated soil treatment or disposal that does
620 not meet the applicable rules of this state for such treatment
621 or disposal, including all general permitting, state air
622 emission standards, monitoring, sampling, and reporting rules
623 more specifically described in department rules.

624 (l) The department shall terminate or suspend a
625 contractor's eligibility for participation in the program if the



626 contractor fails to perform its contractual duties for site
627 rehabilitation program tasks.

628 (m) A site owner or operator, or his or her designee, may
629 not receive any remuneration, in cash or in kind, directly or
630 indirectly, from a rehabilitation contractor performing site
631 cleanup activities pursuant to this section.

632 (7)(6) FUNDING.—The Inland Protection Trust Fund shall be
633 funded as follows:

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

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

640 (8)(7) DEPARTMENTAL DUTY TO SEEK RECOVERY AND
641 REIMBURSEMENT.—

642 (a) Except as provided in subsection (10) ~~(9)~~ and as
643 otherwise provided by law, the department shall recover to the
644 use of the fund from a person or persons at any time causing or
645 having caused the discharge or from the Federal Government,
646 jointly and severally, all sums owed or expended from the fund,
647 pursuant to s. 376.308, except that the department may decline
648 to pursue such recovery if it finds the amount involved too
649 small or the likelihood of recovery too uncertain. Sums
650 recovered as a result of damage due to a discharge related to



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651 the storage of petroleum or petroleum products or other similar
652 disaster shall be apportioned between the fund and the General
653 Revenue Fund so as to repay the full costs to the General
654 Revenue Fund of ~~any~~ sums disbursed therefrom as a result of such
655 disaster. A ~~Any~~ request for reimbursement to the fund for such
656 costs, if not paid within 30 days after ~~of~~ demand, shall be
657 turned over to the department for collection.

658 (b) Except as provided in subsection (10) ~~(9)~~ and as
659 otherwise provided by law, it is the duty of the department in
660 administering the fund diligently to pursue the reimbursement to
661 the fund of any sum expended from the fund for cleanup and
662 abatement pursuant to ~~in accordance with the provisions of this~~
663 section or s. 376.3073, unless the department finds the amount
664 involved too small or the likelihood of recovery too uncertain.
665 For the purposes of s. 95.11, the limitation period within which
666 to institute an action to recover such sums shall begin ~~commence~~
667 on the last date on which ~~any~~ such sums were expended, and not
668 the date on which ~~that~~ the discharge occurred.

669 (c)1. The department may perform financial and technical
670 audits in order to verify site restoration costs and ensure
671 compliance with this chapter. The department shall seek recovery
672 of any overpayment based on the findings of the audits. The
673 department must begin an audit within 5 years after the date of
674 payment for costs incurred at a facility, except in cases where
675 the department alleges specific facts indicating fraud.



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676 2. Upon determination by the department that any portion
677 of costs that have been paid from the fund is disallowed, the
678 department shall provide written notice to the recipient of the
679 payment specifying the allegations of fact that justify the
680 department's proposed action and ordering repayment of
681 disallowed costs within 60 days after receipt of such notice.

682 3. If the recipient does not make payment to the
683 department within 60 days after receipt of such notice, the
684 department shall seek recovery in a court of competent
685 jurisdiction to recover the overpayment, unless the department
686 finds the amount involved too small or the likelihood of
687 recovery too uncertain.

688 4. In addition to the amount of the overpayment, the
689 recipient is liable to the department for interest of 1 percent
690 per month or the prime rate, whichever is less, on the amount of
691 the overpayment from the date of the overpayment by the
692 department until the recipient satisfies the department's
693 request for repayment pursuant to this paragraph. The accrual of
694 interest shall be tolled during the pendency of any litigation.

695 (d) Claims that accrued under former reimbursement or
696 preapproval programs are expressly preserved.

697 (e)-(e) If the department initiates an enforcement action
698 to clean up a contaminated site and determines that the
699 responsible party cannot ~~is~~ financially ~~unable~~ to undertake
700 complete restoration of the contaminated site, that the current



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701 property owner was not responsible for the discharge when the
702 contamination first occurred, or that the state's interest can
703 best be served by conducting cleanup, the department may enter
704 into an agreement with the responsible party or property owner
705 whereby the department agrees to conduct site rehabilitation and
706 the responsible party or property owner agrees to pay for the
707 portion of the cleanup costs that are within such party's or
708 owner's financial capabilities as determined by the department,
709 taking into consideration the party's or owner's net worth and
710 the economic impact on the party or owner.

711 (9)~~(8)~~ INVESTMENTS; INTEREST.—Moneys in the fund which are
712 not needed currently to meet the obligations of the department
713 in the exercise of its responsibilities under this section and
714 s. 376.3073 shall be deposited with the Chief Financial Officer
715 to the credit of the fund and may be invested in such manner as
716 ~~is provided for~~ by law statute. The interest received on such
717 investment shall be credited to the fund. Any provisions of law
718 to the contrary notwithstanding, such interest may be freely
719 transferred between the ~~this~~ trust fund and the Water Quality
720 Assurance Trust Fund, in the discretion of the department.

721 (10)~~(9)~~ EARLY DETECTION INCENTIVE PROGRAM.—To encourage
722 early detection, reporting, and cleanup of contamination from
723 leaking petroleum storage systems, the department shall, within
724 the guidelines established in this subsection, conduct an
725 incentive program which provides ~~shall provide~~ for a 30-month



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726 | grace period ending on December 31, 1988. ~~Pursuant thereto:~~

727 | (a) The department shall establish reasonable requirements
728 | for the written reporting of petroleum contamination incidents
729 | and shall distribute forms to registrants under s. 376.303(1)(b)
730 | and to other interested parties upon request to be used for such
731 | purpose. Until such forms are available for distribution, the
732 | department shall take reports of such incidents, however made,
733 | but shall notify any person making such a report that a complete
734 | written report of the incident will be required by the
735 | department at a later time, the form for which will be provided
736 | by the department.

737 | (b) When reporting forms become available for
738 | distribution, all sites involving incidents of contamination
739 | from petroleum storage systems initially reported to the
740 | department at any time from midnight on June 30, 1986, to
741 | midnight on December 31, 1988, shall be qualified sites if
742 | ~~provided that such~~ a complete written report is filed with
743 | respect thereto within a reasonable time. Subject to the delays
744 | which may occur as a result of the prioritization of sites under
745 | paragraph (5)(a) for any qualified site, costs for activities
746 | described in paragraphs (4)(a)-(e) shall be absorbed at the
747 | expense of the fund, without recourse to reimbursement or
748 | recovery, with the following exceptions:

749 | 1. ~~The provisions of~~ This subsection does ~~shall~~ not apply
750 | to a any site where the department has been denied site access



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751 | to implement ~~the provisions of~~ this section.

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

756 | 3.a. Upon discovery by the department that the owner or
757 | operator of a petroleum storage system has been grossly
758 | negligent in the maintenance of such petroleum storage system;
759 | has, with willful intent to conceal the existence of a serious
760 | discharge, falsified inventory or reconciliation records
761 | maintained with respect to the site at which such system is
762 | located; or has intentionally damaged such petroleum storage
763 | system, the site at which such system is located shall be
764 | ineligible for participation in the incentive program and the
765 | owner shall be liable for all costs due to discharges from
766 | petroleum storage systems at that site, any other provisions of
767 | chapter 86-159, Laws of Florida, to the contrary
768 | notwithstanding. For the purposes of this paragraph, willful
769 | failure to maintain inventory and reconciliation records,
770 | willful failure to make monthly monitoring system checks where
771 | such systems are in place, and failure to meet monitoring and
772 | retrofitting requirements within the schedules established under
773 | chapter 62-761, Florida Administrative Code, or violation of
774 | similar rules adopted by the department under this chapter,
775 | constitutes ~~shall be construed to be~~ gross negligence in the



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776 maintenance of a petroleum storage system.

777 b. The department shall redetermine the eligibility of
778 petroleum storage systems for which a timely Early Detection
779 Incentive Program ~~EDI~~ application was filed, but which were
780 deemed ineligible by the department, under the following
781 conditions:

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

787 (II) The department verifies the storage system compliance
788 based on a compliance inspection.

789

790 ~~Provided, however, that~~ A site may be determined eligible by the
791 department for good cause shown, including, but not limited to,
792 demonstration by the owner or operator that to achieve
793 compliance would cause an increase in the potential for the
794 spread of the contamination.

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

797 (I) Petroleum storage systems owned or operated by the
798 Federal Government.

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

800 (III) Facilities where a discharge was intentionally



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801 | concealed.

802 | (IV) Facilities that were denied eligibility due to:

803 | (A) Absence of contamination, unless any such facility
804 | subsequently establishes that contamination did exist at that
805 | facility on or before December 31, 1988.

806 | (B) Contamination from substances that were not petroleum
807 | or a petroleum product.

808 | (C) Contamination that was not from a petroleum storage
809 | system.

810 | d. ~~EDI~~ Applicants who demonstrate compliance for a site
811 | pursuant to sub-subparagraph b. are eligible for the Early
812 | Detection Incentive Program and site rehabilitation funding
813 | pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~.

814 |
815 | If, in order to avoid prolonged delay, the department in its
816 | discretion deems it necessary to expend sums from the fund to
817 | cover ineligible sites or costs as set forth in this paragraph,
818 | the department may do so and seek recovery and reimbursement
819 | therefor in the same manner and pursuant to ~~in accordance with~~
820 | the same procedures ~~as are~~ established for recovery and
821 | reimbursement of sums otherwise owed to or expended from the
822 | fund.

823 | (c) A ~~No~~ report of a discharge made to the department by a
824 | ~~any~~ person pursuant to ~~in accordance with~~ this subsection, ~~or~~
825 | ~~any~~ rules adopted ~~promulgated~~ pursuant to this subsection may



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826 ~~not hereto,~~ shall be used directly as evidence of liability for
827 such discharge in any civil or criminal trial arising out of the
828 discharge.

