

By Senator Simpson

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1 A bill to be entitled
2 An act relating to the Petroleum Restoration Program;
3 amending s. 376.305, F.S.; revising the eligibility
4 requirements of the Abandoned Tank Restoration
5 Program; deleting provisions prohibiting the relief of
6 liability for persons who acquired title after a
7 certain date; amending s. 376.3071, F.S.; renaming
8 "the low-scored site initiative" as "the low-risk site
9 initiative"; revising the conditions for eligibility
10 and methods for payment of costs for the low-risk site
11 initiative; revising the eligibility requirements for
12 receiving rehabilitation funding; clarifying that a
13 change in ownership does not preclude a site from
14 entering into the program; amending s. 376.30713,
15 F.S.; reducing the number of sites that may be
16 proposed for certain advanced cleanup applications;
17 increasing the total amount for which the department
18 may contract for advanced cleanup work in a fiscal
19 year; authorizing property owners and responsible
20 parties to enter into voluntary cost-share agreements
21 under certain circumstances; providing an effective
22 date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsection (6) of section 376.305, Florida
27 Statutes, is amended to read:

28 376.305 Removal of prohibited discharges.—

29 (6) The Legislature created the Abandoned Tank Restoration

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30 Program in response to the need to provide financial assistance
31 for cleanup of sites that have abandoned petroleum storage
32 systems. For purposes of this subsection, the term "abandoned
33 petroleum storage system" means a petroleum storage system that
34 has not stored petroleum products for consumption, use, or sale
35 since March 1, 1990. The department shall establish the
36 Abandoned Tank Restoration Program to facilitate the restoration
37 of sites contaminated by abandoned petroleum storage systems.

38 (a) To be included in the program:

39 1. An application must be submitted to the department ~~by~~
40 ~~June 30, 1996,~~ certifying that the system has not stored
41 petroleum products for consumption, use, or sale at the facility
42 since March 1, 1990.

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

47 3. The site is not otherwise eligible for the cleanup
48 programs pursuant to ~~s. 376.3071~~ or s. 376.3072.

49 4. The site is not otherwise eligible for the Petroleum
50 Cleanup Participation Program under s. 376.3071(13) based on any
51 discharge reporting form received by the department before
52 January 1, 1995, or a written report of contamination submitted
53 to the department on or before December 31, 1998.

54 (b) In order to be eligible for the program, petroleum
55 storage systems from which a discharge occurred must be closed
56 pursuant to department rules before an eligibility
57 determination. However, if the department determines that the
58 owner of the facility cannot financially comply with the

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59 department's petroleum storage system closure requirements and
60 all other eligibility requirements are met, the petroleum
61 storage system closure requirements shall be waived. The
62 department shall take into consideration the owner's net worth
63 and the economic impact on the owner in making the determination
64 of the owner's financial ability. ~~The June 30, 1996, application~~
65 ~~deadline shall be waived for owners who cannot financially~~
66 ~~comply.~~

67 (c) Sites accepted in the program are eligible for site
68 rehabilitation funding as provided in s. 376.3071.

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

70 1. Sites on property of the Federal Government;
71 2. Sites contaminated by pollutants that are not petroleum
72 products; or

73 3. Sites where the department has been denied site access;
74 ~~or~~

75 ~~4. Sites which are owned by a person who had knowledge of~~
76 ~~the polluting condition when title was acquired unless the~~
77 ~~person acquired title to the site after issuance of a notice of~~
78 ~~site eligibility by the department.~~

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

81
82 ~~This subsection does not relieve a person who has acquired title~~
83 ~~after July 1, 1992, from the duty to establish by a~~
84 ~~preponderance of the evidence that he or she undertook, at the~~
85 ~~time of acquisition, all appropriate inquiry into the previous~~
86 ~~ownership and use of the property consistent with good~~
87 ~~commercial or customary practice in an effort to minimize~~

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88 ~~liability, as required by s. 376.308(1)(c).~~

