

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.; revising
8 legislative intent and purpose; deleting an expiration
9 date; revising the criteria for determining what
10 constitutes certain rehabilitation program tasks;
11 revising the conditions for eligibility and methods
12 for payment of costs for the low-scored site
13 initiative; revising the eligibility requirements for
14 receiving rehabilitation funding; specifying that the
15 issuance of a site rehabilitation completion order
16 does not alter eligibility for state-funded
17 remediation under certain circumstances; clarifying
18 that a change in ownership does not preclude a site
19 from entering into the program; providing additional
20 funding for remediation and monitoring under certain
21 circumstances; amending s. 376.30713, F.S.; revising
22 advanced cleanup application requirements; increasing
23 the total amount for which the department may contract
24 for advanced cleanup work in a fiscal year;
25 authorizing property owners and responsible parties to
26 enter into voluntary cost-share agreements under

27 | certain circumstances; providing an effective date.

28 |

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

30 |

31 | Section 1. Subsection (6) of section 376.305, Florida
32 | Statutes, is amended to read:

33 | 376.305 Removal of prohibited discharges.—

34 | (6) The Legislature created the Abandoned Tank Restoration
35 | Program in response to the need to provide financial assistance
36 | for cleanup of sites that have abandoned petroleum storage
37 | systems. For purposes of this subsection, the term "abandoned
38 | petroleum storage system" means a petroleum storage system that
39 | has not stored petroleum products for consumption, use, or sale
40 | since March 1, 1990. The department shall establish the
41 | Abandoned Tank Restoration Program to facilitate the restoration
42 | of sites contaminated by abandoned petroleum storage systems.

43 | (a) To be included in the program:

44 | 1. An application must be submitted to the department ~~by~~
45 | ~~June 30, 1996,~~ certifying that the system has not stored
46 | petroleum products for consumption, use, or sale at the facility
47 | since March 1, 1990.

48 | 2. The owner or operator of the petroleum storage system
49 | when it was in service must have ceased conducting business
50 | involving consumption, use, or sale of petroleum products at
51 | that facility on or before March 1, 1990.

52 | 3. The site is not otherwise eligible for the cleanup

53 programs pursuant to ~~s. 376.3071~~ or s. 376.3072.

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

59 (b) In order to be eligible for the program, petroleum
60 storage systems from which a discharge occurred must be closed
61 pursuant to department rules before an eligibility
62 determination. However, if the department determines that the
63 owner of the facility cannot financially comply with the
64 department's petroleum storage system closure requirements and
65 all other eligibility requirements are met, the petroleum
66 storage system closure requirements shall be waived. The
67 department shall take into consideration the owner's net worth
68 and the economic impact on the owner in making the determination
69 of the owner's financial ability. ~~The June 30, 1996, application~~
70 ~~deadline shall be waived for owners who cannot financially~~
71 ~~comply.~~

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

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

- 75 1. Sites on property of the Federal Government;
76 2. Sites contaminated by pollutants that are not petroleum
77 products; or
78 3. Sites where the department has been denied site access;

79 ~~or~~

80 ~~4. Sites which are owned by a person who had knowledge of~~
81 ~~the polluting condition when title was acquired unless the~~
82 ~~person acquired title to the site after issuance of a notice of~~
83 ~~site eligibility by the department.~~

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

86

87 ~~This subsection does not relieve a person who has acquired title~~
88 ~~after July 1, 1992, from the duty to establish by a~~
89 ~~preponderance of the evidence that he or she undertook, at the~~
90 ~~time of acquisition, all appropriate inquiry into the previous~~
91 ~~ownership and use of the property consistent with good~~
92 ~~commercial or customary practice in an effort to minimize~~
93 ~~liability, as required by s. 376.308(1)(c).~~

94 Section 2. Paragraph (b) of subsection (2), subsection
95 (4), paragraph (b) of subsection (5), paragraph (b) of
96 subsection (12), and subsection (13) of section 376.3071,
97 Florida Statutes, are amended to read:

98 376.3071 Inland Protection Trust Fund; creation; purposes;
99 funding.—

100 (2) INTENT AND PURPOSE.—

101 (b) It is the intent of the Legislature that the
102 department implement rules and procedures to improve the
103 efficiency and productivity of the Petroleum Restoration
104 Program. The department is directed to implement rules and

105 policies to eliminate and reduce duplication of site
106 rehabilitation efforts, paperwork, and documentation, and
107 micromanagement of site rehabilitation tasks. The department
108 shall make efficiency and productivity a priority in the
109 administration of the Petroleum Restoration Program and to this
110 end, when necessary, shall use petroleum program contracted
111 services to improve the efficiency and productivity of the
112 program. Furthermore, when implementing rules and procedures to
113 improve such efficiency and productivity, the department shall
114 recognize and consider the potential value of utilizing
115 contracted inspection and professional resources to efficiently
116 and productively administer the program.