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

832 (11) ~~(10)~~ VIOLATIONS; PENALTY.—~~A~~ ~~It is unlawful for any~~
833 person may not ~~to~~:

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

838 (b) Intentionally damage a petroleum storage system.

839
840 A ~~Any~~ person convicted of such a violation is ~~shall be~~ guilty of
841 a felony of the third degree, punishable as provided in s.
842 775.082, s. 775.083, or s. 775.084.

843 (12) ~~(11)~~ SITE CLEANUP.—

844 (a) Voluntary cleanup.—This section does not prohibit a
845 person from conducting site rehabilitation ~~either~~ through his or
846 her own personnel or through responsible response action
847 contractors or subcontractors when such person is not seeking
848 site rehabilitation funding from the fund. Such voluntary
849 cleanups must meet all applicable environmental standards.

850 (b) Low-scored site initiative.—Notwithstanding



851 subsections (5) and (6) s. 376.30711, a any site with a priority
852 ranking score of 29 points or less may voluntarily participate
853 in the low-scored site initiative regardless of, whether ~~or not~~
854 the site is eligible for state restoration funding.

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

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

860 b. ~~No~~ Excessively contaminated soil, as defined by
861 department rule, does not exist ~~exists~~ onsite as a result of a
862 release of petroleum products.

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

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

868 e. The area of groundwater containing the petroleum
869 products' chemicals of concern is less than one-quarter acre and
870 is confined to the source property boundaries of the real
871 property on which the discharge originated.

872 f. Soils onsite that are subject to human exposure found
873 between land surface and 2 feet below land surface meet the soil
874 cleanup target levels established by department rule or human
875 exposure is limited by appropriate institutional or engineering



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876 controls.

877 2. Upon affirmative demonstration of the conditions under
878 subparagraph 1., the department shall issue a determination of
879 "No Further Action." Such determination acknowledges that
880 minimal contamination exists onsite and that such contamination
881 is not a threat to the public human health, safety, or welfare,
882 water resources, or the environment. If no contamination is
883 detected, the department may issue a site rehabilitation
884 completion order.

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

888 a. A responsible party or property owner may submit an
889 assessment plan designed to affirmatively demonstrate that the
890 site meets the conditions under subparagraph 1. Notwithstanding
891 the priority ranking score of the site, the department may
892 approve ~~preapprove~~ the cost of the assessment ~~pursuant to s.~~
893 ~~376.30711,~~ including 6 months of groundwater monitoring, not to
894 exceed \$30,000 for each site. The department may not pay the
895 costs associated with the establishment of institutional or
896 engineering controls.

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

899 c. No more than \$10 million for the low-scored site
900 initiative may be encumbered from the ~~Inland Protection Trust~~



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901 fund in any fiscal year. Funds shall be made available on a
902 first-come, first-served basis and shall be limited to 10 sites
903 in each fiscal year for each responsible party or property
904 owner.

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

908 ~~(12) REIMBURSEMENT FOR CLEANUP EXPENSES. Except as~~
909 ~~provided in s. 2(3), chapter 95-2, Laws of Florida, this~~
910 ~~subsection shall not apply to any site rehabilitation program~~
911 ~~task initiated after March 29, 1995. Effective August 1, 1996,~~
912 ~~no further site rehabilitation work on sites eligible for state-~~
913 ~~funded cleanup from the Inland Protection Trust Fund shall be~~
914 ~~eligible for reimbursement pursuant to this subsection. The~~
915 ~~person responsible for conducting site rehabilitation may seek~~
916 ~~reimbursement for site rehabilitation program task work~~
917 ~~conducted after March 28, 1995, in accordance with s. 2(2) and~~
918 ~~(3), chapter 95-2, Laws of Florida, regardless of whether the~~
919 ~~site rehabilitation program task is completed. A site~~
920 ~~rehabilitation program task shall be considered to be initiated~~
921 ~~when actual onsite work or engineering design, pursuant to~~
922 ~~chapter 62-770, Florida Administrative Code, which is integral~~
923 ~~to performing a site rehabilitation program task has begun and~~
924 ~~shall not include contract negotiation and execution, site~~
925 ~~research, or project planning. All reimbursement applications~~



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926 ~~pursuant to this subsection must be submitted to the department~~
927 ~~by January 3, 1997. The department shall not accept any~~
928 ~~applications for reimbursement or pay any claims on applications~~
929 ~~for reimbursement received after that date; provided, however if~~
930 ~~an application filed on or prior to January 3, 1997, was~~
931 ~~returned by the department on the grounds of untimely filing, it~~
932 ~~shall be refiled within 30 days after the effective date of this~~
933 ~~act in order to be processed.~~

934 ~~(a) Legislative findings.—The Legislature finds and~~
935 ~~declares that rehabilitation of contamination sites should be~~
936 ~~conducted in a manner and to a level of completion which will~~
937 ~~protect the public health, safety, and welfare and will minimize~~
938 ~~damage to the environment.~~

939 ~~(b) Conditions.—~~

940 ~~1. The owner, operator, or his or her designee of a site~~
941 ~~which is eligible for restoration funding assistance in the EDI,~~
942 ~~PLRIP, or ATRP programs shall be reimbursed from the Inland~~
943 ~~Protection Trust Fund of allowable costs at reasonable rates~~
944 ~~incurred on or after January 1, 1985, for completed program~~
945 ~~tasks as identified in the department rule promulgated pursuant~~
946 ~~to paragraph (5) (b), or uncompleted program tasks pursuant to~~
947 ~~chapter 95-2, Laws of Florida, subject to the conditions in this~~
948 ~~section. It is unlawful for a site owner or operator, or his or~~
949 ~~her designee, to receive any remuneration, in cash or in kind,~~
950 ~~directly or indirectly from the rehabilitation contractor.~~



951 ~~2. Nothing in this subsection shall be construed to~~
952 ~~authorize reimbursement to any person for costs of contaminated~~
953 ~~soil treatment or disposal that does not meet the applicable~~
954 ~~rules of this state for such treatment or disposal, including~~
955 ~~all general permitting, state air emission standards,~~
956 ~~monitoring, sampling, and reporting rules more specifically~~
957 ~~described in department rules.~~

958 ~~(c) Legislative intent. Due to the value of the potable~~
959 ~~water of this state, it is the intent of the Legislature that~~
960 ~~the department initiate and facilitate as many cleanups as~~
961 ~~possible utilizing the resources of the state, local~~
962 ~~governments, and the private sector, recognizing that source~~
963 ~~removal, wherever it is technologically feasible and cost-~~
964 ~~effective, shall be considered the primary initial response to~~
965 ~~protect public health, safety, and the environment.~~

966 ~~(d) Amount of reimbursement. The department shall~~
967 ~~reimburse actual and reasonable costs for site rehabilitation.~~
968 ~~The department shall not reimburse interest on the amount of~~
969 ~~reimbursable costs for any reimbursement application. However,~~
970 ~~nothing herein shall affect the department's authority to pay~~
971 ~~interest authorized under prior law.~~

972 ~~(e) Records. The person responsible for conducting site~~
973 ~~rehabilitation, or his or her agent, shall keep and preserve~~
974 ~~suitable records as follows:~~

975 ~~1. Hydrological and other site investigations and~~



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976 ~~assessments; site rehabilitation plans; contracts and contract~~
977 ~~negotiations; and accounts, invoices, sales tickets, or other~~
978 ~~payment records from purchases, sales, leases, or other~~
979 ~~transactions involving costs actually incurred related to site~~
980 ~~rehabilitation. Such records shall be made available upon~~
981 ~~request to agents and employees of the department during regular~~
982 ~~business hours and at other times upon written request of the~~
983 ~~department.~~

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

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

991 ~~(f) Application for reimbursement. Any eligible person who~~
992 ~~performs a site rehabilitation program or performs site~~
993 ~~rehabilitation program tasks such as preparation of site~~
994 ~~rehabilitation plans or assessments; product recovery; cleanup~~
995 ~~of groundwater or inland surface water; soil treatment or~~
996 ~~removal; or any other tasks identified by department rule~~
997 ~~developed pursuant to subsection (5), may apply for~~
998 ~~reimbursement. Such applications for reimbursement must be~~
999 ~~submitted to the department on forms provided by the department,~~
1000 ~~together with evidence documenting that site rehabilitation~~



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1001 ~~program tasks were conducted or completed in accordance with~~
1002 ~~department rule developed pursuant to subsection (5), and other~~
1003 ~~such records or information as the department requires. The~~
1004 ~~reimbursement application and supporting documentation shall be~~
1005 ~~examined by a certified public accountant in accordance with~~
1006 ~~standards established by the American Institute of Certified~~
1007 ~~Public Accountants. A copy of the accountant's report shall be~~
1008 ~~submitted with the reimbursement application. Applications for~~
1009 ~~reimbursement shall not be approved for site rehabilitation~~
1010 ~~program tasks which have not been completed, except for the task~~
1011 ~~of remedial action and except for uncompleted program tasks~~
1012 ~~pursuant to chapter 95-2, Laws of Florida, and this subsection.~~
1013 ~~Applications for remedial action may be submitted semiannually~~
1014 ~~at the discretion of the person responsible for cleanup. After~~
1015 ~~an applicant has filed an application with the department and~~
1016 ~~before payment is made, the applicant may assign the right to~~
1017 ~~payment to any other person, without recourse of the assignee or~~
1018 ~~assignor to the state, without affecting the order in which~~
1019 ~~payment is made. Information necessary to process the~~
1020 ~~application shall be requested from and provided by the~~
1021 ~~assigning applicant. Proper notice of the assignment and~~
1022 ~~assignment information shall be made to the department which~~
1023 ~~notice shall be signed and notarized by the assigning applicant.~~
1024 ~~(g) Review.—~~
1025 ~~1. Provided there are sufficient unencumbered funds~~