89 Section 2. Paragraph (b) of subsection (12) and subsection
90 (13) of section 376.3071, Florida Statutes, are amended, and
91 paragraph (c) is added to subsection (12) of that section, to
92 read:

93 376.3071 Inland Protection Trust Fund; creation; purposes;
94 funding.—

95 (12) SITE CLEANUP.—

96 (b) Low-risk ~~Low-scored site initiative.~~—Notwithstanding
97 subsections (5) and (6), a site ~~with a priority ranking score of~~
98 ~~29 points or less~~ may voluntarily participate in the low-risk
99 ~~low-scored~~ site initiative regardless of whether the site is
100 eligible for state restoration funding.

101 1. To participate in the low-risk ~~low-scored~~ site
102 initiative, the ~~responsible party or~~ property owner, or a
103 responsible party that provides evidence of authorization from
104 the property owner, must submit a "No Further Action" proposal
105 and affirmatively demonstrate that the following conditions
106 under subparagraph 4. are met.:

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

109 b. ~~Excessively contaminated soil, as defined by department~~
110 ~~rule, does not exist onsite as a result of a release of~~
111 ~~petroleum products.~~

112 c. ~~A minimum of 6 months of groundwater monitoring~~
113 ~~indicates that the plume is shrinking or stable.~~

114 d. ~~The release of petroleum products at the site does not~~
115 ~~adversely affect adjacent surface waters, including their~~
116 ~~effects on human health and the environment.~~

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117 ~~e. The area of groundwater containing the petroleum~~
118 ~~products' chemicals of concern is less than one-quarter acre and~~
119 ~~is confined to the source property boundaries of the real~~
120 ~~property on which the discharge originated.~~

121 ~~f. Soils onsite that are subject to human exposure found~~
122 ~~between land surface and 2 feet below land surface meet the soil~~
123 ~~cleanup target levels established by department rule or human~~
124 ~~exposure is limited by appropriate institutional or engineering~~
125 ~~controls.~~

126 2. Upon affirmative demonstration that ~~of~~ the conditions
127 under subparagraph 4. ~~are met~~ ~~subparagraph 1.~~, the department
128 shall issue a site rehabilitation completion order incorporating
129 the determination of "No Further Action." ~~proposal submitted by~~
130 the property owner or the responsible party that provides
131 evidence of authorization from the property owner ~~Such~~
132 ~~determination acknowledges that minimal contamination exists~~
133 ~~onsite and that such contamination is not a threat to the public~~
134 ~~health, safety, or welfare, water resources, or the environment.~~
135 If no contamination is detected, the department may issue a site
136 rehabilitation completion order.

137 3. Sites that are eligible for state restoration funding
138 may receive payment of costs for the low-risk ~~low-scored~~ site
139 initiative as follows:

140 a. ~~A responsible party or~~ property owner, or a responsible
141 party that provides evidence of authorization from the property
142 owner, may submit an assessment and limited remediation plan
143 designed to affirmatively demonstrate that the site meets the
144 conditions under subparagraph 4 ~~subparagraph 1.~~ Notwithstanding
145 the priority ranking score of the site, the department may

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146 approve the cost of the assessment and limited remediation,
147 including up to 6 months of groundwater monitoring, in one or
148 more task assignments, or modifications thereof, not to exceed
149 the threshold amount provided in s. 287.017 for CATEGORY TWO,
150 \$30,000 for each site where the department has determined that
151 the assessment and limited remediation, if applicable, will
152 likely result in a determination of "No Further Action." The
153 department may not pay the costs associated with the
154 establishment of institutional or engineering controls, with the
155 exception of the costs associated with a professional land
156 survey or specific purpose survey, if needed, and the costs
157 associated with obtaining a title report and paying recording
158 fees.

159 b. After the approval of initial site assessment results
160 provided pursuant to state funding under sub-subparagraph a.,
161 the department may approve an additional amount not to exceed
162 the threshold amount provided in s. 287.017 for CATEGORY TWO for
163 limited remediation where needed to achieve a determination of
164 "No Further Action."