117 (4) USES.—Whenever, in its determination, incidents of
118 inland contamination related to the storage of petroleum or
119 petroleum products may pose a threat to the public health,
120 safety, or welfare, water resources, or the environment, the
121 department shall obligate moneys available in the fund to
122 provide for:

123 (a) Prompt investigation and assessment of contamination
124 sites.

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

127 (c) Rehabilitation of contamination sites, which shall
128 consist of cleanup of affected soil, groundwater, and inland
129 surface waters, using the most cost-effective alternative that
130 is technologically feasible and reliable and that provides

131 adequate protection of the public health, safety, and welfare,
132 and water resources, and that minimizes environmental damage,
133 pursuant to the site selection and cleanup criteria established
134 by the department under subsection (5), except that this
135 paragraph does not authorize the department to obligate funds
136 for payment of costs which may be associated with, but are not
137 integral to, site rehabilitation, such as the cost for
138 retrofitting or replacing petroleum storage systems.

139 (d) Maintenance and monitoring of contamination sites.

140 (e) Inspection and supervision of activities described in
141 this subsection.

142 (f) Payment of expenses incurred by the department in its
143 efforts to obtain from responsible parties the payment or
144 recovery of reasonable costs resulting from the activities
145 described in this subsection.

146 (g) Payment of any other reasonable costs of
147 administration, including those administrative costs incurred by
148 the Department of Health in providing field and laboratory
149 services, toxicological risk assessment, and other assistance to
150 the department in the investigation of drinking water
151 contamination complaints and costs associated with public
152 information and education activities.

153 (h) Establishment and implementation of the compliance
154 verification program as authorized in s. 376.303(1)(a),
155 including contracting with local governments or state agencies
156 to provide for the administration of such program through

157 locally administered programs, to minimize the potential for
158 further contamination sites.

159 (i) Funding of the provisions of ss. 376.305(6) and
160 376.3072.

161 (j) Activities related to removal and replacement of
162 petroleum storage systems, exclusive of costs of any tank,
163 piping, dispensing unit, or related hardware, if soil removal is
164 approved as a component of site rehabilitation and requires
165 removal of the tank where remediation is conducted under this
166 section or if such activities were justified in an approved
167 remedial action plan.

168 (k) Reasonable costs of restoring property as nearly as
169 practicable to the conditions which existed before activities
170 associated with contamination assessment or remedial action
171 taken under s. 376.303(4).

172 (l) Repayment of loans to the fund.

173 (m) Expenditure of sums from the fund to cover ineligible
174 sites or costs as set forth in subsection (13), if the
175 department in its discretion deems it necessary to do so. In
176 such cases, the department may seek recovery and reimbursement
177 of costs in the same manner and pursuant to the same procedures
178 established for recovery and reimbursement of sums otherwise
179 owed to or expended from the fund.

180 (n) Payment of amounts payable under any service contract
181 entered into by the department pursuant to s. 376.3075, subject
182 to annual appropriation by the Legislature.

183 (o) Petroleum remediation pursuant to this section
 184 throughout a state fiscal year. The department shall establish a
 185 process to uniformly encumber appropriated funds throughout a
 186 state fiscal year and shall allow for emergencies and imminent
 187 threats to public health, safety, and welfare, water resources,
 188 and the environment as provided in paragraph (5)(a). This
 189 paragraph does not apply to appropriations associated with the
 190 free product recovery initiative provided in paragraph (5)(c) or
 191 the advanced cleanup program provided in s. 376.30713.

192 (p) Enforcement of this section and ss. 376.30-376.317 by
 193 the Fish and Wildlife Conservation Commission. The department
 194 shall disburse moneys to the commission for such purpose.