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1026 ~~available in the Inland Protection Trust Fund, or to the extent~~
1027 ~~proceeds of debt obligations are available for the payment of~~
1028 ~~existing reimbursement obligations pursuant to s. 376.3075, the~~
1029 ~~department shall have 60 days to determine if the applicant has~~
1030 ~~provided sufficient information for processing the application~~
1031 ~~and shall request submission of any additional information that~~
1032 ~~the department may require within such 60-day period. If the~~
1033 ~~applicant believes any request for additional information is not~~
1034 ~~authorized, the applicant may request a hearing pursuant to ss.~~
1035 ~~120.569 and 120.57. Once the department requests additional~~
1036 ~~information, the department may request only that information~~
1037 ~~needed to clarify such additional information or to answer new~~
1038 ~~questions raised by or directly related to such additional~~
1039 ~~information.~~

1040 ~~2. The department shall deny or approve the application~~
1041 ~~for reimbursement within 90 days after receipt of the last item~~
1042 ~~of timely requested additional material, or, if no additional~~
1043 ~~material is requested, within 90 days of the close of the 60-day~~
1044 ~~period described in subparagraph 1., unless the total review~~
1045 ~~period is otherwise extended by written mutual agreement of the~~
1046 ~~applicant and the department.~~

1047 ~~3. Final disposition of an application shall be provided~~
1048 ~~to the applicant in writing, accompanied by a written~~
1049 ~~explanation setting forth in detail the reason or reasons for~~
1050 ~~the approval or denial. If the department fails to make a~~



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1051 ~~determination on an application within the time provided in~~
1052 ~~subparagraph 2., or denies an application, or if a dispute~~
1053 ~~otherwise arises with regard to reimbursement, the applicant may~~
1054 ~~request a hearing pursuant to ss. 120.569 and 120.57.~~

1055 ~~(h) Reimbursement. Upon approval of an application for~~
1056 ~~reimbursement, reimbursement for reasonable expenditures of a~~
1057 ~~site rehabilitation program or site rehabilitation program tasks~~
1058 ~~documented therein shall be made in the order in which the~~
1059 ~~department receives completed applications. Effective January 1,~~
1060 ~~1997, all unpaid reimbursement applications are subject to~~
1061 ~~payment on the following terms: The department shall develop a~~
1062 ~~schedule of the anticipated dates of reimbursement of~~
1063 ~~applications submitted to the department pursuant to this~~
1064 ~~subsection. The schedule shall specify the projected date of~~
1065 ~~payment based on equal monthly payments and projected annual~~
1066 ~~revenue of \$100 million. Based on the schedule, the department~~
1067 ~~shall notify all reimbursement applicants of the projected date~~
1068 ~~of payment of their applications. The department shall direct~~
1069 ~~the Inland Protection Financing Corporation to pay applicants~~
1070 ~~the present value of their applications as soon as practicable~~
1071 ~~after approval by the department, subject to the availability of~~
1072 ~~funds within the Inland Protection Financing Corporation. The~~
1073 ~~present value of an application shall be based on the date on~~
1074 ~~which the department anticipates the Inland Protection Financing~~
1075 ~~Corporation will settle the reimbursement application and the~~



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1076 ~~schedule's projected date of payment and shall use 3.5 percent~~
1077 ~~as the annual discount rate. The determination of the amount of~~
1078 ~~the claim and the projected date of payment shall be subject to~~
1079 ~~s. 120.57.~~

1080 ~~(i) Liberal construction. With respect to site~~
1081 ~~rehabilitation initiated prior to July 1, 1986, the provisions~~
1082 ~~of this subsection shall be given such liberal construction by~~
1083 ~~the department as will accomplish the purposes set forth in this~~
1084 ~~subsection. With regard to the keeping of particular records or~~
1085 ~~the giving of certain notice, the department may accept as~~
1086 ~~compliance action by a person which meets the intent of the~~
1087 ~~requirements set forth in this subsection.~~

1088 ~~(j) Reimbursement review contracts. The department may~~
1089 ~~contract with entities capable of processing or assisting in the~~
1090 ~~review of reimbursement applications. Any purchase of such~~
1091 ~~services shall not be subject to chapter 287.~~

1092 ~~(k) Audits.—~~

1093 ~~1. The department is authorized to perform financial and~~
1094 ~~technical audits in order to certify site restoration costs and~~
1095 ~~ensure compliance with this chapter. The department shall seek~~
1096 ~~recovery of any overpayments based on the findings of these~~
1097 ~~audits. The department must commence any audit within 5 years~~
1098 ~~after the date of reimbursement, except in cases where the~~
1099 ~~department alleges specific facts indicating fraud.~~

1100 ~~2. Upon determination by the department that any portion~~



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1101 ~~of costs which have been reimbursed are disallowed, the~~
1102 ~~department shall give written notice to the applicant setting~~
1103 ~~forth with specificity the allegations of fact which justify the~~
1104 ~~department's proposed action and ordering repayment of~~
1105 ~~disallowed costs within 60 days of notification of the~~
1106 ~~applicant.~~

1107 ~~3. In the event the applicant does not make payment to the~~
1108 ~~department within 60 days of receipt of such notice, the~~
1109 ~~department shall seek recovery in a court of competent~~
1110 ~~jurisdiction to recover reimbursement overpayments made to the~~
1111 ~~person responsible for conducting site rehabilitation, unless~~
1112 ~~the department finds the amount involved too small or the~~
1113 ~~likelihood of recovery too uncertain.~~

1114 ~~4. In addition to the amount of any overpayment, the~~
1115 ~~applicant shall be liable to the department for interest of 1~~
1116 ~~percent per month or the prime rate, whichever is less, on the~~
1117 ~~amount of overpayment, from the date of overpayment by the~~
1118 ~~department until the applicant satisfies the department's~~
1119 ~~request for repayment pursuant to this paragraph. The~~
1120 ~~calculation of interest shall be tolled during the pendency of~~
1121 ~~any litigation.~~

1122 ~~5. Financial and technical audits frequently are conducted~~
1123 ~~under this section many years after the site rehabilitation~~
1124 ~~activities were performed and the costs examined in the course~~
1125 ~~of the audit were incurred by the person responsible for site~~



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1126 ~~rehabilitation. During the intervening span of years, the~~
1127 ~~department's rule requirements and its related guidance and~~
1128 ~~other nonrule policy directives may have changed significantly.~~
1129 ~~The Legislature finds that it may be appropriate for the~~
1130 ~~department to provide relief to persons subject to such~~
1131 ~~requirements in financial and technical audits conducted~~
1132 ~~pursuant to this section.~~

1133 ~~a. The department is authorized to grant variances and~~
1134 ~~waivers from the documentation requirements of subparagraph~~
1135 ~~(c)2. and from the requirements of rules applicable in technical~~
1136 ~~and financial audits conducted under this section. Variances and~~
1137 ~~waivers shall be granted when the person responsible for site~~
1138 ~~rehabilitation demonstrates to the department that application~~
1139 ~~of a financial or technical auditing requirement would create a~~
1140 ~~substantial hardship or would violate principles of fairness.~~
1141 ~~For purposes of this subsection, "substantial hardship" means a~~
1142 ~~demonstrated economic, technological, legal, or other type of~~
1143 ~~hardship to the person requesting the variance or waiver. For~~
1144 ~~purposes of this subsection, "principles of fairness" are~~
1145 ~~violated when the application of a requirement affects a~~
1146 ~~particular person in a manner significantly different from the~~
1147 ~~way it affects other similarly situated persons who are affected~~
1148 ~~by the requirement or when the requirement is being applied~~
1149 ~~retroactively without due notice to the affected parties.~~

1150 ~~b. A person whose reimbursed costs are subject to a~~



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1151 ~~financial and technical audit under this section may file a~~
1152 ~~written request to the department for grant of a variance or~~
1153 ~~waiver. The request shall specify:~~

1154 ~~(I) The requirement from which a variance or waiver is~~
1155 ~~requested.~~

1156 ~~(II) The type of action requested.~~

1157 ~~(III) The specific facts which would justify a waiver or~~
1158 ~~variance.~~

1159 ~~(IV) The reason or reasons why the requested variance or~~
1160 ~~waiver would serve the purposes of this section.~~

1161 ~~e. Within 90 days after receipt of a written request for~~
1162 ~~variance or waiver under this subsection, the department shall~~
1163 ~~grant or deny the request. If the request is not granted or~~
1164 ~~denied within 90 days of receipt, the request shall be deemed~~
1165 ~~approved. An order granting or denying the request shall be in~~
1166 ~~writing and shall contain a statement of the relevant facts and~~
1167 ~~reasons supporting the department's action. The department's~~
1168 ~~decision to grant or deny the petition shall be supported by~~
1169 ~~competent substantial evidence and is subject to ss. 120.569 and~~
1170 ~~120.57. Once adopted, model rules promulgated by the~~
1171 ~~Administration Commission under s. 120.542 shall govern the~~
1172 ~~processing of requests under this provision.~~

1173 ~~6. The Chief Financial Officer may audit the records of~~
1174 ~~persons who receive or who have received payments pursuant to~~
1175 ~~this chapter in order to verify site restoration costs, ensure~~



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1176 ~~compliance with this chapter, and verify the accuracy and~~
1177 ~~completeness of audits performed by the department pursuant to~~
1178 ~~this paragraph. The Chief Financial Officer may contract with~~
1179 ~~entities or persons to perform audits pursuant to this~~
1180 ~~subparagraph. The Chief Financial Officer shall commence any~~
1181 ~~audit within 1 year after the department's completion of an~~
1182 ~~audit conducted pursuant to this paragraph, except in cases~~
1183 ~~where the department or the Chief Financial Officer alleges~~
1184 ~~specific facts indicating fraud.~~

1185 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
1186 detection, reporting, and cleanup of contamination caused by
1187 discharges of petroleum or petroleum products, the department
1188 shall, within the guidelines established in this subsection,
1189 implement a cost-sharing cleanup program to provide
1190 rehabilitation funding assistance for all property contaminated
1191 by discharges of petroleum or petroleum products occurring
1192 before January 1, 1995, subject to a copayment provided for in a
1193 Petroleum Cleanup Participation Program ~~preapproved site~~
1194 ~~rehabilitation agreement. Eligibility is shall be~~ subject to an
1195 annual appropriation from the ~~Inland Protection Trust~~ fund.
1196 Additionally, funding for eligible sites is shall be contingent
1197 upon annual appropriation in subsequent years. Such continued
1198 state funding is shall not be deemed an entitlement or a vested
1199 right under this subsection. Eligibility shall be determined in
1200 the program, ~~shall be~~ notwithstanding any other provision of



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1201 law, consent order, order, judgment, or ordinance to the
1202 contrary.