165 c.b. The assessment and limited remediation work shall be
166 completed no later than 9 ~~6~~ months after the department
167 authorizes the start of a state-funded, low-risk site initiative
168 task issues its approval. If groundwater monitoring is required
169 after the assessment and limited remediation in order to satisfy
170 the conditions under subparagraph 4., the department may
171 authorize an additional 6 months to complete the monitoring.

172 d.e. No more than \$15 ~~\$10~~ million for the low-risk low-
173 ~~scored~~ site initiative may be encumbered from the fund in any
174 fiscal year. Funds shall be made available on a first-come,

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175 first-served basis and shall be limited to 10 sites in each
176 fiscal year for each ~~responsible party or~~ property owner or each
177 responsible party that provides evidence of authorization from
178 the property owner.

179 ~~e.d.~~ Program deductibles, copayments, and the limited
180 contamination assessment report requirements under paragraph
181 (13) (c) do not apply to expenditures under this paragraph.

182 4. The department shall issue a site rehabilitation
183 completion order incorporating the "No Further Action" proposal
184 submitted by a property owner or a responsible party that
185 provides evidence of authorization from the property owner upon
186 affirmative demonstration that all of the following conditions
187 are met:

188 a. Soil saturated with petroleum or petroleum products, or
189 soil that causes a total corrected hydrocarbon measurement of
190 500 parts per million or higher for Gasoline Analytical Group or
191 50 parts per million or higher for Kerosene Analytical Group, as
192 defined by department rule, does not exist onsite as a result of
193 a release of petroleum products.

194 b. A minimum of 6 months of groundwater monitoring
195 indicates that the plume is shrinking or stable.

196 c. The release of petroleum products at the site does not
197 adversely affect adjacent surface waters, including their
198 effects on human health and the environment.

199 d. The area of groundwater containing the petroleum
200 products' chemicals of concern is confined to the source
201 property boundaries of the real property on which the discharge
202 originated, or has migrated from the source property to only a
203 transportation facility of the Department of Transportation.

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204 e. The groundwater contamination containing the petroleum
205 products' chemicals of concern is not a threat to any permitted
206 potable water supply well.

207 f. Soils onsite found between land surface and 2 feet below
208 land surface which are subject to human exposure meet the soil
209 cleanup target levels established in subparagraph (5)(b)9., or
210 human exposure is limited by appropriate institutional or
211 engineering controls.

212
213 Issuance of a site rehabilitation completion order under this
214 paragraph acknowledges that minimal contamination exists onsite
215 and that such contamination is not a threat to the public
216 health, safety, or welfare, water resources, or the environment.
217 If the department determines that a discharge for which a site
218 rehabilitation completion order was issued pursuant to this
219 paragraph may pose a threat to the public health, safety, or
220 welfare, water resources, or the environment, the issuance of
221 the site rehabilitation completion order, with or without
222 conditions, does not alter eligibility for state-funded
223 rehabilitation that would otherwise be applicable under this
224 section.

225 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
226 detection, reporting, and cleanup of contamination caused by
227 discharges of petroleum or petroleum products, the department
228 shall, within the guidelines established in this subsection,
229 implement a cost-sharing cleanup program to provide
230 rehabilitation funding assistance for all property contaminated
231 by discharges of petroleum or petroleum products from a
232 petroleum storage system occurring before January 1, 1995,

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233 subject to a copayment provided for in a Petroleum Cleanup
234 Participation Program site rehabilitation agreement. Eligibility
235 is subject to an annual appropriation from the fund.
236 Additionally, funding for eligible sites is contingent upon
237 annual appropriation in subsequent years. Such continued state
238 funding is not an entitlement or a vested right under this
239 subsection. Eligibility shall be determined in the program,
240 notwithstanding any other provision of law, consent order,
241 order, judgment, or ordinance to the contrary.