195 (q) Payments for program deductibles, copayments, and
 196 limited contamination assessment reports that otherwise would be
 197 paid by another state agency for state-funded petroleum
 198 contamination site rehabilitation. ~~This paragraph expires July~~
 199 ~~1, 2016.~~

200
 201 The issuance of a site rehabilitation completion order pursuant
 202 to subsection (5) or paragraph (12)(b) for contamination
 203 eligible for programs funded by this section does not alter the
 204 project's eligibility for state-funded remediation if the
 205 department determines that site conditions are not protective of
 206 human health under actual or proposed circumstances of exposure
 207 under subsection (5). The Inland Protection Trust Fund may ~~only~~
 208 be used only to fund the activities in ss. 376.30-376.317 except

209 ss. 376.3078 and 376.3079. Amounts on deposit in the fund in
 210 each fiscal year must ~~shall~~ first be applied or allocated for
 211 the payment of amounts payable by the department pursuant to
 212 paragraph (n) under a service contract entered into by the
 213 department pursuant to s. 376.3075 and appropriated in each year
 214 by the Legislature before making or providing for other
 215 disbursements from the fund. This subsection does not authorize
 216 the use of the fund for cleanup of contamination caused
 217 primarily by a discharge of solvents as defined in s.
 218 206.9925(6), or polychlorinated biphenyls when their presence
 219 causes them to be hazardous wastes, except solvent contamination
 220 which is the result of chemical or physical breakdown of
 221 petroleum products and is otherwise eligible. Facilities used
 222 primarily for the storage of motor or diesel fuels as defined in
 223 ss. 206.01 and 206.86 are not excluded from eligibility pursuant
 224 to this section.

225 (5) SITE SELECTION AND CLEANUP CRITERIA.—

226 (b) It is the intent of the Legislature to protect the
 227 health of all people under actual circumstances of exposure. The
 228 secretary shall establish criteria by rule for the purpose of
 229 determining, on a site-specific basis, the rehabilitation
 230 program tasks that comprise a site rehabilitation program and
 231 the level at which a rehabilitation program task and a site
 232 rehabilitation program are completed. In establishing the rule,
 233 the department shall incorporate, to the maximum extent
 234 feasible, risk-based corrective action principles to achieve

235 protection of the public health, safety, and welfare, water
236 resources, and the environment in a cost-effective manner as
237 provided in this subsection. Criteria for determining what
238 constitutes a rehabilitation program task or completion of site
239 rehabilitation program tasks and site rehabilitation programs
240 shall be based upon the factors set forth in paragraph (a) and
241 the following additional factors:

242 1. The current exposure and potential risk of exposure to
243 humans and the environment including multiple pathways of
244 exposure.

245 2. The appropriate point of compliance with cleanup target
246 levels for petroleum products' chemicals of concern. The point
247 of compliance shall be at the source of the petroleum
248 contamination. However, the department may temporarily move the
249 point of compliance to the boundary of the property, or to the
250 edge of the plume when the plume is within the property
251 boundary, while cleanup, including cleanup through natural
252 attenuation processes in conjunction with appropriate
253 monitoring, is proceeding. The department may also, pursuant to
254 criteria provided for in this paragraph, temporarily extend the
255 point of compliance beyond the property boundary with
256 appropriate monitoring, if such extension is needed to
257 facilitate natural attenuation or to address the current
258 conditions of the plume, if the public health, safety, and
259 welfare, water resources, and the environment are adequately
260 protected. Temporary extension of the point of compliance beyond

261 the property boundary, as provided in this subparagraph, must
262 include notice to local governments and owners of any property
263 into which the point of compliance is allowed to extend.

264 3. The appropriate site-specific cleanup goal. The site-
265 specific cleanup goal shall be that all petroleum contamination
266 sites ultimately achieve the applicable cleanup target levels
267 provided in this paragraph. However, the department may allow
268 concentrations of the petroleum products' chemicals of concern
269 to temporarily exceed the applicable cleanup target levels while
270 cleanup, including cleanup through natural attenuation processes
271 in conjunction with appropriate monitoring, is proceeding, if
272 the public health, safety, and welfare, water resources, and the
273 environment are adequately protected.