1203 (a)1. The department shall accept any discharge reporting
1204 form received before ~~prior to~~ January 1, 1995, as an application
1205 for this program, and the facility owner or operator need not
1206 reapply.

1207 2. Owners or operators of property contaminated by
1208 petroleum or petroleum products from a petroleum storage system
1209 may apply for such program by filing a written report of the
1210 contamination incident, including evidence that such incident
1211 occurred before ~~prior to~~ January 1, 1995, with the department.
1212 Incidents of petroleum contamination discovered after December
1213 31, 1994, at sites which have not stored petroleum or petroleum
1214 products for consumption, use, or sale after such date shall be
1215 presumed to have occurred before ~~prior to~~ January 1, 1995. An
1216 operator's filed report shall be ~~deemed~~ an application of the
1217 owner for all purposes. Sites reported to the department after
1218 December 31, 1998, are ~~shall not be~~ eligible for the ~~this~~
1219 program.

1220 (b) Subject to annual appropriation from the ~~Inland~~
1221 ~~Protection Trust~~ fund, sites meeting the criteria of this
1222 subsection are eligible for up to \$400,000 of site
1223 rehabilitation funding assistance in priority order pursuant to
1224 subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~. Sites meeting
1225 the criteria of this subsection for which a site rehabilitation



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1226 completion order was issued before ~~prior to~~ June 1, 2008, do not
1227 qualify for the 2008 increase in site rehabilitation funding
1228 assistance and are bound by the pre-June 1, 2008, limits. Sites
1229 meeting the criteria of this subsection for which a site
1230 rehabilitation completion order was not issued before ~~prior to~~
1231 June 1, 2008, regardless of whether ~~or not~~ they have previously
1232 transitioned to nonstate-funded cleanup status, may continue
1233 state-funded cleanup pursuant to this section ~~s. 376.30711~~ until
1234 a site rehabilitation completion order is issued or the
1235 increased site rehabilitation funding assistance limit is
1236 reached, whichever occurs first. The department may not pay ~~At~~
1237 ~~no time shall~~ expenses incurred beyond ~~outside~~ the scope of an
1238 approved contract ~~preapproved site rehabilitation program under~~
1239 ~~s. 376.30711~~ be reimbursable.

1240 (c) Upon notification by the department that
1241 rehabilitation funding assistance is available for the site
1242 pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~, the
1243 owner, operator, or person otherwise responsible for site
1244 rehabilitation shall provide the department with a limited
1245 contamination assessment report and shall enter into a Petroleum
1246 Cleanup Participation Program ~~preapproved~~ site rehabilitation
1247 agreement with the department ~~and a contractor qualified under~~
1248 ~~s. 376.30711(2)(b)~~. The agreement must ~~shall~~ provide for a 25-
1249 percent copayment by the owner, operator, or person otherwise
1250 responsible for conducting site rehabilitation. The owner,



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1251 operator, or person otherwise responsible for conducting site
1252 rehabilitation shall adequately demonstrate the ability to meet
1253 the copayment obligation. The limited contamination assessment
1254 report and the copayment costs may be reduced or eliminated if
1255 the owner and all operators responsible for restoration under s.
1256 376.308 demonstrate that they cannot ~~are~~ financially ~~unable to~~
1257 comply with the copayment and limited contamination assessment
1258 report requirements. The department shall take into
1259 consideration the owner's and operator's net worth in making the
1260 determination of financial ability. In the event the department
1261 and the owner, operator, or person otherwise responsible for
1262 site rehabilitation cannot ~~are unable to~~ complete negotiation of
1263 the cost-sharing agreement within 120 days after beginning
1264 ~~commencing~~ negotiations, the department shall terminate
1265 negotiations and the site shall be ~~deemed~~ ineligible for state
1266 funding under this subsection and all liability protections
1267 provided for in this subsection shall be revoked.

1268 (d) A ~~No~~ report of a discharge made to the department by a
1269 ~~any person pursuant to in accordance with~~ this subsection, ~~or~~
1270 any rules adopted pursuant to this subsection may not hereto,
1271 ~~shall~~ be used directly as evidence of liability for such
1272 discharge in any civil or criminal trial arising out of the
1273 discharge.

1274 (e) ~~Nothing in~~ This subsection does not ~~shall be construed~~
1275 ~~to~~ preclude the department from pursuing penalties under ~~in~~



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1276 ~~accordance with~~ s. 403.141 for violations of any law or any
1277 rule, order, permit, registration, or certification adopted or
1278 issued by the department pursuant to its lawful authority.

1279 (f) Upon the filing of a discharge reporting form under
1280 paragraph (a), ~~neither~~ the department or ~~nor any~~ local
1281 government may not ~~shall~~ pursue any judicial or enforcement
1282 action to compel rehabilitation of the discharge. This paragraph
1283 does ~~shall~~ not prevent any such action with respect to
1284 discharges determined ineligible under this subsection or to
1285 sites for which rehabilitation funding assistance is available
1286 pursuant to subsections ~~in accordance with subsection~~ (5) and
1287 (6) ~~s. 376.30711~~.

1288 (g) The following are ~~shall be~~ excluded from participation
1289 in the program:

1290 1. Sites at which the department has been denied
1291 reasonable site access to implement ~~the provisions of this~~
1292 section.

1293 2. Sites that were active facilities when owned or
1294 operated by the Federal Government.

1295 3. Sites that are identified by the United States
1296 Environmental Protection Agency to be on, or which qualify for
1297 listing on, the National Priorities List under Superfund. This
1298 exception does not apply to those sites for which eligibility
1299 has been requested or granted as of the effective date of this
1300 act under the Early Detection Incentive Program established



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1301 pursuant to s. 15, chapter 86-159, Laws of Florida.

1302 4. Sites for which ~~The~~ contamination is covered under the
1303 Early Detection Incentive Program, the Abandoned Tank
1304 Restoration Program, or the Petroleum Liability and Restoration
1305 Insurance Program, in which case site rehabilitation funding
1306 assistance shall continue under the respective program.

1307 (14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—Before ~~Prior~~
1308 ~~to~~ the department enters ~~entering~~ into a service contract with
1309 the Inland Protection Financing Corporation which includes
1310 payments by the department to support any existing or planned
1311 note, bond, certificate of indebtedness, or other obligation or
1312 evidence of indebtedness of the corporation pursuant to s.
1313 376.3075, the Legislature, by law, must specifically authorize
1314 the department to enter into such a contract. The corporation
1315 may issue bonds in an amount not to exceed \$104 million, with a
1316 term up to 15 years, and annual payments not in excess of \$10.4
1317 million. The department may enter into a service contract in
1318 conjunction with the issuance of such bonds which provides for
1319 annual payments for debt service payments or other amounts
1320 payable with respect to bonds, plus any administrative expenses
1321 of the corporation to finance the rehabilitation of petroleum
1322 contamination sites pursuant to ss. 376.30-376.317.

1323 Section 3. Section 376.30711, Florida Statutes, is
1324 repealed.

1325 Section 4. Section 376.30713, Florida Statutes, is amended



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1326 to read:

1327 376.30713 ~~Preapproved~~ Advanced cleanup.—

1328 (1) In addition to the legislative findings provided in s.
1329 376.3071 ~~376.30711~~, the Legislature finds and declares:

1330 (a) That the inability to conduct site rehabilitation in
1331 advance of a site's priority ranking pursuant to s.

1332 376.3071(5) (a) may substantially impede or prohibit property
1333 transactions or the proper completion of public works projects.

1334 (b) While the first priority of the state is to provide
1335 for protection of the public health, safety, and welfare, ~~the~~
1336 ~~water resources of the state, human health,~~ and the environment,
1337 the viability of commerce is of equal importance to the state.

1338 (c) It is in the public interest and of substantial
1339 economic benefit to the state to provide an opportunity for site
1340 rehabilitation to be conducted on a limited basis at
1341 contaminated sites, in advance of the site's priority ranking,
1342 to facilitate property transactions or public works projects.

1343 (d) It is appropriate for a person who is ~~persons~~
1344 responsible for site rehabilitation to share the costs
1345 associated with managing and conducting ~~preapproved~~ advanced
1346 cleanup, to facilitate the opportunity for ~~preapproved~~ advanced
1347 cleanup, and to mitigate the additional costs that will be
1348 incurred by the state in conducting site rehabilitation in
1349 advance of the site's priority ranking. Such cost sharing will
1350 result in more contaminated sites being cleaned up and greater



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1351 environmental benefits to the state. ~~The provisions of This~~
1352 section is ~~shall~~ only be available for sites eligible for
1353 restoration funding under EDI, ATRP, or PLRIP ~~PLIRP~~. This
1354 section is available for discharges eligible for restoration
1355 funding under the petroleum cleanup participation program for
1356 the state's cost share of site rehabilitation. Applications must
1357 ~~shall~~ include a cost-sharing commitment for this section in
1358 addition to the 25-percent-copayment requirement of the
1359 petroleum cleanup participation program. This section is not
1360 available for any discharge under a petroleum cleanup
1361 participation program where the 25-percent-copayment requirement
1362 of the petroleum cleanup participation program has been reduced
1363 or eliminated pursuant to s. 376.3071(13)(c).