242 (a)1. The department shall accept any discharge reporting
243 form received before January 1, 1995, as an application for this
244 program, and the facility owner or operator need not reapply.

245 2. Owners or operators of property, regardless of whether
246 ownership has changed, which is contaminated by petroleum or
247 petroleum products from a petroleum storage system may apply for
248 such program by filing a written report of the contamination
249 incident, including evidence that such incident occurred before
250 January 1, 1995, with the department. Incidents of petroleum
251 contamination discovered after December 31, 1994, at sites which
252 have not stored petroleum or petroleum products for consumption,
253 use, or sale after such date shall be presumed to have occurred
254 before January 1, 1995. An operator's filed report shall be an
255 application of the owner for all purposes. ~~Sites reported to the~~
256 ~~department after December 31, 1998, are not eligible for the~~
257 ~~program.~~

258 (b) Subject to annual appropriation from the fund, sites
259 meeting the criteria of this subsection are eligible for up to
260 \$400,000 of site rehabilitation funding assistance in priority
261 order pursuant to subsections (5) and (6). Sites meeting the

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262 criteria of this subsection for which a site rehabilitation
263 completion order was issued before June 1, 2008, do not qualify
264 for the 2008 increase in site rehabilitation funding assistance
265 and are bound by the pre-June 1, 2008, limits. Sites meeting the
266 criteria of this subsection for which a site rehabilitation
267 completion order was not issued before June 1, 2008, regardless
268 of whether they have previously transitioned to nonstate-funded
269 cleanup status, may continue state-funded cleanup pursuant to
270 this section until a site rehabilitation completion order is
271 issued or the increased site rehabilitation funding assistance
272 limit is reached, whichever occurs first. The department may not
273 pay expenses incurred beyond the scope of an approved contract.

274 (c) Upon notification by the department that rehabilitation
275 funding assistance is available for the site pursuant to
276 subsections (5) and (6), the owner, operator, or person
277 otherwise responsible for site rehabilitation shall provide the
278 department with a limited contamination assessment report and
279 shall enter into a Petroleum Cleanup Participation Program site
280 rehabilitation agreement with the department. The agreement must
281 provide for a 25-percent copayment by the owner, operator, or
282 person otherwise responsible for conducting site rehabilitation.
283 The owner, operator, or person otherwise responsible for
284 conducting site rehabilitation shall adequately demonstrate the
285 ability to meet the copayment obligation. The limited
286 contamination assessment report and the copayment costs may be
287 reduced or eliminated if the owner and all operators responsible
288 for restoration under s. 376.308 demonstrate that they cannot
289 financially comply with the copayment and limited contamination
290 assessment report requirements. The department shall take into

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291 consideration the owner's and operator's net worth in making the
292 determination of financial ability. In the event the department
293 and the owner, operator, or person otherwise responsible for
294 site rehabilitation cannot complete negotiation of the cost-
295 sharing agreement within 120 days after beginning negotiations,
296 the department shall terminate negotiations and the site shall
297 be ineligible for state funding under this subsection and all
298 liability protections provided for in this subsection shall be
299 revoked.

300 (d) A report of a discharge made to the department by a
301 person pursuant to this subsection or any rules adopted pursuant
302 to this subsection may not be used directly as evidence of
303 liability for such discharge in any civil or criminal trial
304 arising out of the discharge.

305 (e) This subsection does not preclude the department from
306 pursuing penalties under s. 403.141 for violations of any law or
307 any rule, order, permit, registration, or certification adopted
308 or issued by the department pursuant to its lawful authority.

309 (f) Upon the filing of a discharge reporting form under
310 paragraph (a), the department or local government may not pursue
311 any judicial or enforcement action to compel rehabilitation of
312 the discharge. This paragraph does not prevent any such action
313 with respect to discharges determined ineligible under this
314 subsection or to sites for which rehabilitation funding
315 assistance is available pursuant to subsections (5) and (6).