274 4. The appropriateness of using institutional or
275 engineering controls. Site rehabilitation programs may include
276 the use of institutional or engineering controls to eliminate
277 the potential exposure to petroleum products' chemicals of
278 concern to humans or the environment. Use of such controls must
279 have prior department approval, and institutional controls may
280 not be acquired with moneys from the fund other than the costs
281 associated with a professional land survey or a specific purpose
282 survey, if such is needed, and costs associated with obtaining a
283 title report and recording fees. When institutional or
284 engineering controls are implemented to control exposure, the
285 removal of such controls must have prior department approval and
286 must be accompanied immediately by the resumption of active

287 cleanup or other approved controls unless cleanup target levels
288 pursuant to this paragraph have been achieved.

289 5. The additive effects of the petroleum products'
290 chemicals of concern. The synergistic effects of petroleum
291 products' chemicals of concern must also be considered when the
292 scientific data becomes available.

293 6. Individual site characteristics which must include, but
294 not be limited to, the current and projected use of the affected
295 groundwater in the vicinity of the site, current and projected
296 land uses of the area affected by the contamination, the exposed
297 population, the degree and extent of contamination, the rate of
298 contaminant migration, the apparent or potential rate of
299 contaminant degradation through natural attenuation processes,
300 the location of the plume, and the potential for further
301 migration in relation to site property boundaries.

302 7. Applicable state water quality standards.

303 a. Cleanup target levels for petroleum products' chemicals
304 of concern found in groundwater shall be the applicable state
305 water quality standards. Where such standards do not exist, the
306 cleanup target levels for groundwater shall be based on the
307 minimum criteria specified in department rule. The department
308 shall consider the following, as appropriate, in establishing
309 the applicable minimum criteria: calculations using a lifetime
310 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
311 best achievable detection limit; the naturally occurring
312 background concentration; or nuisance, organoleptic, and

313 aesthetic considerations.

314 b. Where surface waters are exposed to petroleum
315 contaminated groundwater, the cleanup target levels for the
316 petroleum products' chemicals of concern shall be based on the
317 surface water standards as established by department rule. The
318 point of measuring compliance with the surface water standards
319 shall be in the groundwater immediately adjacent to the surface
320 water body.

321 8. Whether deviation from state water quality standards or
322 from established criteria is appropriate. The department may
323 issue a "No Further Action Order" based upon the degree to which
324 the desired cleanup target level is achievable and can be
325 reasonably and cost-effectively implemented within available
326 technologies or engineering and institutional control
327 strategies. Where a state water quality standard is applicable,
328 a deviation may not result in the application of cleanup target
329 levels more stringent than the standard. In determining whether
330 it is appropriate to establish alternate cleanup target levels
331 at a site, the department may consider the effectiveness of
332 source removal that has been completed at the site and the
333 practical likelihood of the use of low yield or poor quality
334 groundwater; the use of groundwater near marine surface water
335 bodies; the current and projected use of the affected
336 groundwater in the vicinity of the site; or the use of
337 groundwater in the immediate vicinity of the storage tank area,
338 where it has been demonstrated that the groundwater

339 contamination is not migrating away from such localized source,
340 if the public health, safety, and welfare, water resources, and
341 the environment are adequately protected.

342 9. Appropriate cleanup target levels for soils.

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

350 b. Leachability-based soil target levels shall be based on
351 protection of the groundwater cleanup target levels or the
352 alternate cleanup target levels for groundwater established
353 pursuant to this paragraph, as appropriate. Source removal and
354 other cost-effective alternatives that are technologically
355 feasible shall be considered in achieving the leachability soil
356 target levels established by the department. The leachability
357 goals do not apply if the department determines, based upon
358 individual site characteristics, that petroleum products'
359 chemicals of concern will not leach into the groundwater at
360 levels which pose a threat to public health, safety, and
361 welfare, water resources, or the environment.

362

363 This paragraph does not restrict the department from temporarily
364 postponing completion of any site rehabilitation program for

365 which funds are being expended whenever such postponement is
366 necessary in order to make funds available for rehabilitation of
367 a contamination site with a higher priority status.

368 (12) SITE CLEANUP.—

369 (b) *Low-scored site initiative.*—Notwithstanding
370 subsections (5) and (6), a site with a priority ranking score of
371 29 points or less may voluntarily participate in the low-scored
372 site initiative regardless of whether the site is eligible for
373 state restoration funding.