1364 (2) The department may ~~is authorized to~~ approve an
1365 application for ~~preapproved~~ advanced cleanup at eligible sites,
1366 before ~~prior to~~ funding based on the site's priority ranking
1367 established pursuant to s. 376.3071(5)(a), pursuant to ~~in~~
1368 ~~accordance with the provisions of this section.~~ Only the
1369 facility owner or operator or the person otherwise responsible
1370 for site rehabilitation qualifies ~~Persons who qualify as an~~
1371 applicant under ~~the provisions of this section shall only~~
1372 ~~include the facility owner or operator or the person otherwise~~
1373 ~~responsible for site rehabilitation.~~

1374 (a) ~~Preapproved~~ Advanced cleanup applications may be
1375 submitted between May 1 and June 30 and between November 1 and



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1376 December 31 of each fiscal year. Applications submitted between
1377 May 1 and June 30 shall be for the fiscal year beginning July 1.
1378 An application must ~~shall~~ consist of:

1379 1. A commitment to pay ~~no less than~~ 25 percent or more of
1380 the total cleanup cost deemed recoverable under ~~the provisions~~
1381 ~~of~~ this section along with proof of the ability to pay the cost
1382 share. An application proposing that the department enter into a
1383 performance-based contract for the cleanup of 20 or more sites
1384 may use a commitment to pay, a demonstrated cost savings to the
1385 department, or both to meet the cost-share requirement. For an
1386 application relying on a demonstrated cost savings to the
1387 department, the applicant shall, in conjunction with the
1388 proposed agency term contractor, establish and provide in the
1389 application the percentage of cost savings in the aggregate that
1390 is being provided to the department for cleanup of the sites
1391 under the application compared to the cost of cleanup of those
1392 same sites using the current rates provided to the department by
1393 the proposed agency term contractor. The department shall
1394 determine whether the cost savings demonstration is acceptable.
1395 Such determination is not subject to chapter 120.

1396 2. A nonrefundable review fee of \$250 to cover the
1397 administrative costs associated with the department's review of
1398 the application.

1399 3. A limited contamination assessment report.

1400 4. A proposed course of action.



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1401
1402 The limited contamination assessment report must ~~shall~~ be
1403 sufficient to support the proposed course of action and to
1404 estimate the cost of the proposed course of action. ~~Any~~ Costs
1405 incurred related to conducting the limited contamination
1406 assessment report are not refundable from the Inland Protection
1407 Trust Fund. Site eligibility under this subsection, or any other
1408 provision of this section is, ~~shall~~ not constitute an
1409 entitlement to ~~preapproved~~ advanced cleanup or continued
1410 restoration funding. The applicant shall certify to the
1411 department that the applicant has the prerequisite authority to
1412 enter into an ~~a preapproved~~ advanced cleanup contract with the
1413 department. The ~~This~~ certification must ~~shall~~ be submitted with
1414 the application.

1415 (b) The department shall rank the applications based on
1416 the percentage of cost-sharing commitment proposed by the
1417 applicant, with the highest ranking given to the applicant who
1418 ~~that~~ proposes the highest percentage of cost sharing. If the
1419 department receives applications that propose identical cost-
1420 sharing commitments and that ~~which~~ exceed the funds available to
1421 commit to all such proposals during the ~~preapproved~~ advanced
1422 cleanup application period, the department shall proceed to
1423 rerank those applicants. Those applicants submitting identical
1424 cost-sharing proposals that ~~which~~ exceed funding availability
1425 must ~~shall~~ be so notified by the department and ~~shall be~~ offered



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1426 the opportunity to raise their individual cost-share
1427 commitments, in a period ~~of time~~ specified in the notice. At the
1428 close of the period, the department shall proceed to rerank the
1429 applications pursuant to ~~in accordance with~~ this paragraph.

1430 (3) (a) Based on the ranking established under paragraph
1431 (2) (b) ~~and the funding limitations provided in subsection (4),~~
1432 the department shall begin ~~commence~~ negotiation with such
1433 applicants. If the department and the applicant agree on the
1434 course of action, the department may enter into a contract with
1435 the applicant. The department may ~~is authorized to~~ negotiate the
1436 terms and conditions of the contract.

1437 (b) ~~Preapproved~~ Advanced cleanup shall be conducted
1438 pursuant to s. 376.3071(5) (b) and (6) and rules adopted under
1439 ss. 287.0595 and 376.3071 ~~under the provisions of ss.~~
1440 ~~376.3071(5) (b) and 376.30711.~~ If the terms of the ~~preapproved~~
1441 advanced cleanup contract are not fulfilled, the applicant
1442 forfeits any right to future payment for any site rehabilitation
1443 work conducted under the contract.

1444 (c) The department's decision not to enter into an a
1445 ~~preapproved~~ advanced cleanup contract with the applicant is
1446 ~~shall not be~~ subject to ~~the provisions of~~ chapter 120. If the
1447 department cannot ~~is not able to~~ complete negotiation of the
1448 course of action and the terms of the contract within 60 days
1449 after beginning ~~commencing~~ negotiations, the department shall
1450 terminate negotiations with that applicant.



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1451 (4) The department may ~~is authorized to~~ enter into
1452 contracts for a total of up to \$15 million of ~~preapproved~~
1453 advanced cleanup work in each fiscal year. However, a facility
1454 or an applicant who bundles multiple sites as specified in
1455 subparagraph (2)(a)1. may not be approved ~~preapproved~~ for more
1456 than \$5 million of cleanup activity in each fiscal year. For the
1457 purposes of this section, the term "facility" includes ~~shall~~
1458 ~~include~~, but is not ~~be~~ limited to, multiple site facilities such
1459 as airports, port facilities, and terminal facilities even
1460 though such enterprises may be treated as separate facilities
1461 for other purposes under this chapter.

1462 (5) All funds collected by the department pursuant to this
1463 section shall be deposited into the Inland Protection Trust Fund
1464 to be used as provided in this section.

1465 Section 5. Subsections (4) and (30) of section 376.301,
1466 Florida Statutes, are amended to read:

1467 376.301 Definitions of terms used in ss. 376.30-376.317,
1468 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
1469 376.75, unless the context clearly requires otherwise, the term:

1470 ~~(4) "Backlog" means reimbursement obligations incurred~~
1471 ~~pursuant to s. 376.3071(12), prior to March 29, 1995, or~~
1472 ~~authorized for reimbursement under the provisions of s.~~
1473 ~~376.3071(12), pursuant to chapter 95-2, Laws of Florida. Claims~~
1474 ~~within the backlog are subject to adjustment, where appropriate.~~

1475 ~~(30) "Person responsible for conducting site~~



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1476 ~~rehabilitation" means the site owner, operator, or the person~~
1477 ~~designated by the site owner or operator on the reimbursement~~
1478 ~~application. Mortgage holders and trust holders may be eligible~~
1479 ~~to participate in the reimbursement program pursuant to s.~~
1480 ~~376.3071(12).~~

1481 Section 6. Subsection (5) of section 376.302, Florida
1482 Statutes, is amended to read:

1483 376.302 Prohibited acts; penalties.—

1484 (5) A ~~Any~~ person who commits fraud in representing his or
1485 her ~~their~~ qualifications as a contractor ~~for reimbursement~~ or in
1486 submitting a payment invoice ~~reimbursement request~~ pursuant to
1487 s. 376.3071 ~~376.3071(12)~~ commits a felony of the third degree,
1488 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1489 Section 7. Subsection (6) of section 376.305, Florida
1490 Statutes, is amended to read:

1491 376.305 Removal of prohibited discharges.—

1492 (6) The Legislature created the Abandoned Tank Restoration
1493 Program in response to the need to provide financial assistance
1494 for cleanup of sites that have abandoned petroleum storage
1495 systems. For purposes of this subsection, the term "abandoned
1496 petroleum storage system" means a ~~shall mean any~~ petroleum
1497 storage system that has not stored petroleum products for
1498 consumption, use, or sale since March 1, 1990. The department
1499 shall establish the Abandoned Tank Restoration Program to
1500 facilitate the restoration of sites contaminated by abandoned



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1501 petroleum storage systems.

1502 (a) To be included in the program:

1503 1. An application must be submitted to the department by
1504 June 30, 1996, certifying that the system has not stored
1505 petroleum products for consumption, use, or sale at the facility
1506 since March 1, 1990.

1507 2. The owner or operator of the petroleum storage system
1508 when it was in service must have ceased conducting business
1509 involving consumption, use, or sale of petroleum products at
1510 that facility on or before March 1, 1990.

1511 3. The site is not otherwise eligible for the cleanup
1512 programs pursuant to s. 376.3071 or s. 376.3072.

1513 (b) In order to be eligible for the program, petroleum
1514 storage systems from which a discharge occurred must be closed
1515 pursuant to ~~in accordance with~~ department rules before ~~prior to~~
1516 an eligibility determination. However, if the department
1517 determines that the owner of the facility cannot ~~is~~ financially
1518 ~~unable to~~ comply with the department's petroleum storage system
1519 closure requirements and all other eligibility requirements are
1520 met, the petroleum storage system closure requirements shall be
1521 waived. The department shall take into consideration the owner's
1522 net worth and the economic impact on the owner in making the
1523 determination of the owner's financial ability. The June 30,
1524 1996, application deadline shall be waived for owners who cannot
1525 ~~are~~ financially ~~unable to~~ comply.