316 (g) The following are excluded from participation in the
317 program:

318 1. Sites at which the department has been denied reasonable
319 site access to implement this section.

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320 2. Sites that were active facilities when owned or operated
321 by the Federal Government.

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

329 4. Sites for which contamination is covered under the Early
330 Detection Incentive Program, the Abandoned Tank Restoration
331 Program, or the Petroleum Liability and Restoration Insurance
332 Program, in which case site rehabilitation funding assistance
333 shall continue under the respective program.

334 Section 3. Paragraph (a) of subsection (2) and subsection
335 (4) of section 376.30713, Florida Statutes, are amended to read:
336 376.30713 Advanced cleanup.-

337 (2) The department may approve an application for advanced
338 cleanup at eligible sites, before funding based on the site's
339 priority ranking established pursuant to s. 376.3071(5)(a),
340 pursuant to this section. Only the facility owner or operator or
341 the person otherwise responsible for site rehabilitation
342 qualifies as an applicant under this section.

343 (a) Advanced cleanup applications may be submitted between
344 May 1 and June 30 and between November 1 and December 31 of each
345 fiscal year. Applications submitted between May 1 and June 30
346 shall be for the fiscal year beginning July 1. An application
347 must consist of:

348 1. A commitment to pay 25 percent or more of the total

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349 cleanup cost deemed recoverable under this section along with
350 proof of the ability to pay the cost share. An application
351 proposing that the department enter into a performance-based
352 contract for the cleanup of 10 ~~20~~ or more sites may use a
353 commitment to pay, a demonstrated cost savings to the
354 department, or both to meet the cost-share requirement. For an
355 application relying on a demonstrated cost savings to the
356 department, the applicant shall, in conjunction with the
357 proposed agency term contractor, establish and provide in the
358 application the percentage of cost savings in the aggregate that
359 is being provided to the department for cleanup of the sites
360 under the application compared to the cost of cleanup of those
361 same sites using the current rates provided to the department by
362 the proposed agency term contractor. The department shall
363 determine whether the cost savings demonstration is acceptable.
364 Such determination is not subject to chapter 120.

365 2. A nonrefundable review fee of \$250 to cover the
366 administrative costs associated with the department's review of
367 the application.

368 3. A limited contamination assessment report.

369 4. A proposed course of action.

370

371 The limited contamination assessment report must be sufficient
372 to support the proposed course of action and to estimate the
373 cost of the proposed course of action. Costs incurred related to
374 conducting the limited contamination assessment report are not
375 refundable from the Inland Protection Trust Fund. Site
376 eligibility under this subsection or any other provision of this
377 section is not an entitlement to advanced cleanup or continued

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378 restoration funding. The applicant shall certify to the
379 department that the applicant has the prerequisite authority to
380 enter into an advanced cleanup contract with the department. The
381 certification must be submitted with the application.

382 (4) The department may enter into contracts for a total of
383 up to \$25 ~~\$15~~ million of advanced cleanup work in each fiscal
384 year. However, a facility or an applicant who bundles multiple
385 sites as specified in subparagraph (2)(a)1. may not be approved
386 for more than \$5 million of cleanup activity in each fiscal
387 year. A property owner or responsible party may enter into a
388 voluntary cost-share agreement in which the property owner or
389 responsible party commits to bundle multiple sites and lists the
390 facilities that will be included in those future bundles. The
391 facilities listed are not subject to agency term contractor
392 assignment pursuant to department rule. The department reserves
393 the right to terminate the voluntary cost-share agreement if the
394 property owner or responsible party fails to submit an
395 application to bundle multiple sites within an open application
396 period during which it is eligible to participate. For the
397 purposes of this section, the term "facility" includes, but is
398 not limited to, multiple site facilities such as airports, port
399 facilities, and terminal facilities even though such enterprises
400 may be treated as separate facilities for other purposes under
401 this chapter.

402 Section 4. This act shall take effect July 1, 2016.