374 1. To participate in the low-scored site initiative, the
375 ~~responsible party or property owner, or a responsible party who~~
376 provides evidence of authorization from the property owner, must
377 submit a "No Further Action" proposal and affirmatively
378 demonstrate that the following conditions imposed under
379 subparagraph 4. are met.‡

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

382 b. ~~Excessively contaminated soil, as defined by department~~
383 ~~rule, does not exist onsite as a result of a release of~~
384 ~~petroleum products.~~

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

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

390 e. ~~The area of groundwater containing the petroleum~~

391 ~~products' chemicals of concern is less than one-quarter acre and~~
392 ~~is confined to the source property boundaries of the real~~
393 ~~property on which the discharge originated.~~

394 ~~f. Soils onsite that are subject to human exposure found~~
395 ~~between land surface and 2 feet below land surface meet the soil~~
396 ~~cleanup target levels established by department rule or human~~
397 ~~exposure is limited by appropriate institutional or engineering~~
398 ~~controls.~~

399 2. Upon affirmative demonstration that ~~of~~ the conditions
400 imposed under subparagraph 4. are met ~~subparagraph 1.~~, the
401 department shall issue a site rehabilitation completion order
402 incorporating the determination of "No Further Action." proposal
403 submitted by the property owner or the responsible party, who
404 must provide evidence of authorization from the property owner
405 ~~Such determination acknowledges that minimal contamination~~
406 ~~exists onsite and that such contamination is not a threat to the~~
407 ~~public health, safety, or welfare, water resources, or the~~
408 ~~environment.~~ If no contamination is detected, the department may
409 issue a site rehabilitation completion order.

410 3. Sites that are eligible for state restoration funding
411 may receive payment of costs for the low-scored site initiative
412 as follows:

413 a. A responsible party or property owner, or a responsible
414 party who provides evidence of authorization from the property
415 owner, may submit an assessment and limited remediation plan
416 designed to affirmatively demonstrate that the site meets the

417 conditions imposed under subparagraph 4 ~~subparagraph 1~~.
418 Notwithstanding the priority ranking score of the site, the
419 department may approve the cost of the assessment and limited
420 remediation, including up to 12 ~~6~~ months of groundwater
421 monitoring and 12 months of limited remediation activities in
422 one or more task assignments or modifications thereof, not to
423 exceed the threshold amount provided in s. 287.017 for CATEGORY
424 TWO, \$30,000 for each site where the department has determined
425 that the assessment and limited remediation, if applicable, will
426 likely result in a determination of "No Further Action." ~~The~~
427 department may not pay the costs associated with the
428 establishment of institutional or engineering controls other
429 than the costs associated with a professional land survey or a
430 specific purpose survey, if such is needed, and the costs
431 associated with obtaining a title report and paying recording
432 fees.

433 b. After the approval of initial site assessment results
434 provided pursuant to state funding under sub-subparagraph a.,
435 the department may approve an additional amount not to exceed
436 the threshold amount provided in s. 287.017 for CATEGORY TWO for
437 limited remediation needed to achieve a determination of "No
438 Further Action."

439 c. ~~b.~~ The assessment and limited remediation work shall be
440 completed no later than 15 ~~6~~ months after the department
441 authorizes the start of a state-funded, low-score site
442 initiative task. If groundwater monitoring is required after the

443 assessment and limited remediation in order to satisfy the
444 conditions under subparagraph 4., the department may authorize
445 an additional 12 months to complete the monitoring ~~issues its~~
446 ~~approval.~~

447 ~~d.e.~~ No more than \$15 ~~\$10~~ million for the low-scored site
448 initiative may be encumbered from the fund in any fiscal year.
449 Funds shall be made available on a first-come, first-served
450 basis and shall be limited to 10 sites in each fiscal year for
451 each ~~responsible party or~~ property owner or each responsible
452 party who provides evidence of authorization from the property
453 owner.

454 ~~e.d.~~ Program deductibles, copayments, and the limited
455 contamination assessment report requirements under paragraph
456 (13) (d) ~~(13) (e)~~ do not apply to expenditures under this
457 paragraph.

458 4. The department shall issue an order incorporating the
459 "No Further Action" proposal submitted by a property owner or a
460 responsible party who provides evidence of authorization from
461 the property owner upon affirmative demonstration that all of
462 the following conditions are met:

463 a. Soil saturated with petroleum or petroleum products, or
464 soil that causes a total corrected hydrocarbon measurement of
465 500 parts per million or higher for the Gasoline Analytical
466 Group or 50 parts per million or higher for the Kerosene
467 Analytical Group, as defined by department rule, does not exist
468 onsite as a result of a release of petroleum products.