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1526 (c) Sites accepted in the program are ~~will be~~ eligible for
1527 site rehabilitation funding as provided in s. 376.3071
1528 ~~376.3071(12) or s. 376.30711, as appropriate.~~

1529 (d) The following sites are excluded from eligibility:

1530 1. Sites on property of the Federal Government;

1531 2. Sites contaminated by pollutants that are not petroleum
1532 products;

1533 3. Sites where the department has been denied site access;

1534 or

1535 4. Sites which are owned by a any person who had knowledge
1536 of the polluting condition when title was acquired unless the
1537 ~~that~~ person acquired title to the site after issuance of a
1538 notice of site eligibility by the department.

1539 (e) Participating sites are subject to a deductible as
1540 determined by rule, not to exceed \$10,000.

1541

1542 ~~The provisions of~~ This subsection does ~~do~~ not relieve a any
1543 person who has acquired title after ~~subsequent to~~ July 1, 1992,
1544 from the duty to establish by a preponderance of the evidence
1545 that he or she undertook, at the time of acquisition, all
1546 appropriate inquiry into the previous ownership and use of the
1547 property consistent with good commercial or customary practice
1548 in an effort to minimize liability, as required by s.
1549 376.308(1)(c).

1550 Section 8. Paragraph (a) of subsection (1) and subsections



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1551 (3), (4), and (9) of section 376.30714, Florida Statutes, are
1552 amended to read:

1553 376.30714 Site rehabilitation agreements.—

1554 (1) In addition to the legislative findings provided in s.
1555 376.3071, the Legislature finds and declares:

1556 (a) The provisions of s. ss. 376.3071(5) (a) ~~and 376.30711~~
1557 have delayed cleanup of low-priority sites determined to be
1558 eligible for state funding under that section and ss. 376.305,
1559 ~~376.3071,~~ and 376.3072.

1560 (3) Free product attributable to a new discharge shall be
1561 removed to the extent practicable and pursuant to ~~in accordance~~
1562 ~~with~~ department rules adopted pursuant to s. 376.3071(5) at the
1563 expense of the owner, operator, or other responsible party. Free
1564 product attributable to existing contamination shall be removed
1565 pursuant to ~~in accordance with~~ s. 376.3071(5) and (6), ~~or s.~~
1566 ~~376.30711(1)(b),~~ and department rules adopted pursuant thereto.

1567 (4) Beginning January 1, 1999, the department may ~~is~~
1568 ~~authorized to~~ negotiate and enter into site rehabilitation
1569 agreements with applicants at sites with eligible existing
1570 contamination at which a new discharge occurs. The site
1571 rehabilitation agreement must ~~shall~~ include, but is ~~be~~
1572 limited to, allocation of the funding responsibilities of the
1573 department and the applicant for cleanup of the qualified site,
1574 establishment of a mechanism to guarantee the applicant's
1575 commitment to pay its agreed amount of site rehabilitation as



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1576 set forth in the agreement, and establishment of the priority in
1577 which cleanup of the qualified site will occur. Under ~~any~~ such a
1578 negotiated site rehabilitation agreement, the applicant may not
1579 ~~shall~~ be responsible for ~~no~~ more than the cleanup costs that are
1580 attributable to the new discharge. However, the payment of ~~any~~
1581 applicable deductibles, copayments, or other program eligibility
1582 requirements under ss. 376.305, 376.3071, and 376.3072 shall
1583 continue to apply to the existing contamination and must be
1584 accounted for in the negotiated site rehabilitation agreement.
1585 The department may ~~is further authorized,~~ pursuant to this
1586 section, ~~to preapprove or~~ conduct additional assessment
1587 activities at the site.

1588 (9) Site rehabilitation conducted at qualified sites shall
1589 be conducted pursuant to ~~under the provisions of~~ ss.
1590 376.3071(5) (b) and (6) ~~376.30711~~. If the terms of the agreement
1591 are not fulfilled by the applicant, the applicant forfeits the
1592 ~~any~~ right to continued funding for ~~any~~ site rehabilitation work
1593 under the agreement and is ~~shall be~~ subject to enforcement
1594 action by the department or local government to compel cleanup
1595 of the new discharge.

1596 Section 9. Subsection (2) of section 376.3072, Florida
1597 Statutes, is amended to read:

1598 376.3072 Florida Petroleum Liability and Restoration
1599 Insurance Program.—

1600 (2) (a) An ~~Any~~ owner or operator of a petroleum storage



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1601 system may become an insured in the restoration insurance
1602 program at a facility if ~~provided~~:

1603 1. A site at which an incident has occurred is ~~shall be~~
1604 eligible for restoration if the insured is a participant in the
1605 third-party liability insurance program or otherwise meets
1606 applicable financial responsibility requirements. After July 1,
1607 1993, the insured must also provide the required excess
1608 insurance coverage or self-insurance for restoration to achieve
1609 the financial responsibility requirements of 40 C.F.R. s.
1610 280.97, subpart H, not covered by paragraph (d).

1611 2. A site which had a discharge reported before ~~prior to~~
1612 January 1, 1989, for which notice was given pursuant to s.
1613 376.3071(10) ~~376.3071(9) or (12)~~, and which is ineligible for
1614 the third-party liability insurance program solely due to that
1615 discharge is ~~shall be~~ eligible for participation in the
1616 restoration program for an ~~any~~ incident occurring on or after
1617 January 1, 1989, pursuant to ~~in accordance with~~ subsection (3).
1618 Restoration funding for an eligible contaminated site will be
1619 provided without participation in the third-party liability
1620 insurance program until the site is restored as required by the
1621 department or until the department determines that the site does
1622 not require restoration.

1623 3. Notwithstanding paragraph (b), a site where an
1624 application is filed with the department before ~~prior to~~ January
1625 1, 1995, where the owner is a small business under s.



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1626 288.703(6), a state community college with less than 2,500 FTE,
1627 a religious institution as defined by s. 212.08(7)(m), a
1628 charitable institution as defined by s. 212.08(7)(p), or a
1629 county or municipality with a population of less than 50,000, is
1630 ~~shall be~~ eligible for up to \$400,000 of eligible restoration
1631 costs, less a deductible of \$10,000 for small businesses,
1632 eligible community colleges, and religious or charitable
1633 institutions, and \$30,000 for eligible counties and
1634 municipalities, if ~~provided that~~:

1635 a. Except as provided in sub-subparagraph e., the facility
1636 was in compliance with department rules at the time of the
1637 discharge.

1638 b. The owner or operator has, upon discovery of a
1639 discharge, promptly reported the discharge to the department,
1640 and drained and removed the system from service, if necessary.

1641 c. The owner or operator has not intentionally caused or
1642 concealed a discharge or disabled leak detection equipment.

1643 d. The owner or operator proceeds to complete initial
1644 remedial action as specified in ~~defined by~~ department rules.

1645 e. The owner or operator, if required and if it has not
1646 already done so, applies for third-party liability coverage for
1647 the facility within 30 days after ~~of~~ receipt of an eligibility
1648 order issued by the department pursuant to this subparagraph
1649 ~~provision~~.

1650



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1651 However, the department may consider in-kind services from
1652 eligible counties and municipalities in lieu of the \$30,000
1653 deductible. The cost of conducting initial remedial action as
1654 defined by department rules is ~~shall be~~ an eligible restoration
1655 cost pursuant to this subparagraph ~~provision~~.

1656 4.a. By January 1, 1997, facilities at sites with existing
1657 contamination must ~~shall be required to~~ have methods of release
1658 detection to be eligible for restoration insurance coverage for
1659 new discharges subject to department rules for secondary
1660 containment. Annual storage system testing, in conjunction with
1661 inventory control, shall be considered to be a method of release
1662 detection until the later of December 22, 1998, or 10 years
1663 after the date of installation or the last upgrade. Other
1664 methods of release detection for storage tanks which meet such
1665 requirement are:

1666 (I) Interstitial monitoring of tank and integral piping
1667 secondary containment systems;

1668 (II) Automatic tank gauging systems; or

1669 (III) A statistical inventory reconciliation system with a
1670 tank test every 3 years.

1671 b. For pressurized integral piping systems, the owner or
1672 operator must use:

1673 (I) An automatic in-line leak detector with flow
1674 restriction meeting the requirements of department rules used in
1675 conjunction with an annual tightness or pressure test; or



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1676 (II) An automatic in-line leak detector with electronic
1677 flow shut-off meeting the requirements of department rules.

1678 c. For suction integral piping systems, the owner or
1679 operator must use:

1680 (I) A single check valve installed directly below the
1681 suction pump if, ~~provided~~ there are no other valves between the
1682 dispenser and the tank; or

1683 (II) An annual tightness test or other approved test.

1684 d. Owners of facilities with existing contamination that
1685 install internal release detection systems pursuant to ~~in~~
1686 ~~accordance with~~ sub-subparagraph a. shall permanently close
1687 their external groundwater and vapor monitoring wells pursuant
1688 to ~~in accordance with~~ department rules by December 31, 1998.
1689 Upon installation of the internal release detection system, such
1690 ~~these wells must~~ ~~shall~~ be secured and taken out of service until
1691 permanent closure.

1692 e. Facilities with vapor levels of contamination meeting
1693 the requirements of or below the concentrations specified in the
1694 performance standards for release detection methods specified in
1695 department rules may continue to use vapor monitoring wells for
1696 release detection.

1697 f. The department may approve other methods of release
1698 detection for storage tanks and integral piping which have at
1699 least the same capability to detect a new release as the methods
1700 specified in this subparagraph.



1701 (b)1. To be eligible to be certified as an insured
1702 facility, for discharges reported after January 1, 1989, the
1703 owner or operator must ~~shall~~ file an affidavit upon enrollment
1704 in the program. The affidavit must ~~shall~~ state that the owner or
1705 operator has read and is familiar with this chapter and the
1706 rules relating to petroleum storage systems and petroleum
1707 contamination site cleanup adopted pursuant to ss. 376.303 and
1708 376.3071 and that the facility is in compliance with this
1709 chapter and applicable rules adopted pursuant to s. 376.303.
1710 Thereafter, the facility's annual inspection report shall serve
1711 as evidence of the facility's compliance with department rules.
1712 The facility's certificate as an insured facility may be revoked
1713 only if the insured fails to correct a violation identified in
1714 an inspection report before a discharge occurs. The facility's
1715 certification may be restored when the violation is corrected as
1716 verified by a reinspection.

1717 2. Except as provided in paragraph (a), to be eligible to
1718 be certified as an insured facility, the applicant must
1719 demonstrate to the department that the applicant has financial
1720 responsibility for third-party claims and excess coverage, as
1721 required by this section and 40 C.F.R. s. 280.97(h), and that
1722 the applicant maintains such insurance during the applicant's
1723 participation as an insured facility.

1724 3. Should a reinspection of the facility be necessary to
1725 demonstrate compliance, the insured shall pay an inspection fee



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1726 not to exceed \$500 per facility to be deposited in the Inland
1727 Protection Trust Fund.

1728 4. Upon report of a discharge, the department shall issue
1729 an order stating that the site is eligible for restoration
1730 coverage unless the insured has intentionally caused or
1731 concealed a discharge or disabled leak detection equipment, has
1732 misrepresented facts in the affidavit filed pursuant to
1733 subparagraph 1., or cannot demonstrate that he or she has
1734 obtained and maintained the financial responsibility for third-
1735 party claims and excess coverage as required in subparagraph 2.

1736

1737 This paragraph does not ~~Nothing contained herein shall~~ prevent
1738 the department from assessing civil penalties for noncompliance
1739 pursuant to this subsection ~~as provided herein~~.

1740 (c) A lender that has loaned money to a participant in the
1741 Florida Petroleum Liability and Restoration Insurance Program
1742 and has held a mortgage lien, security interest, or ~~any~~ lien
1743 rights on the site primarily to protect the lender's right to
1744 convert or liquidate the collateral in satisfaction of the debt
1745 secured, or a financial institution which serves as a trustee
1746 for an insured in the program for the purpose of site
1747 rehabilitation, is ~~shall be~~ eligible for a state-funded cleanup
1748 of the site, if the lender forecloses the lien or accepts a deed
1749 in lieu of foreclosure on that property and acquires title, and
1750 as long as the following has occurred, as applicable:



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1751 | 1. The owner or operator provided the lender with proof
1752 | that the facility is eligible for the restoration insurance
1753 | program at the time of the loan or before the discharge
1754 | occurred.

1755 | 2. The financial institution or lender ~~completes site~~
1756 | ~~rehabilitation and seeks reimbursement pursuant to s.~~
1757 | ~~376.3071(12) or conducts preapproved~~ site rehabilitation
1758 | pursuant to s. 376.3071 ~~376.30711~~, as appropriate.

1759 | 3. The financial institution or lender did not engage in
1760 | management activities at the site before ~~prior to~~ foreclosure
1761 | and does not operate the site or otherwise engage in management
1762 | activities after foreclosure, except to comply with
1763 | environmental statutes or rules or to prevent, abate, or
1764 | remediate a discharge.

1765 | (d)1. With respect to eligible incidents reported to the
1766 | department before ~~prior to~~ July 1, 1992, the restoration
1767 | insurance program shall provide up to \$1.2 million of
1768 | restoration for each incident and shall have an annual aggregate
1769 | limit of \$2 million of restoration per facility.

1770 | 2. For any site at which a discharge is reported on or
1771 | after July 1, 1992, and for which restoration coverage is
1772 | requested, the department shall pay for restoration in
1773 | accordance with the following schedule:

1774 | a. For discharges reported to the department from July 1,
1775 | 1992, to June 30, 1993, the department shall pay up to \$1.2



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1776 million of eligible restoration costs, less a \$1,000 deductible
1777 per incident.

1778 b. For discharges reported to the department from July 1,
1779 1993, to December 31, 1993, the department shall pay up to \$1.2
1780 million of eligible restoration costs, less a \$5,000 deductible
1781 per incident. However, if, before ~~prior to~~ the date the
1782 discharge is reported and by September 1, 1993, the owner or
1783 operator can demonstrate financial responsibility in effect in
1784 accordance with 40 C.F.R. s. 280.97, subpart H, for coverage
1785 under sub-subparagraph c., the deductible will be \$500. The \$500
1786 deductible shall apply for a period of 1 year from the effective
1787 date of a policy or other form of financial responsibility
1788 obtained and in effect by September 1, 1993.

1789 c. For discharges reported to the department from January
1790 1, 1994, to December 31, 1996, the department shall pay up to
1791 \$400,000 of eligible restoration costs, less a deductible of
1792 \$10,000.

1793 d. For discharges reported to the department from January
1794 1, 1997, to December 31, 1998, the department shall pay up to
1795 \$300,000 of eligible restoration costs, less a deductible of
1796 \$10,000.

1797 e. Beginning January 1, 1999, ~~no~~ restoration coverage may
1798 not ~~shall~~ be provided.

1799 f. In addition, a supplemental deductible shall be added
1800 as follows:



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1801 (I) A supplemental deductible of \$5,000 if the owner or
1802 operator fails to report a suspected release within 1 working
1803 day after discovery.

1804 (II) A supplemental deductible of \$10,000 if the owner or
1805 operator, within 3 days after discovery of an actual new
1806 discharge, fails to take steps to test or empty the storage
1807 system and complete such activity within 7 days.

1808 (III) A supplemental deductible of \$25,000 if the owner or
1809 operator, after testing or emptying the storage system, fails to
1810 proceed within 24 hours thereafter to abate the known source of
1811 the discharge or to begin free product removal relating to an
1812 actual new discharge and fails to complete abatement within 72
1813 hours, although free product recovery may be ongoing.

1814 (e) The following are not eligible to participate in the
1815 Petroleum Liability and Restoration Insurance Program:

1816 1. Sites owned or operated by the Federal Government
1817 during the time the facility was in operation.

1818 2. Sites where the owner or operator has denied the
1819 department reasonable site access.

1820 3. Any third-party claims relating to damages caused by
1821 discharges discovered before ~~prior to~~ January 1, 1989.

1822 4. Any incidents discovered before ~~prior to~~ January 1,
1823 1989, ~~are not eligible to participate in the restoration~~
1824 ~~insurance program~~. However, this exclusion does ~~shall~~ not be
1825 ~~construed to~~ prevent a new incident at the same location from



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1826 participation in the restoration insurance program if the owner
1827 or operator is otherwise eligible. This exclusion does ~~shall~~ not
1828 affect eligibility for participation in the Early Detection
1829 Incentive ~~EDI~~ Program.

1830
1831 Sites meeting the criteria of this subsection for which a site
1832 rehabilitation completion order was issued before ~~prior to~~ June
1833 1, 2008, do not qualify for the 2008 increase in site
1834 rehabilitation funding assistance and are bound by the pre-June
1835 1, 2008, limits. Sites meeting the criteria of this subsection
1836 for which a site rehabilitation completion order was not issued
1837 before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they
1838 have previously transitioned to nonstate-funded cleanup status,
1839 may continue state-funded cleanup pursuant to s. 376.3071(6)
1840 ~~376.30711~~ until a site rehabilitation completion order is issued
1841 or the increased site rehabilitation funding assistance limit is
1842 reached, whichever occurs first. ~~At no time shall expenses~~
1843 ~~incurred outside the preapproved site rehabilitation program~~
1844 ~~under s. 376.30711 be reimbursable.~~

1845 Section 10. Subsections (1) and (4) of section 376.3073,
1846 Florida Statutes, are amended to read:

1847 376.3073 Local programs and state agency programs for
1848 control of contamination.—

1849 (1) The department shall, to the greatest extent possible
1850 and cost-effective, contract with local governments to provide



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1851 for the administration of its departmental responsibilities
1852 under ss. 376.305, 376.3071(4)(a)-(e), (h), (k), and (m) and (6)
1853 ~~(l), (n), 376.30711,~~ 376.3072, and 376.3077 through locally
1854 administered programs. The department may also contract with
1855 state agencies to carry out the restoration activities
1856 authorized pursuant to ss. 376.3071, 376.3072, and 376.305,~~and~~
1857 ~~376.30711.~~ However, ~~no~~ such a contract may not ~~shall~~ be entered
1858 into unless the local government or state agency is deemed
1859 capable of carrying out such responsibilities to the
1860 department's satisfaction.