469 b. A minimum of 12 months of groundwater monitoring
470 indicates that the plume is shrinking or stable.

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

474 d. The area containing the petroleum products' chemicals
475 of concern:

476 (I) Is confined to the source property boundaries of the
477 real property on which the discharge originated, unless the
478 property owner has requested or authorized a more limited area
479 in the "No Further Action" proposal submitted under this
480 subsection; or

481 (II) Has migrated from the source property onto or beneath
482 a transportation facility as defined s. 334.03(30) for which the
483 department has approved, and governmental entity owning the
484 transportation facility has agreed to institutional controls as
485 defined in s. 376.301(21). This sub-sub-subparagraph does not,
486 however, impose any legal liability on the transportation
487 facility owner, obligate such owner to engage in remediation, or
488 waive such owner's right to recover costs for damages.

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

492 f. Soils onsite found between land surface and 2 feet
493 below land surface which are subject to human exposure meet the
494 soil cleanup target levels established in subparagraph (5)(b)9.,

495 or human exposure is limited by appropriate institutional or
496 engineering controls.

497
498 Issuance of a site rehabilitation completion order under this
499 paragraph acknowledges that minimal contamination exists onsite
500 and that such contamination is not a threat to the public
501 health, safety, or welfare; water resources; or the environment.
502 Pursuant to subsection (4), the issuance of the site
503 rehabilitation completion order, with or without conditions,
504 does not alter eligibility for state-funded rehabilitation that
505 would otherwise be applicable under this section.

506 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
507 detection, reporting, and cleanup of contamination caused by
508 discharges of petroleum or petroleum products, the department
509 shall, within the guidelines established in this subsection,
510 implement a cost-sharing cleanup program to provide
511 rehabilitation funding assistance for all property contaminated
512 by discharges of petroleum or petroleum products from a
513 petroleum storage system occurring before January 1, 1995,
514 subject to a copayment provided for in a Petroleum Cleanup
515 Participation Program site rehabilitation agreement. Eligibility
516 is subject to an annual appropriation from the fund.
517 Additionally, funding for eligible sites is contingent upon
518 annual appropriation in subsequent years. Such continued state
519 funding is not an entitlement or a vested right under this
520 subsection. Eligibility shall be determined in the program,

521 notwithstanding any other provision of law, consent order,
 522 order, judgment, or ordinance to the contrary.

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

526 2. Regardless of whether ownership has changed, owners or
 527 operators of property that is contaminated by petroleum or
 528 petroleum products from a petroleum storage system may apply for
 529 such program by filing a written report of the contamination
 530 incident, including evidence that such incident occurred before
 531 January 1, 1995, with the department. Incidents of petroleum
 532 contamination discovered after December 31, 1994, at sites which
 533 have not stored petroleum or petroleum products for consumption,
 534 use, or sale after such date shall be presumed to have occurred
 535 before January 1, 1995. An operator's filed report shall be an
 536 application of the owner for all purposes. ~~Sites reported to the~~
 537 ~~department after December 31, 1998, are not eligible for the~~
 538 ~~program.~~

539 (b) Subject to annual appropriation from the fund, sites
 540 meeting the criteria of this subsection are eligible for up to
 541 \$400,000 of site rehabilitation funding assistance in priority
 542 order pursuant to subsections (5) and (6). Sites meeting the
 543 criteria of this subsection for which a site rehabilitation
 544 completion order was issued before June 1, 2008, do not qualify
 545 for the 2008 increase in site rehabilitation funding assistance
 546 and are bound by the pre-June 1, 2008, limits. Sites meeting the

547 criteria of this subsection for which a site rehabilitation
548 completion order was not issued before June 1, 2008, regardless
549 of whether they have previously transitioned to nonstate-funded
550 cleanup status, may continue state-funded cleanup pursuant to
551 this section until a site rehabilitation completion order is
552 issued or the increased site rehabilitation funding assistance
553 limit is reached, whichever occurs first. The department may not
554 pay expenses incurred beyond the scope of an approved contract.

555 (c) The department may also approve supplemental funding
556 of up to \$100,000 for additional remediation and monitoring if
557 such remediation and monitoring is necessary to achieve a
558 determination of "No Further Action."