1861 (4) Under no circumstances shall the cleanup criteria
1862 employed in locally administered programs or state agency
1863 programs or pursuant to local ordinance be more stringent than
1864 the criteria established by the department pursuant to s.
1865 376.3071(5) or (6) ~~s. 376.30711.~~

1866 Section 11. Subsections (4) and (5) of section 376.3075,
1867 Florida Statutes, are amended to read:

1868 376.3075 Inland Protection Financing Corporation.—

1869 (4) The corporation may enter into one or more service
1870 contracts with the department to provide services to the
1871 department in connection with financing the functions and
1872 activities provided in ss. 376.30-376.317. The department may
1873 enter into one or more such service contracts with the
1874 corporation and provide for payments under such contracts
1875 pursuant to s. 376.3071(4)(n) ~~376.3071(4)(o),~~ subject to annual



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1876 appropriation by the Legislature. The proceeds from such service
1877 contracts may be used for the corporation's administrative costs
1878 and expenses after payments as set forth in subsection (5). Each
1879 service contract may have a term of up to 20 years. Amounts
1880 annually appropriated and applied to make payments under such
1881 service contracts may not include any funds derived from
1882 penalties or other payments received from any property owner or
1883 private party, including payments received under s.
1884 376.3071(7)(b) ~~376.3071(6)(b)~~. In compliance with s. 287.0641
1885 and other applicable provisions of law, the obligations of the
1886 department under such service contracts do not constitute a
1887 general obligation of the state or a pledge of the faith and
1888 credit or taxing power of the state and ~~nor may~~ such obligations
1889 are not be construed in any manner as an obligation of the State
1890 Board of Administration or entities for which it invests funds,
1891 other than the department as provided in this section, but are
1892 payable solely from amounts available in the Inland Protection
1893 Trust Fund, subject to annual appropriation. In compliance with
1894 this subsection and s. 287.0582, the service contract must
1895 expressly include the following statement: "The State of
1896 Florida's performance and obligation to pay under this contract
1897 is contingent upon an annual appropriation by the Legislature."
1898 (5) The corporation may issue and incur notes, bonds,
1899 certificates of indebtedness, or other obligations or evidences
1900 of indebtedness payable from and secured by amounts payable to



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1901 the corporation by the department under a service contract
1902 entered into pursuant to subsection (4) for the purpose of
1903 financing the rehabilitation of petroleum contamination sites
1904 pursuant to ss. 376.30-376.317. The term of any such note, bond,
1905 certificate of indebtedness, or other obligation or evidence of
1906 indebtedness may not have a financing term that exceeds 15
1907 years. The corporation may select its financing team and issue
1908 its obligations through competitive bidding or negotiated
1909 contracts, whichever is most cost-effective. ~~Any~~ Indebtedness of
1910 the corporation does not constitute a debt or obligation of the
1911 state or a pledge of the faith and credit or taxing power of the
1912 state, but is payable from and secured by payments made by the
1913 department under the service contract pursuant to s.
1914 376.3071(4)(n) ~~376.3071(4)(e)~~.

1915 Section 12. Subsections (17) and (18) of section 161.053,
1916 Florida Statutes, are amended to read:

1917 161.053 Coastal construction and excavation; regulation on
1918 county basis.—

1919 (17) The department may grant areawide permits to local
1920 governments, other governmental agencies, and utility companies
1921 for special classes of activities in areas under their general
1922 jurisdiction or responsibility or for the construction of minor
1923 structures, if these activities or structures, due to the type,
1924 size, or temporary nature of the activity or structure, will not
1925 cause measurable interference with the natural functioning of



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1926 | the beach-dune system or with marine turtles or their nesting
1927 | sites. Such activities or structures must comply with this
1928 | section and may include, but are not limited to: road repairs,
1929 | not including new construction; utility repairs and
1930 | replacements, or other minor activities necessary to provide
1931 | utility services; beach cleaning; dune restoration; on-grade
1932 | walkovers for enhancing accessibility or use in compliance with
1933 | the Americans with Disabilities Act; and emergency response. The
1934 | department shall ~~may~~ adopt rules to establish criteria and
1935 | guidelines for permit applicants. The department shall consult
1936 | with the Fish and Wildlife Conservation Commission on each
1937 | proposed areawide permit and must require notice provisions
1938 | appropriate to the type and nature of the activities for which
1939 | the areawide permits are sought.

1940 | (18) (a) The department may grant general permits for
1941 | projects, including dune restoration, dune walkovers, decks,
1942 | fences, landscaping, sidewalks, driveways, pool resurfacing,
1943 | minor pool repairs, and other nonhabitable structures, if the
1944 | projects, due to type, size, or temporary nature, will not cause
1945 | a measurable interference with the natural functioning of the
1946 | beach-dune system or with marine turtles or their nesting sites.
1947 | Multifamily habitable structures do not qualify for general
1948 | permits. However, single-family habitable structures and
1949 | swimming pools associated with such single-family habitable
1950 | structures that do not advance the line of existing construction



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1951 and satisfy all siting and design requirements of this section,
1952 and minor reconstruction for existing coastal armoring
1953 structures, may be eligible for a general permit.

1954 (b) The department shall ~~may~~ adopt rules to establish
1955 criteria and guidelines for permit applicants.

1956 (c)~~(a)~~ Persons wishing to use the general permits must, at
1957 least 30 days before beginning any work, notify the department
1958 in writing on forms adopted by the department. The notice must
1959 include a description of the proposed project and supporting
1960 documents depicting the proposed project, its location, and
1961 other pertinent information as required by rule, to demonstrate
1962 that the proposed project qualifies for the requested general
1963 permit. Persons who undertake projects without proof of notice
1964 to the department, but whose projects would otherwise qualify
1965 for general permits, shall be considered to have undertaken a
1966 project without a permit and are subject to enforcement pursuant
1967 to s. 161.121.

1968 (d)~~(b)~~ Persons wishing to use a general permit must
1969 provide notice as required by the applicable local building code
1970 where the project will be located. If a building code does not
1971 require ~~requires no~~ notice, a ~~any~~ person wishing to use a
1972 general permit must, at a minimum, post a sign describing the
1973 project on the property at least 5 days before commencing
1974 construction. The sign must be at least 88 square inches, with
1975 letters no smaller than one-quarter inch.



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1976 Section 13. Section 258.435, Florida Statutes, is created
1977 to read:

1978 258.435 Use of aquatic preserves for the accommodation of
1979 visitors.-

1980 (1) The Department of Environmental Protection shall
1981 promote the public use of aquatic preserves and their associated
1982 uplands. The department may receive gifts and donations to carry
1983 out the purpose of part II of this chapter. Moneys received in
1984 trust by the department by gift, devise, appropriation, or
1985 otherwise, subject to the terms of such trust, shall be
1986 deposited into the Land Acquisition Trust Fund and appropriated
1987 to the department for the administration, development,
1988 improvement, promotion, and maintenance of aquatic preserves and
1989 their associated uplands and for any future acquisition or
1990 development of aquatic preserves and their associated uplands.

1991 (2) The department may grant a privilege or concession for
1992 the accommodation of visitors in and use of aquatic preserves
1993 and their associated state-owned uplands if the privilege or
1994 concession does not deny or interfere with the public's access
1995 to such lands and is compatible with the aquatic preserve's
1996 management plan as approved by the Acquisition and Restoration
1997 Council. A concession must be granted based on business plans,
1998 qualifications, approach, and specified expectations or
1999 criteria. A privilege or concession may not be assigned or
2000 transferred by the grantee without the consent of the



2001 | department.

2002 | (3) Upon submittal to the department of a proposed
 2003 | concession or privilege, the department shall post a description
 2004 | of the proposed concession or privilege on the department's
 2005 | website, including a description of the activity to occur under
 2006 | the proposed concession or privilege, the time of year that the
 2007 | activity would take place, and the location of the activity.
 2008 | Once the description of the proposed privilege or concession is
 2009 | posted on the department's website and at least 60 days before
 2010 | execution of a privilege or concession agreement, the department
 2011 | shall provide an opportunity for public comment on the proposed
 2012 | privilege or concession agreement.

2013 | Section 14. Subsections (2) and (7) of section 380.276,
 2014 | Florida Statutes, are amended to read:

2015 | 380.276 Beaches and coastal areas; display of uniform
 2016 | warning and safety flags at public beaches; placement of uniform
 2017 | notification signs; beach safety education.—

2018 | (2) The Department of Environmental Protection, through
 2019 | the Florida Coastal Management Program, shall direct and
 2020 | coordinate the uniform warning and safety flag program. The
 2021 | purpose of the program shall be to encourage the display of
 2022 | uniform warning and safety flags at public beaches along the
 2023 | coast of the state and to encourage the placement of uniform
 2024 | notification signs that provide the meaning of such flags.
 2025 | Unless additional safety and warning devices are authorized



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2026 pursuant to subsection (7), only warning and safety flags
2027 developed by the department shall be displayed. Participation in
2028 the program shall be open to any government having jurisdiction
2029 over a public beach along the coast, whether or not the beach
2030 has lifeguards.

2031 (7) The Department of Environmental Protection, through
2032 the Florida Coastal Management Program, may ~~also~~ develop and
2033 make available to the public other educational information and
2034 materials related to beach safety and may also authorize state
2035 agencies and local governments to use additional safety and
2036 warning devices in conjunction with the display of uniform
2037 warning and safety flags at public beaches.

2038 Section 15. The sum of \$1.5 million in nonrecurring funds
2039 is appropriated from the General Revenue Fund to the Department
2040 of Environmental Protection to be distributed to the Southwest
2041 Florida Water Management District to purchase 41.47 acres of
2042 property for the construction of a stormwater retention pond to
2043 mitigate flooding within the Heritage Lakes Community at the
2044 Oaks at Riverside property in Pasco County. The Southwest
2045 Florida Water Management District agreement may not preclude
2046 shared use of the land for open space and passive recreation.

2047 Section 16. Subsection (3) of section 258.007, Florida
2048 Statutes, is amended to read:

2049 258.007 Powers of division.—

2050 (3) (a) The division may grant privileges, leases,



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2051 | concessions, and permits for the use of land for the
2052 | accommodation of visitors in the various parks, monuments, and
2053 | memorials, provided no natural curiosities or objects of
2054 | interest shall be granted, leased, or rented on such terms as
2055 | shall deny or interfere with free access to them by the public;
2056 | provided further, such grants, leases, and permits may be made
2057 | and given without advertisement or securing competitive bids;
2058 | and provided further, that no such grant, lease, or permit shall
2059 | be assigned or transferred by any grantee without consent of the
2060 | division.

2061 | (b) Notwithstanding paragraph (a), after May 1, 2014, the
2062 | division may not grant new concession agreements for the
2063 | accommodation of visitors in a state park that provides beach
2064 | access and contains less than 7,000 feet of shoreline if the
2065 | type of concession is available within 1,500 feet of the park's
2066 | boundaries. This paragraph does not apply to concession
2067 | agreements for accommodations offered at a park on or before May
2068 | 1, 2014. This paragraph shall take effect upon this act becoming
2069 | a law.

2070 | Section 17. Unless otherwise provided herein, this act
2071 | shall take effect July 1, 2014.