559 (d) Upon notification by the department that
560 rehabilitation funding assistance is available for the site
561 pursuant to subsections (5) and (6), the property owner,
562 operator, or person otherwise responsible for site
563 rehabilitation shall provide the department with a limited
564 contamination assessment report and shall enter into a Petroleum
565 Cleanup Participation Program site rehabilitation agreement with
566 the department. The agreement must provide for a 25-percent
567 copayment by the owner, operator, or person otherwise
568 responsible for conducting site rehabilitation. The owner,
569 operator, or person otherwise responsible for conducting site
570 rehabilitation shall adequately demonstrate the ability to meet
571 the copayment obligation. The limited contamination assessment
572 report and the copayment costs may be reduced or eliminated if

573 the owner and all operators responsible for restoration under s.
574 376.308 demonstrate that they cannot financially comply with the
575 copayment and limited contamination assessment report
576 requirements. The department shall take into consideration the
577 owner's and operator's net worth in making the determination of
578 financial ability. In the event the department and the owner,
579 operator, or person otherwise responsible for site
580 rehabilitation cannot complete negotiation of the cost-sharing
581 agreement within 120 days after beginning negotiations, the
582 department shall terminate negotiations and the site shall be
583 ineligible for state funding under this subsection and all
584 liability protections provided for in this subsection shall be
585 revoked.

586 (e)~~(d)~~ A report of a discharge made to the department by a
587 person pursuant to this subsection or any rules adopted pursuant
588 to this subsection may not be used directly as evidence of
589 liability for such discharge in any civil or criminal trial
590 arising out of the discharge.

591 (f)~~(e)~~ This subsection does not preclude the department
592 from pursuing penalties under s. 403.141 for violations of any
593 law or any rule, order, permit, registration, or certification
594 adopted or issued by the department pursuant to its lawful
595 authority.

596 (g)~~(f)~~ Upon the filing of a discharge reporting form under
597 paragraph (a), the department or local government may not pursue
598 any judicial or enforcement action to compel rehabilitation of

599 the discharge. This paragraph does not prevent any such action
600 with respect to discharges determined ineligible under this
601 subsection or to sites for which rehabilitation funding
602 assistance is available pursuant to subsections (5) and (6).

603 (h)~~(g)~~ The following are excluded from participation in
604 the program:

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

607 2. Sites that were active facilities when owned or
608 operated by the Federal Government.

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

616 4. Sites for which contamination is covered under the
617 Early Detection Incentive Program, the Abandoned Tank
618 Restoration Program, or the Petroleum Liability and Restoration
619 Insurance Program, in which case site rehabilitation funding
620 assistance shall continue under the respective program.

621 Section 3. Paragraph (d) of subsection (1), paragraph (a)
622 of subsection (2), and subsection (4) of section 376.30713,
623 Florida Statutes, are amended to read:

624 376.30713 Advanced cleanup.—

625 (1) In addition to the legislative findings provided in s.
626 376.3071, the Legislature finds and declares:

627 (d) It is appropriate for a person who is responsible for
628 site rehabilitation to share the costs associated with managing
629 and conducting advanced cleanup, to facilitate the opportunity
630 for advanced cleanup, and to mitigate the additional costs that
631 will be incurred by the state in conducting site rehabilitation
632 in advance of the site's priority ranking. Such cost sharing
633 will result in more contaminated sites being cleaned up and
634 greater environmental benefits to the state. This section is
635 only available for sites eligible for restoration funding under
636 EDI, ATRP, or PLRIP. This section is available for discharges
637 eligible for restoration funding under the petroleum cleanup
638 participation program for the state's cost share of site
639 rehabilitation. Applications must include a cost-sharing
640 commitment for this section in addition to the 25-percent-
641 copayment requirement of the petroleum cleanup participation
642 program. This section is not available for any discharge under a
643 petroleum cleanup participation program where the 25-percent-
644 copayment requirement of the petroleum cleanup participation
645 program has been reduced or eliminated pursuant to s.
646 376.3071(13)(d) ~~s. 376.3071(13)(e)~~.

647 (2) The department may approve an application for advanced
648 cleanup at eligible sites, notwithstanding ~~before funding based~~
649 ~~on~~ the site's priority ranking established pursuant to s.
650 376.3071(5)(a), pursuant to this section. Only the facility

651 owner or operator or the person otherwise responsible for site
652 rehabilitation qualifies as an applicant under this section.

653 (a) Advanced cleanup applications may be submitted between
654 May 1 and June 30 and between November 1 and December 31 of each
655 fiscal year. Applications submitted between May 1 and June 30
656 shall be for the fiscal year beginning July 1. An application
657 must consist of:

658 1. A commitment to pay 25 percent or more of the total
659 cleanup cost deemed recoverable under this section along with
660 proof of the ability to pay the cost share. The department shall
661 determine whether the cost savings demonstration is acceptable.
662 Such determination is not subject to chapter 120.

663 a. Applications for the aggregate cleanup of 5 or more
664 sites may be submitted in one of two formats to meet the cost-
665 share requirement:

666 (I) For an aggregate application proposing that the
667 department enter into a performance-based contract ~~for the~~
668 ~~cleanup of 20 or more sites~~ may use a commitment to pay, a
669 demonstrated cost savings to the department, or both to meet the
670 ~~cost-share~~ requirement.

671 (II) For an aggregate application relying on a
672 demonstrated cost savings to the department, the applicant
673 shall, in conjunction with the proposed agency term contractor,
674 establish and provide in the application the percentage of cost
675 savings in the aggregate that is being provided to the
676 department for cleanup of the sites under the application

677 compared to the cost of cleanup of those same sites using the
678 current rates provided to the department by the proposed agency
679 term contractor. ~~The department shall determine whether the cost~~
680 ~~savings demonstration is acceptable. Such determination is not~~
681 ~~subject to chapter 120.~~

682 b. Applications for the cleanup of individual sites may be
683 submitted in one of two formats to meet the cost-share
684 requirement:

685 (I) For an individual application proposing that the
686 department enter into a performance-based contract may use a
687 commitment to pay, a demonstrated cost savings to the
688 department, or both to meet the requirement.

689 (II) For an individual application relying on a
690 demonstrated cost savings to the department, the applicant
691 shall, in conjunction with the proposed agency term contractor,
692 establish and provide in the application a 25-percent cost
693 savings to the department for cleanup of the site under the
694 application compared to the cost of cleanup of the same site
695 using the current rates provided to the department by the
696 proposed agency term contractor.

697 2. A nonrefundable review fee of \$250 to cover the
698 administrative costs associated with the department's review of
699 the application.

700 3. A limited contamination assessment report.

701 4. A proposed course of action.

702 5. A department site access agreement, or similar

703 agreements approved by the department that do not violate state
704 law, entered into with the property owner or owners, as
705 applicable, and evidence of authorization from such owner or
706 owners for petroleum site rehabilitation program tasks
707 consistent with the proposed course of action where the
708 applicant is not the property owner for any of the sites
709 contained in the application.

710
711 The limited contamination assessment report must be sufficient
712 to support the proposed course of action and to estimate the
713 cost of the proposed course of action. Costs incurred related to
714 conducting the limited contamination assessment report are not
715 refundable from the Inland Protection Trust Fund. Site
716 eligibility under this subsection or any other provision of this
717 section is not an entitlement to advanced cleanup or continued
718 restoration funding. The applicant shall certify to the
719 department that the applicant has the prerequisite authority to
720 enter into an advanced cleanup contract with the department. The
721 certification must be submitted with the application.

722 (4) The department may enter into contracts for a total of
723 up to \$25 ~~\$15~~ million of advanced cleanup work in each fiscal
724 year. However, a facility or an applicant who bundles multiple
725 sites as specified in subparagraph (2)(a)1. may not be approved
726 for more than \$5 million of cleanup activity in each fiscal
727 year. A property owner or responsible party may enter into a
728 voluntary cost-share agreement in which the property owner or

729 responsible party commits to bundle multiple sites and lists the
730 facilities that will be included in those future bundles. The
731 facilities listed are not subject to agency term contractor
732 assignment pursuant to department rule. The department reserves
733 the right to terminate or amend the voluntary cost-share
734 agreement for any identified site under the voluntary cost-share
735 agreement if the property owner or responsible party fails to
736 submit an application to bundle any site, not already covered by
737 an advance cleanup contract, under such voluntary cost-share
738 agreement within a subsequent open application period during
739 which it is eligible to participate. For the purposes of this
740 section, the term "facility" includes, but is not limited to,
741 multiple site facilities such as airports, port facilities, and
742 terminal facilities even though such enterprises may be treated
743 as separate facilities for other purposes under this chapter.
744 Section 4. This act shall take effect July 1, 2016.